Circuit Court for Baltimore City
Case Nos. 813-290001, 813-290002, 813-290003

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2126

September Term, 2017

---

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

---

Kehoe,
Arthur,
Shaw Geter,

JJ.

---

Opinion by Shaw Geter, J.

---

Filed: March 26, 2019

This is the fifth appeal involving three children—MJS, a girl born March 2010, AHS, a girl born March 2011, and MAS, AHS' twin sister—who were previously declared children in need of assistance (CINA).[1] In the first appeal, we affirmed the decision of the juvenile court in the Circuit Court for Baltimore City to change the concurrent plan of reunification or guardianship with a non-relative to a sole plan of reunification with Appellee, the children's father, and to lift a prior restriction on the Department of Social Services' use of the children's passports. Appellants, the children and their mother, then filed a petition for certiorari to the Court of Appeals, which was denied on September 22, 2017.

While the first two appeals were pending, the juvenile court conducted a hearing to consider allowing the children to travel to Mexico to visit their father. The court issued orders on May 12 and 15, 2017, continuing the permanency plan and permitting the children to travel to Mexico for reunification visits with their father. Appellants subsequently filed a motion for reconsideration, alleging for the first time that Father was convicted of second-degree assault under an alias. The juvenile court denied the motion and Appellants appealed. We affirmed the juvenile court's decision in an unpublished opinion on January 12, 2018.

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

On December 14, 2017, after multiple hearings, the juvenile court rescinded its order of commitment to the Department and granted custody of the children to their father. The court, in addition, granted limited guardianship authority to the Department of Social Services until it could reunify the children with their father. It did not terminate jurisdiction due to the pending appeal. The children and their mother appealed the December 14, 2017 order and, collectively, present the following issues for our consideration:[2]

1. Whether the trial court committed error when it issued contradictory grants concerning the visitation, custody, and guardianship of the children; failed to comply with statutory provisions regarding permanency review hearings; and delegated to the Department the authority to determine when reunification of the children with their father would occur?

2. Whether the trial court committed an error of law or abused its discretion in granting immediate custody of the children to their father, based on clearly erroneous findings of fact and insufficient evidence that the children would be safe and that their needs would or could be met if in their father's custody at that time?

3. Whether the trial court exceeded its authority and thereby committed error in ordering the children to be placed in a foreign country?

4. Did the court err by failing to order a specific visitation schedule between the mother and the children?

5. Did the court err by limiting the mother's cross-examination of the social workers as to why the children did not wish to stay with their father on the night of November 15, 2017?

## BACKGROUND

### 1. Prior Proceedings.

[2] The children present questions one through three, and the mother presents questions four and five.

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

A little over one month later, on November 14, 2013, the court held a hearing to determine whether the Children were CINA. The court made the following findings: first, Mother failed to maintain a safe, stable, nurturing, and protective environment for the children; second, Mother had a history of living a transient lifestyle, was not gainfully employed, and had no means of independent housing; third, she had been diagnosed with diabetes and was legally blind. Finally, the court noted that Father was deported in 2012, and found that he failed to take the necessary steps to protect the Children from the neglectful situation. Accordingly, the court determined the Children were CINA and committed them to the Department. A permanency plan review hearing was scheduled to be held within six months, on April 14, 2014.

The case was thereafter continued several times, in part, because Mother moved to Florida and did not notify the Department of her whereabouts and Father could not legally reenter the United States. The first permanency plan review hearing was held on February

2, 2016. After testimony was taken, the court found that the Department had made reasonable efforts with parents/guardians in support of accomplishing the court's plan, and it changed the permanency plan to reunification with a parent or guardian concurrent with guardianship by a non-relative for all of the Children.

The court held a subsequent permanency plan review hearing in September 2016. Mother and the Children argued the permanency plan should not be changed to reunification with Father only; instead, the Children asked for placement with a non-relative for adoption/custody and guardianship. Mother, who indicated that she was not seeking reunification, asked for the plan to remain unchanged. Additionally, the Children and Mother asked the court to order a psychological evaluation of the Children. Conversely, the Department and Father requested the permanency plan be changed to reunification with Father only. They also argued the request for a psychological evaluation should be denied because there was no evidence the Children had a need for evaluation.

The juvenile court found Father to be a fit parent and changed the permanency plan from a concurrent placement with parents and a non-relative for custody and guardianship to reunification with Father only. The court found there was "no testimony or evidence" that made it concerned Father would not take care of the Children's health, safety, and welfare; it further noted that the Sistema para el Desarolla Integral de la Familia ("DIF")[3] would provide additional oversight during reunification. Additionally, the court denied the request for a psychological evaluation. The Children and Mother appealed this order.

[3] DIF functions as the local department of social services in Mexico.

While the September 2016 order was on appeal, the juvenile court held a hearing on December 1, 2016 to determine whether to modify an order that restricted the Department's ability to use the Children's passports. The court removed the restriction, allowing the Department to use the Children's passports. The Children and Mother also appealed this decision. This Court, after consolidating the two appeals, affirmed the court's decisions in an unreported opinion on July 31, 2017. *See In Re: M.S., A.S., and M.S.*, 2017 WL 3224883 (Md. Ct. Spec. App. Jul. 31, 2017).

On May 11 and 12, 2017, while the first two appeals were pending, the juvenile court conducted a hearing to consider allowing the Children to travel to Mexico to visit Father. The court issued an order on May 12, 2017, permitting the Children to travel between June 12 and August 30, 2017 with their caseworker, Tracie Cook-Thomas, for reunification visits with Father. On May 15, 2017, the court continued the Children's commitment to the Department and the plan of reunification with Father, and scheduled the next CINA review hearing for August 2017. Mother and the Children appealed both orders to this Court. This Court dismissed this appeal on January 12, 2018.

On June 21, 2017, the juvenile court issued a stay of its December 1, 2016 and May 7, 2017 orders, which resulted in the Children not visiting Mexico that summer. On August 11, 2017, following our dismissal of the third appeal on January 12, 2018, this Court lifted the stay. However, on August 25, 2017, the Court of Appeals stayed the juvenile court's December 1, 2016 and May 2017 orders, pending further review. The Court of Appeals lifted the stay on September 22, 2017.

The juvenile court granted the Department permission to proceed with visitations between Father and the Children on August 2, 2017. Mother and the Children appealed this order to this Court. The Children moved this Court to stay the August 2, 2017 order, but this Court denied the motion on October 20, 2017. This Court then dismissed the appeal on November 22, 2017.

**2. Background on Mother and Father.**

A. *Parents' Relationship*

Father came to the United States when he was nineteen years old. Seven years later, he met Mother, and the two began a romantic relationship. During the next six years, the couple procreated the Children. Father worked and supported the family and Mother was not employed outside the home.

The relationship encountered difficulty when Mother began to use alcohol and drugs during her friends' frequent visits to the couple's home. The situation led Father and Mother to have many discussions, resulting in Mother eventually asking Father to leave the home, which Father did not accept. Mother's pattern of behavior continued until one day, when Father arrived home, he discovered Mother had left their home with the Children. Several days later, a friend of Mother returned the Children to Father and mentioned that Mother's whereabouts were unknown. Father cared for the Children for the next three months, after which time Mother returned to the home and continued to use drugs.

In 2012, Mother accused Father of domestic violence and he was arrested. Following his arrest, in September 2012, Father was deported because he was in the United

States illegally. At this time, MJS was not quite two years and nine months old and AHS and MAS were about nineteen months old.

B. *Father's Recent Activity*

After returning to Mexico, Father established a committed relationship with Ms. SL, who is a fourth-grade teacher. Father and Ms. SL have one daughter, Ren, born in May 2014.

Father has regularly seen a psychologist, Yuliana Gonzalez. As of November 2017, Gonzalez had provided therapy to Father for two years, and had addressed with him how to appropriately communicate within a family and the dynamics of conflict. Father participated in five sessions addressing anger management and, beginning in 2014, seven weeks of parenting instruction with Gonzalez. Ms. SL attended parenting classes in 2016 and 2017.

Since 2014, at the Department's request, DIF conducted several assessments of Father and his home. Maria Carvajal, who holds a master's degree and is licensed, conducted the home-study assessments on behalf of DIF. During the time it has worked with and investigated Father and Ms. S.L. since his return to Mexico in 2012, DIF has not observed any issue of domestic violence in the household. DIF has determined that Father and Ms. SL have a "stable and harmonious" home.

Since returning to Mexico, Father has only had limited contact with the Children. Other than the November 2017 trip, Father has not seen the Children since July 23, 2012 and contact between them has consisted of sporadic telephone and video chat conversations.

C. *Mother's Recent Activity*

Since 2014, Mother has resided in Florida. Mother has "liberal" contact with the Children via telephone, calling at least twice per week. Mother's ability to travel is restricted due to her visual impairment and limited financial means. However, Mother attended and testified at the May 12, 2017 permanency plan review hearing and visited the Children that weekend. Mother has been unable to visit the Children since May 2017, although she is attempting to save money to afford a visit.

**3. The Children's Visit to Mexico.**

From November 12 through November 17, 2017, Cook-Thomas and Susan McEachron, a caseworker of the Department, took the Children to Tlaxcala, Mexico to visit Father. They arrived in Mexico on the evening of November 12, and were greeted by Father, Ms. SL, Ren, their paternal grandmother, Father's aunt, their cousin, Father's best friend, and other family. The group had balloons and flowers for the Children. Initially, the Children appeared "stunned," but MJS "went to [Father] and cried and they held each other for a long time." Father then squatted down and hugged AHS and MAS. Cook-Thomas described the interaction as a "very good warm greeting," and believed the Children "seemed comfortable."

After leaving the airport, Father took the group to a site he wanted to show them—a church overlooking the city. The group then visited the Children's grandmother's home for a light meal. McEachron described the family as "very excited" to meet the Children, and that both the Children and Father's family were "very open" to interacting with one another. At the end of the night, the Children asked Cook-Thomas and McEachron whether

they could remain at their grandmother's house for the night, but the Children were required to spend that night at their hotel.

On the second day, November 13, 2017, Father transported the Children, Cook-Thomas, and McEachron from the hotel to DIF for a scheduled appointment. Prior to meeting with DIF, the group went to a nearby park. At some point, MAS's braid fell out and Father fixed it for her. Upon seeing this, AHS and MAS removed their braids to receive Father's help. Cook-Thomas described Father's interaction with the Children at the park: "[H]e was playing with them . . . just very good natured with the girls. He was sure to hold their hands any time they were crossing the streets or going anywhere there were cars."

Cook-Thomas met with Carvajal and DIF attorneys for two hours. There, she confirmed that DIF would "corroborate[] the tasks that [the Department] had given [Father]"; "follow[] the family as [the Department] prepare[s] for reunification"; "assist with any adjustment"; "monitor Father, his home, and the [C]hildren"; "ensure . . . [the Children] would be registered for school"; and "monitor therapy" and "parenting classes for Father." DIF also confirmed it was aware of the past allegation of domestic violence against Father. Additionally, DIF advised Cook-Thomas that Father could add the Children to his insurance to ensure the Children's medical care in Mexico. While at DIF, MAS told Cook-Thomas that she wanted to live with Father.

After leaving DIF, Cook-Thomas, McEachron, and the Children had dinner with Father and Ms. SL. While eating, AHS's taco began to come apart and she became

"whiny." Ms. SL "handle[d] it instantly and [AHS] was calmed down." Cook-Thomas commented that she saw nothing "inappropriate" about this interaction.

On November 14, 2017, Father took Cook-Thomas, McEachron, and the Children to visit the school the Children would attend. The school was a small, all-girls school within walking distance from Father's place of employment. Cook-Thomas met with the principal and special education teacher to discuss the ability of the school to meet the Children's needs. The school had a social worker and two English-speaking teachers on staff. The school's staff indicated the school's English teacher could be available to the Children during or after school hours to help them translate their work if necessary. Additionally, the Children would be placed in a small class, assisted by the English teacher, special educator, and social worker, before being placed in the main classroom. The school staff would allow Father to enroll the Children initially by supplying the school with the Children's birth certificates, which Cook-Thomas supplied to him during the trip. Father could then finalize their enrollment by providing the Children's citizenship papers to the school later, once he received them. Father indicated his family would provide after-school care for the Children.

After leaving the school, visiting Father's place of employment, and having lunch, everyone went to Father's home. It was a fully-furnished, three-bedroom home with one and a half bathrooms, which Cook-Thomas described as "cozy," "well lit," with "adequate space for all four children." There would be a bedroom for MJS, and AHS and MAS would share the other bedroom. Father built beds for the Children. The Children requested that they spend the night at Father's home, which Cook-Thomas and McEachron allowed.

Father sent Cook-Thomas updates via text message and video. Cook-Thomas never developed any concerns, and believed the "visit went well."

On November 15, 2017, the Children had the chance to spend significant time with Father, without the presence of Cook-Thomas and McEachron. Father, after gaining permission from Cook-Thomas, took the Children to a park. The Children then ate lunch with him and his aunt.

That afternoon, everyone went to the Children's paternal grandparents' home. Father wanted to visit his father, who was ill. The group waited for the grandfather to return from Mexico City. Once he arrived, the Children "waived hi at him real quick and ran off and played with the[ir] cousin's toys." Father requested the Children return and respectfully greet their grandfather. After some resistance, Father insisted and brought each child over to their grandfather one by one to properly shake his hand and introduce themselves. McEachron described this "parenting action" as "perfectly normal."

That night, Cook-Thomas, McEachron, the Children, and Father returned to the hotel. AHS told Cook-Thomas that she wanted to speak with "Mommy," her foster parent, Ms. Si. Cook-Thomas brought her upstairs to call Ms. Si, but she did not answer the first couple attempts, and AHS began to cry. MAS also started crying. Both eventually calmed down when Ms. Si called back and spoke with AHS and MAS. The two children then returned to the lobby to speak with Father. Although AHS and MAS were still "loving and hugging," AHS told Father that she did not want to stay the night at his home. MJS indicated that she still desired to stay the night at Father's home. MAS seemed "torn",

according to Cook-Thomas, but ultimately indicated she wanted to stay with her twin, AHS. MAS later changed her mind, but, at that point, Father had left the hotel.

The next morning, on November 16, 2017, AHS and MAS seemed to be fine and were "vying for [Father's] attention, trying to hold his hand, and being picked up by him." Cook-Thomas, McEachron, the Children, and Father attended a restaurant for lunch. There, the Children, without Father's awareness, grabbed sodas for sale from a fridge. After returning to the table where the rest of the group was located, Father inquired as to who gave them permission to have the sodas. After each of the Children took a few sips from their respective sodas, Father took the sodas away. This caused AHS to crawl under the table and cry, and MJS to lay across a nearby bench and cry. According to Cook-Thomas, Father seemed to have been surprised by their reactions, but "didn't really react to it in anger" and "didn't give in." When the food arrived, AHS and MJS returned to the table and ate. McEachron assessed Father's actions as "appropriate."

Later that day, Cook-Thomas, Father, Ms. SL, and the Children met with Gonzalez, Father's therapist. Gonzalez told Cook-Thomas that she had discussed with Father and Ms. SL, together and separately, domestic violence issues. Gonzalez indicated that she found no sign of any such issues with the couple. Gonzalez then confirmed that she would continue to provide Father with therapy, assess the needs of the family when reunification occurred, and provide therapy for the Children with the help of the school's staff. That night, the Children spent the evening at Father's home. Again, he sent Cook-Thomas text messages and video apprising her of how the evening progressed.

The following day, Cook-Thomas, McEachron, and the Children flew back to Maryland. Cook-Thomas described the departure as "tearful," with the Children giving numerous hugs and goodbyes to Father and Ms. SL.

**4. The Permanency Plan Review Hearing subject to this Appeal.**

On December 4, 5, 11, 12, 13, and 14, 2017, the juvenile court held a hearing to review the permanency plan of the Children. At the hearing, the court heard from multiple witnesses regarding the Children's trip to Mexico to meet Father and issues regarding their reunification with him.

The court first heard from Angela White, a therapist with the Department who had worked with the Children since 2015.[4] The goal of White's therapy was to assist the Children with their emotional expression and regulation whether reunification occurred or not; and if it did occur, behavioral modification and services in support of reunification. In their sessions together, White provided therapeutic services to identify emotions, their ability to express themselves through language, and develop their story of how they came into foster care.

White testified regarding the Children's trip to Mexico to visit Father. She stated that prior to the trip, the Children referred to Father as "Father S[.]," but that after the trip, they referred to him as "Papi." White spoke with MAS about her not wanting to spend the night at Father's home on the night of November 15, 2017, and found no need to make any

[4] White testified that from May to July 2017, she met with the Children weekly, and from August 2017 until the hearing, she met with the Children monthly due to a stay in the proceedings.

therapeutic recommendations regarding the incident. White reported that she had not diagnosed the children with any disorder—adjustment or otherwise.

White reported the Children showed no "resistance" to reunification with Father and there were no "challenges with developing the[ir] relationship" with Father. In a visit on December 2, 2017, MJS indicated to White that she was ready to live with Father and was eager to learn Spanish, and AHS told White that she would move to Mexico.

Ultimately, White "believe[d] reunification [was] in [the Children's] best interest." She testified, "[Father], to my knowledge, had not shown that he is not available, [he is] financially" and "emotionally able to meet [the Children's] needs to be an appropriate parent[.]" She continued, "the things that he doesn't know, he can get from outside services or outside support[.]" However, White did recommend the Children "continue with therapy" and "more family work . . . so that [the Children] can be okay with knowing that their foster parents are comfortable with" their reunification with Father, and also "more trips" to Mexico so they can grow their relationship with Father.

The court then heard from Cook-Thomas. A substantial portion of her testimony discussed the factual details of the Children's trip to Mexico, which are set forth above. In addition, she testified as to opinions she formed while on the trip. She thought Tlaxcala was a "clean," small community, where she "felt safe." Cook-Thomas testified that, based on her meeting with DIF and Father, she "d[id] not have any concerns" that the needed services would be available to the Children upon reunification with Father. Also, based on her discussions with Gonzalez, she stated she had no concerns and saw no barriers to addressing the Children's therapeutic needs in Mexico. She further testified that Father

was currently waiting on apostilles[5] to complete the required paperwork to obtain Mexican citizenship for the Children, and that she had no concerns about Father's ability to follow through with that endeavor.

Cook-Thomas discussed her observations of the family while in Mexico. She described the interactions between the Children and their younger sister, Ren, saying the Children and Ren "got along very well" and that the Children "acted like big sisters" to Ren. Cook-Thomas stated, while in Mexico, she had "no concerns" when leaving the Children alone with Father.

Ultimately, when asked for her assessment of Father, Cook-Thomas testified:

> He is employed, gainfully employed, where he has been for a few years. He has a home that's appropriate. He has contact with DIF, therapist, and school, [that] have already been identified. He's had three or four home studies done by the consulate in conjunction with the DIF. He's made himself available. He appears to be appropriate for [the Children] to be reunified . . . He's been great about accessing services . . . I felt confident that he would be able to get what he needs for [the Children].

She further testified, "I don't have any concerns about [Father's] ability to keep [the Children] safe."

[5] An apostille is used to "authenticate the seals and signatures of officials on public documents such as birth certificates, court orders, or any other document issued by a public authority so that they can be recognized in foreign countries that are members of the 1961 Hague Convention Treaty." BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE, available at https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/internl-judicial-asst/authentications-and-apostilles/apostille-requirements.html (last accessed March 4, 2019).

At the hearing on December 11, 2017, Mother cross-examined Cook-Thomas regarding the reason why AHS and MAS did not spend the night with Father on the night of November 17, 2017, and the following interaction occurred:

**MOTHER**: And you never – and you had spoke with the [Children] about why they didn't want to stay with [Father] that evening; is that correct?

**THOMAS-COOK**: We asked them why.

**MOTHER**: And you never found out exactly why they didn't, did you?

**THOMAS-COOK**: They didn't really say to me.

**MOTHER**: So you never found out why they really – why they didn't want to stay with [Father] that night?

**FATHER**: Objection, Your Honor. She just answered –

**THE COURT**: Sustained.

**MOTHER**: Do you know why they didn't want to stay with [Father]?

**FATHER**: Objection, Your Honor.

**THE DEPARTMENT**: Objection.

**THE COURT**: Sustained.

**MOTHER**: Would finding out whether they stayed with [Father] – did you find that – well, knowing why they didn't want to stay with [Father] inform how you would have handled it?

**FATHER**: Objection, Your Honor.

**THE COURT**: Sustained. Calls for speculation.

**MOTHER**: Today do you know why they didn't want to stay with [Father]?

**FATHER**: Objection, Your Honor.

**THE COURT**: Sustained. Move on, Ms. Dukes.

McEachron then testified about the Children's trip to Mexico and her impressions therefrom. McEachron testified, upon watching the Children and Father interact, Father seemed to be "protective" of the Children. She stated that the Children always seemed to be "comfortable" with Father and that she had no concerns for their safety when they were with him alone. McEachron explained that the Children and Father often went to a park in the center of Tlaxcala. There, the Children "r[an] in all different directions" and "it was kind of hard to keep track of them all," but, in her opinion, Father "handled it very well" and McEachron believed "he had some parenting skills to keep [the Children] safe and keep them together but let them have fun." McEachron recounted an instance where the family was taking pictures and MAS became upset because AHS had "told Daddy on [her]." Father spoke to MAS and reintegrated her with the group, resulting in him eventually playing "airplane" with MAS. McEachron opined, "I think [F]ather is able to appropriately meet their, like, emotional needs. He was able to give them attention. He was acknowledging that there were times when they kind of desired attention and he was very patient[.]"

McEachron then testified that she had no concerns regarding the school the Children would attend, stating:

> I like the school. I thought it was small enough where the [Children] could have some individualized attention that they're going to need while they

> transition with the language piece. It seemed to be well controlled and structured. There wasn't anything going on that shouldn't have been going on in the school . . . it looked like a typical school.

McEachron then testified about her impressions of Father's family. She spoke about Ms. SL, describing her as "very sweet," "patient," and "very excited and open to having [the Children]." She said the Children would often run to Ms. SL to greet her and AHS would "show off her Spanish" to her. Additionally, the Children often played with Ren, singing songs and teaching one another Spanish and English.

McEachron testified as to her assessment of Father. Based on her observations, Father had no difficulty speaking to the Children in English or Spanish. She further stated, "I would describe him as he's very personable, very friendly. He has a large community of support. He is, you know, functioning in society. He has employment. He has housing, a vehicle. He's . . . doing well. He doesn't seem to have any particular . . . mental health issues." McEachron "believe[d] that [F]ather can meet the emotional needs of the Children" based on the interactions she observed, as well as their financial needs. She further testified, based on the significant amount of time she spent with him, that she did not see nor had any reason to believe that Father abused any substances, including cigarettes. Nor did McEachron find any sign of domestic abuse between Father and Ms. SL. Ultimately, McEachron testified that she had "no concerns," and that she "thought the [C]hildren should be reunified to [Father]."

On December 14, 2017, the juvenile court issued an order awarding custody of the Children to Father and rescinding the Children's commitment to the Department. The Department was granted "authority to place the [Children] until arrangements were made

to reunify the [Children] with [F]ather or a transfer of custody to the US consulate for reunification." Additionally, the order provided the Department and/or Cook-Thomas with "[l]imited guardianship" of the Children "for medical, dental, education, psychiatric/psychological, out-of-state travel, and out of country travel purposes." The order also stated, "The implementation of the permanency plan shall be achieved by 12/14/17."

We will incorporate additional facts in our discussion of the issues as they become necessary.

## DISCUSSION

### I. Whether the court committed an error of law in its order concerning the visitation, custody, and guardianship of the Children.

The Children contend the juvenile court erred in granting custody of the Children to Father and concurrently granting or continuing commitment of the Children to the Department. They argue that when custody is granted to a parent, the Department no longer has authority over the child. Thus, the "grant of custody to [Father] would terminate the Department's authority to place the Children pending reunification, and also its authority to transport the Children to Mexico."

Maryland Code, Courts & Judicial Proceedings ("CJP") § 3-819 provides, in pertinent part:

> (b)(1) In making a disposition on a CINA petition under this subtitle, the court shall:
>
> . . .
>
> (iii) Subject to paragraph (2) of this subsection, find that the child is in need of assistance and:
>
> 1. Not change the child's custody status; or

> 2. Commit the child on terms the court considers appropriate to the custody of:
>
> A. A parent;
>
> B. Subject to § 3-819.2 of this subtitle, a relative, or other individual; or
>
> C. A local department, the Maryland Department of Health, or both, including designation of the type of facility where the child is to be placed.

The Children argue "[t]he use of the word 'or' in the statute makes clear that the [j]uvenile court could not grant custody to [Father], and simultaneously grant or continue commitment to the Department." However, CJP § 3-819(c)(1) further provides that, "[i]n addition to any action under subsection (b)(1)(iii) of this section, the court may . . . (ii) [g]rant limited guardianship to the department . . . for specific purposes including medical and educational purposes or for other appropriate services if a parent is unavailable, unwilling, or unable to consent to services that are in the best interest of the child[.]"

The juvenile court, in its December 14, 2017 order, granted sole custody of the Children to Father, which the court was permitted to do pursuant to CJP § 3-819(b)(1)(iii)(2)(A). Additionally, the juvenile court awarded the Department "[l]imited guardianship of [the Children] for medical, dental, education, psychiatric/psychological, out-of-state travel and out of country travel for the purpose of reunification visits with [Father]." This was proper pursuant to CJP § 3-819(c)(1)(ii) because Father was unavailable to consent to such services as he lived in Mexico.

The Children also claim the juvenile court was not legally allowed to award custody to Father and award limited guardianship to Department, concurrently. In other words, they argue Father and the Department cannot have "the same rights and responsibilities

with respect to the Children[.]" However, the Children have cited no legal authority for this contention. "Guardianship" is defined as "an award by a court . . . of the authority to make ordinary and emergency decisions as to the child's care, welfare, education, physical and mental health, and the right to pursue support." CJP § 3-801(o). We do not see any reason why Father and the Department could not share guardianship of the Children until they could be placed with Father permanently.

The Children finally argue the court erred by rescinding the commitment of the Children to the Department in the same order in which it granted the Department limited guardianship of the Children. However, this proposition is also not supported by any legal authority. As we see it, the court was free to rescind a previous commitment to a party in the same order in which it awarded limited guardianship to that party. Thus, the juvenile court did not err.

**II. Whether the court erred by failing to comply with statutory provisions regarding permanency review hearings and delegating to the Department the authority to determine when reunification of the Children with Father would occur.**

The Children allege the juvenile court erred because the Department presented no written reports at the December 2017 hearings. Pursuant to CJP § 3-826(b)(1), "[u]nless the court directs otherwise, a local department shall provide all parties with a written report at least 10 days before any scheduled disposition, permanency planning, or review hearing under § 3-819 or § 3-823 of this subtitle." Although not ten days prior to the December 4, 2017 hearing, the Department provided the Children with records and information regarding their visit to Mexico for their review prior to the hearing. Significantly, however,

the Children do not allege that their failure to receive a report prejudiced them in any respect. Accordingly, because any failure to provide the written report ten days before the hearing was harmless error, reversal is not appropriate. *In re: Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 100 (2010) ("If it appears that the court erred as a matter of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless.").

The Children next argue, pursuant to CJP § 3-823(h)(2)(iv), the juvenile court erred, as a matter of law, in failing to include a date on which the Children would have reasonably been placed with Father. CJP § 3-823(h)(2)(iv) provides, "At a review hearing, the court shall . . . [p]roject a reasonable date by which a child in placement may be returned home, placed in a preadoptive home, or placed under a legal guardianship[.]"

The court did not err in failing to project a reasonable date by which the Children may be placed under a legal guardianship. Indeed, in its order dated December 14, 2017, the court granted custody of the Children to Father and limited legal guardianship of the Children to the Department. The order also provided, "The implementation of the permanency plan shall be achieved by 12/14/17." Thus, the court projected a reasonable date by which the Children would be placed under the legal guardianship of the Department and Father as required by CJP § 3-823(h)(2)(iv).

### III. Whether the court erred or abused its discretion in granting immediate custody of the Children to Father.

Appellants challenge the juvenile court's order awarding custody of the Children to Father, arguing the court's decision was unsupported by the evidence before the court.

Appellees contend the court properly exercised its discretion in awarding custody of the Children to Father because the record shows he is a fit parent who is willing and able to care for them.

The purpose of the court in CINA proceedings is "[t]o conserve and strengthen the child's family ties and to separate a child from the child's parents only when necessary for the child's welfare," and "[t]o hold parents of children found to be in need of assistance responsible for remedying the circumstances that required the court's intervention." CJP § 3-802(a)(3)–(4). "The statutory mandate requires that reunification of the child with the parent be the goal of the permanency plan if there is competent and credible evidence that future abuse or neglect is not likely." *In re Yve S.*, 373 Md. 551, 618 (2003). Additionally, a "presumption exists, until rebutted, that it is in the child's best interest to be placed with a parent." *Id.* at 572 (internal quotations omitted). That presumption is only overcome where the parties opposing the parent's custody of the child can show "(a) the parent is unfit to have custody, or (b) if there are such exceptional circumstances as to make custody detrimental to the best interest of the child." *Ross v. Hoffman*, 280 Md. 172, 178-79 (1977).

The record before the juvenile court fully supported the court's decision to award custody of the Children to Father. Father had the means to care for the Children. Father was gainfully employed, as verified by Cook-Thomas during the visit to Mexico. Father lived in an adequate home for the addition of the Children. The home, described as "clean," was fully-furnished, had one and a half bathrooms, and three bedrooms—one for MJS and another for AHS and MAS to share. The Children were being enrolled in an all-girls school, which was located close to Father's place of employment. Upon starting at the

school, the Children would first be placed in a small class with a special education and an English-speaking teacher, before ultimately being placed in the main classroom. Additionally, there would be a teacher at the school to help the Children translate their schoolwork if required. At the time of the juvenile court's decision, Father was in contact with the consulate to obtain the Children's Mexican citizenship to finalize the Children's enrollment, only waiting on the completion of required forms. Cook-Thomas testified that she had no concerns about his ability to follow through with this objective.

Additionally, there was evidence presented indicating there would be substantial support for the Children upon reunification with Father. DIF would provide transition services to the Children and instructions to Father. Father's therapist, Gonzalez, is available to assist the Children in and out of school. Father also has a large family, including Ms. SL, who is a teacher, and a sister, who expressed her willingness to support and help the Children. We also must note that, upon reunification with Father, the Children would finally have the daily support of each other.

Further, the record indicates Father's willingness to care for the Children. Father has followed through on a majority of the Department's requests and DIF has reported that he has been cooperative with them as well. Father expressed to the Department that he would do whatever was necessary to complete his parenting classes. In preparation of the Children's visit to Mexico, he scheduled all the required appointments and provided all necessary transportation.

The juvenile court also heard from several witnesses who had no concerns about the Children being reunified with Father. Cook-Thomas, having worked with the Children

since February 2, 2014, testified that she had no concerns about Father's ability to keep the Children safe and healthy. After meeting with the school's administrators and staff, Cook-Thomas testified that she felt "satisfied . . . that monitoring, transitional services, therapy, schooling, counseling, transition would be in place for the [C]hildren," and believed "that the therapeutic needs of the [C]hildren would be met." She also stated that she had no concern about Father's ability to follow any instruction given by DIF.

White, the Children's therapist since 2015, did not report any resistance or challenges to the reunification of the Children with Father. She noted that no concerns were brought to her by the foster parents after the Children returned from Mexico. White testified that she did not have any concerns about reunification after her conversation with Father.

McEachron testified as to her observations and impressions during the Children's visit to Mexico. McEachron testified that Father displayed quality parenting skills on multiple occasions. She described Father's behavior as "patient," "appropriate," and "normal" to any family interaction. Ultimately, she believed Father could meet the Children's emotional needs and had no concerns with the Children's reunification with him. As we see it, evidence in the record sufficiently supported the juvenile court's decision to award custody of the Children to Father.

The Children advance several arguments as bases for why the court erred in granting custody of the Children to Father. They contend Father's ability to safely parent was not demonstrated. Specifically, that Father failed to complete parenting classes, failed to demonstrate treatment for domestic violence, and that there was no agreement with DIF or

any other entity to monitor the Children's placement with Father. Additionally, they contend the court ignored Mother's "concerns that the Children might again witness domestic violence if placed with [Father]." They also allege that Father falsely stated to a DIF representative, in September 2016, that he had had no domestic violence issues and that the domestic violence for which he was deported was only alleged. They further insinuate the testimony of Cook-Thomas concerning Father's domestic violence was unreliable because it was based on her conversation with Gonzalez, which Father translated himself. According to the Children, "[t]his falls short of the protection the trial court must provide and its obligation to ensure that the Children's safety and welfare be of paramount importance."

However, Cook-Thomas testified that she spoke to multiple sources regarding Father's history of domestic violence. DIF and the Mexican consulate both indicated that Father was not involved in domestic violence in Mexico since his return in 2012. Upon meeting with Gonzalez and asking about any domestic violence issues, Gonzalez identified none. Father's sister even stated that she had no concerns about his temperament. Mother's concerns regarding the Children witnessing domestic violence while in Father's custody is, in our view, speculative.

According to the Children, the court erred by not ensuring that they could remain in contact with Mother or their siblings in the United States. In support of their argument, they assert that Mother has remained in frequent and consistent contact with the Children despite her inability to visit the Children and that Mother had "repeatedly testified about her concerns that [Father] would end contact between her and the Children once he has

custody of the Children." We believe these concerns to be premature and speculative. We see no evidence, other than Mother's testimony, that Father would end contact as contended.

The Children argue the juvenile court should not have granted custody of them to Father without first interviewing them regarding their "feelings about leaving their respective foster families and being sent to live with [Father] in Mexico." The Children allege the evidence regarding the impact of the reunification on the Children was based on the observations of McEachron. According to them, the court erred in relying solely on McEachron because she met the Children just before flying to Mexico for the visit and her testimony conflicted with White's recommendation. However,

> Resolving disputed credibility and weighing disputed evidence are matters, of course, in the unfettered control of the fact finder. Where either the credibility of a witness or the weight of the evidence is in dispute, therefore, there is no way in which a fact finder, with such matters properly before him, could ever be clearly erroneous for not being persuaded.

*Starke v. Starke*, 134 Md. App. 663, 683 (2000). Thus, in being presented with conflicting testimony, it was in the juvenile court's discretion to weigh the credibility and weight of McEachron and White's testimony, and decide accordingly.

The Children contend their needs for therapy will not be satisfied upon reunification. Specifically, they argue Gonzalez, the therapist Cook-Thomas identified as a possible therapist to the Children, did not speak English, and that the Children required further therapy before reunification as White recommended. We find this argument meritless. Even if the Children's therapy sessions with Gonzalez were not satisfactory because she did not know English and would be required to rely on a translator, there are

surely other therapists in Mexico available to provide adequate therapy to the Children. Further, while White recommended the Children obtain further therapy before reunification, the court heard multiple other witnesses expressing no concern that the Children's therapeutic needs would be met in Mexico.

The Children next suggest that their educational needs will not be met because they are not proficient in Spanish, and would be limited to two hours per day of English instruction at their school. However, this is not the first instance of children being moved by their parents to a foreign country in which the people speak foreign languages. This is also not sufficient reason to withhold the Children from Father, who is willing and able to care for them. Additionally, evidence was produced that AHS and MAS conversed in Spanish with their family while in Mexico.

Finally, the Children claim their lack of Mexican citizenship will inhibit them from enrolling in school. We find this argument to be speculative. McEachron testified that the school would allow Children to be enrolled with their birth certificates, which Father obtained from Cook-Thomas in November 2017, until the Children received their citizenship. Additionally, Father obtained custody of the Children on December 14, 2017. The Department then acquired apostilles, which are required for the Children to obtain Mexican citizenship, on January 12, 3018.[6] Thus, at this point, the Children seem to be well on their way to obtaining Mexican citizenship.

[6] On December 11, 2017, Cook-Thomas testified that the apostilles, which were required to be obtained by the Department for the Children's application for Mexican citizenship, would take up to 30 days.

For the foregoing reasons, we hold the juvenile court did not err or abuse its discretion in awarding immediate custody of the Children to Father. *See Santo v. Santo*, 448 Md. 620, 625–26 (2016) (stating abuse of discretion exists where "no reasonable person would take the view adopted by the [juvenile] court or when the court acts without reference to any guiding rules or principles.") (internal quotations omitted).

## IV. Whether the court exceeded its authority and thereby committed error in ordering the Children be placed in a foreign county.

The Children claim "the juvenile court did not have the power to order placement of the Children in Mexico." The Children argue the court's jurisdiction in CINA cases stems from CJP § 3-803, and the court was not empowered with "the authority to remove the Children, United States citizens, from their home country."

Juvenile courts are "statutorily created courts of limited jurisdiction" that may exercise only "those powers expressly designated by statute." *Smith v. State*, 399 Md. 565, 574 (2007). The Children are correct insofar as the juvenile courts are not empowered to place children in another country. *See generally*, CJP §§ 3-801–836. However, the juvenile court did not place the Children in Mexico. In fact, the court's order did not mention Mexico. Instead, the court merely awarded custody of the Children to Father, and limited guardianship and the ability to temporarily place the Children until reunification could be completed to the Department. The geographical location of Father was irrelevant to the court's order.

## V. Whether the court erred by failing to order a specific visitation schedule between Mother and the Children.

Mother asserts the juvenile court erred when it "failed to order a specific visitation schedule, giving sole discretion to [Father.]" She alleges that "[l]eaving visitation up to the parties effectively deprived [Mother] of visits, because father alone was empowered to decide whether the Children . . . could maintain contact with [Mother]."

In Maryland, "the right of visitation is an important, natural, and legal right, although it is not an absolute right, but is one which must yield to the good of the child." *Roberts v. Roberts*, 35 Md. App. 497, 507 (1977). Indeed,

> [a] parent's right of access to his or her child will ordinarily be decreed unless the parent has forfeited the privilege by his conduct or unless the exercise of the privilege would injuriously affect the welfare of the child, for it is only in exceptional cases that this right should be denied. And in the absence of extraordinary circumstances, a parent should not be denied the right of visitation[.]

*Id*. at 507 (quoting *Radford v. Matczuk*, 223 Md. 483, 488 (1960)).

The Children cite *In re Justin D.*, for the proposition that the trial court "may not delegate its responsibility to determine the minimal level of appropriate contact between the child and his or her parent or guardian[.]" 357 Md. 431, 449 (2000). However, the Court of Appeals, in *In re Mark*, clarified that the holding of *In re Justin D.*, was merely that "a trial court may not delegate judicial authority to determine the visitation rights of parents to a non-judicial agency or person." 365 Md. 687, 704 (2001).

Here, the juvenile court did not delegate the authority to determine Mother's visitation rights to a non-judiciary agency or person. In fact, the court did not address the issue of visitation. Mother never requested the court to allow her visitation with the Children at any time during the December 2017 proceedings. Mother has provided no legal

authority indicating the court was required to address her visitations right in its order. Consequently, the court did not err in failing to provide visitation for Mother in its order.

## VI. Whether the court erred in limiting Mother's cross-examination of the social workers as to why the Children did not wish to stay with Father on the night of November 15, 2017.

Mother claims the court erred in limiting her cross-examination of Thomas-Cook as to why the Children did not wish to stay with Father at his home on November 15, 2017. According to her, the evidence "was relevant to the issue of whether their physical and/or psychological health would be adversely affected if they were sent to live with [Father]."

"Relevant evidence" is defined as "evidence having any tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Md. Rule 5-401. However, "relevant, evidence may be excluded if its probative value is outweighed by . . . consideration of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403. Additionally, "a lay opinion is not admissible unless the witness had sufficient knowledge to form a rational opinion." *Wyatt v. Johnson,* 103 Md. App. 250, 268 (1995). "Only lay opinions that are rationally based on the perceptions of the witness and helpful to the trier of fact are admissible[.]" *Goren v. U.S. Fire Ins. Co.,* 113 Md. App. 674, 685 (1997). Ultimately, "[w]hether to allow or exclude the conclusions of a lay witness is left to the sound discretion of the trial court." *Wyatt,* 103 Md. at 268. "[W]e will only reverse upon finding that the trial judge's determination was both manifestly wrong and substantially injurious." *MEMC Electronic Materials, Inc., et al. v. BP Solar Intern., Inc.,*

196 Md. App. 318, 342 (2010) (quoting *Lomax v. Comptroller of Treasury*, 88 Md. App. 50, 54 (1991)).

First, Mother claims the court wrongfully sustained an objection to her question to Cook-Thomas, "Do you know why they didn't want to stay with their father?" However, just before this question was asked, Mother asked Cook-Thomas whether she "found out exactly why" AHS and MAS did not want to spend the night at Father's home on the night of November 15, 2017, to which Cook-Thomas responded, "[AHS and MAS] didn't really say to me." Thus, Cook-Thomas had already testified that AHS and MAS never told her why each of them did not want to stay at Father's home that night. The question that Mother asked and to which the court sustained the objection sought to present cumulative evidence and, further, Cook-Thomas stated she did not have sufficient knowledge to answer the question.

Second, Mother challenges the court's exclusion of the following questions: "Do you know why they didn't want to stay with [Father]?"; "Would finding out whether they stayed with [Father] – did you find that – well, knowing why they didn't want to stay with [Father] inform how you would have handled it?"; and "Today do you know why they didn't want to stay with [Father]?". As we see it, all of these questions required Cook-Thomas to speculate regarding the thoughts of AHS and MAS. Cook-Thomas testified just prior to these questions that AHS and MAS "didn't really say [to her]" why each of them did not want to spend the night at Father's home that night. Without AHS and MAS telling Cook-Thomas this information, Cook-Thomas did not have sufficient knowledge to form a rational opinion as to answer the questions posed. Accordingly, we hold the juvenile

court did not abuse its discretion in limiting Mother's cross-examination of Cook-Thomas as it related to why AHS and MAS did not want to stay the night with Father on the night of November 15, 2017.

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.**