Circuit Court for Caroline County
Case No. C-05-JV-19-000003

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 2175

September Term, 2022

IN RE: D.T.

Nazarian
Reed
Zic,

JJ.

Opinion by Reed, J.

Filed: September 27, 2023

The present interlocutory appeal arises from the most recent guardianship hearing held on January 30, 2023. One question is being asked of this Court in this particular appeal—did the lower court err in holding that natural parents do not have a right to file motions or introduce evidence in post-termination guardianship hearings held pursuant to Md. Fam. Law 5-326. Central to answering this question is determining what the scope is of provision (3)(ii), which states "[a] parent is entitled to be heard and to participate at a guardianship review hearing." However, Appellee, Caroline County Department of Social Services ("DSS"), moves to dismiss this appeal pursuant to Maryland Rule 8-602(b)(1) on the grounds that Appellant, B.B.-O, ("Mother") is not an authorized party to the interlocutory order from the guardianship review hearing in accordance with Courts and Judicial Proceedings § 12-303 and Family Law § 5-310 because her parental rights were previously terminated. DSS further argues that this appeal is not allowed per the final judgment rule.

For the reasons set forth in this opinion, DSS' motion to dismiss is denied. We however do agree with DSS that Mother is not a party that can appeal a final judgment, which includes guardianship review hearings. We further find that Mother had the right to participate in the review hearing, including the ability to present and introduce evidence, but that the court didn't abuse its discretion in declining to enter Mother's submission into evidence, and ultimately, we affirm.

BACKGROUND

The Appellant in this case is B.B.O ("Mother")—the biological mother of the minor, D.T.-O ("D") who was born in 2009. D, along with her two half siblings R and C, was first removed from the custody of Mother and Father (J.T.O) back in 2011 when she was two years old.[1] It was at this time that D was first found to be a child in need of assistance ("CINA").[2] In 2013, at the age of four, D was reunited with her family. However, the "DSS" became involved again in 2016, after it was reported that her sister R was sexually abused by D's father. DSS investigated and made a finding of indicated sexual abuse against R. DSS also made a finding of indicated neglect by Mother due to her failure to protect R from the abuse, as well as her subsequent failure to acknowledge that the abuse occurred and for her pressuring R not to be forthcoming with DSS about the abuse. DSS then created a safety plan that required Father to move to a different residence and have no contact with any of the children. Five months following the reunification, the children were removed again after DSS found Mother in violation of the safety plan for bringing R a Christmas card from Father and taking her by Father's residence to pick something up when he was not home.[3] Throughout the next four years, D remained in foster care with

[1] Note: the two half siblings have different fathers than D.

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

[3] R was not living with Mother at this point.

weekly supervised visitation with her mother and brother and eventually father.[4] During this time, D shifted from wanting to be reunited with her parents to eventually stating she wanted to be adopted by her foster family whom she had a relationship with for four years.[5]

The following table is a timeline made by this Court in its opinion to Mother's appeal of the termination of her parental rights in 2021. Unless otherwise indicated, the facts in this timeline are undisputed and derive from the following sources: the juvenile court's factual findings, the parties' briefs, the Appellate Court of Maryland's independent review of the trial testimony, trial exhibits, and pre-trial pleadings and briefs in both the TPR proceeding and associated CINA case.

May 2009	D is born
Feb. 2011	D, R, and C first removed from home
Apr. 2011	D found a CINA for the first time
Aug. 2013	First CINA case closed; family reunited
Aug. 2016	Department receives report of sex abuse of D's older sister R and initiates investigation Father and Mother agree to a safety plan under which Father has no contact with children; Father moves to separate residence

[4] D's siblings went to live with their respective fathers. Mother's visitation continued consistently during this time except for when she was detained by ICE from mid-June 2017 until late-September 2017. Father initially did not have visitation with D due, in part, to the "no-contact" order from DSS

[5] Note: Parents argue that D only said that she wanted to live with her foster family after she was told by a social worker she would not go back to living with her parents. In its unreported opinion from 2021 affirming the TPR, this Court stated that "there is at least some support in the record for Mother's contention that the shift in D's indisputably strong initial desire to be reunited with her family to a desire to be adopted was influenced in part by the Department's communications with her and her therapist Ms. Kirby."

Sept. 2016	R moves out to live with family friends
Oct. 2016	Department concludes investigation and makes finding against Mother of indicated neglect of R and finding against Father of indicated sexual abuse of R
Jan. 2017	Department removes D and C from family home and places them in shelter care in the home of Ms. A
Feb. 2017	Court finds D to be a CINA Permanency plan is reunification
June 2017	Mother placed in ICE detention
July 2017	Department recommends that permanency plan be changed to relative placement
Aug. 2017	Magistrate holds permanency plan review hearing and recommends permanency plan changed to relative placement (adopting Recommendations in Department's July 27, 2017 report)
Sept. 2017	Juvenile court adopts magistrate's recommendation and changes permanency plan to relative placement Mother released from ICE detention
May 2018	Department files report recommending permanency plan change to adoption
Jan. 2018	Court orders therapeutic visitation between Father and D to begin (although they do not begin until May 2018)
July 2018	Magistrate recommends adoption by non-relative Mother files exceptions to magistrate's recommendation; juvenile court hears exceptions

Dec. 2018	Juvenile court denies exceptions and changes permanency plan to adoption by non-relative
Jan. 2019	Department files Petition for Guardianship
Mar. 2019	D's last in-person visit with Father
May 2019	D's last in-person visit with Mother Attorneys for D, Mother, and Father withdraw from case D placed with pre-adoptive family (Ms. A's grandson, E.A., and his wife, N.A.)
Oct. 2019	Trial (3 days)
Nov. 2019	Trial, continued (2 days)
Jan. 2020	Trial, continued (5 days)
Apr. 2020	On Department's motion, juvenile court cancels scheduled hearing date set for April and continued trial date set for May and orders parties to submit written closing arguments
April 2020	Mother files motion for reconsideration, requesting the court reopen the case to finish presenting her evidence
June 2020	Parties file closing arguments Court denies Mother's motion for reconsideration
Jan. 2021	Court issues memorandum and order terminating Mother's and Father's parental rights

On January 21, 2021, Mother and Father's parental rights were terminated and affirmed by this Court in an unreported opinion on September 3, 2021. By this time, D had substantial familiarity with her foster family and eventual prospective adoptive parents—having first lived with Ms. A in January 2017 to eventually residing with Ms. A's grandson, Mr. A, and his wife, Mrs. A in 2019. In the spring of 2019, D also had her last in-person visits with both Mother and Father.

There have now been two guardianship review hearings since the TPR and both parents were represented by counsel at each. The first guardianship review hearing took place on February 28, 2022. In the Guardianship Review Hearing Report submitted prior to the hearing, DSS stated a "Safe-C" was completed on D on October 26, 2021 that "ensured she was in a safe environment." The report stated home visits were done on October 26, 2021, November 15, 2021, December 22, 2021, January 18, 2022, January 31, 2022, and February 9, 2022.[6] In the report, DSS recommended "[t]hat the Court continues to find that the Child's current placement and circumstances are in her best interests." At this hearing, Mother maintained that she wished for D to be placed with relatives. DSS told the court it anticipated finalizing D's adoption with the A's "within the next sixty to ninety days at the longest."[7] Caroline Department of Social Services attorney stated the following:

> [A]nd we do believe that since this attachment adoption therapy has concluded as you can see from the report, that the Department is looking to have a finalization of the actual adoption within the coming months Your Honor.
>
> THE COURT: How soon do you think Mr. Edwards?
>
> DSS Attorney: We're thinking within like the next sixty to ninety days at the longest Your Honor.

[6] At the Feb 2022 guardianship review hearing, DSS attorney stated: "[w]e go out on average almost once a week." It appears that they were going out monthly until DSS was informed of the foster father's abuse allegations, at which time they began going out once a week. DSS briefly removed D from her foster home from January 12 through Jan 24, 2022 while they investigated Mr. A.

[7] As DSS acknowledged at the Oral Argument on July 6th, 2023, DSS already had knowledge of Mr. A's sexual abuse allegations making the purported timeline for adoption highly unlikely.

The circuit court found that D's current placement was still in her best interest and that reasonable efforts to finalize the permanency plan were made by DSS.

In between the first and second guardianship review hearings, Mother learned that Mr. A was arrested and charged with rape, child sexual abuse, and other charges on or about March 18, 2022. On March 25, 2022, Mother filed a petition for emergency review accompanied by documents showing the criminal charges filed against Mr. A. Her petition also alleged that DSS failed to hold a shelter care hearing for D and "purposely withheld this information from the court by omitting any mention of it in its report filed immediately prior to the February 28, 2022 review hearing and for not disclosing it during that hearing." DSS argued that Mother did not have standing and asked the court to ignore and strike Mother's claims from the record, which the court did.

On March 28, 2022, Mother filed an Amended Petition for Emergency Review and Reply. This petition alleged the same facts as the previous petition but also clarified that Mr. A was investigated in January 2022 and that DSS had actual knowledge of Mr. A's charges and "failed to disclose this to the court or seek approval or authorization for shelter care." The petition further substantiated this by referring to a sworn statement from Corporal Tilghman that DSS was informed of Mr. A's allegations on or before January 28, 2022. Mother asked the court to review "what, if any, steps CCDSS [took] to protect Respondent from Mr. A between January 28, 2022 and March 23, 2022." Mother also asked the court to find that D's current foster care home is not in D's best interest, and to

place D with her biological half-sister.[8] DSS again opposed Mother for lack of standing and asked the court to deny and strike this matter from the record. The court dismissed Mother's petition and struck it from the record on the grounds that mother was "no longer a party and lack[ed] standing within these guardianship proceedings as her parental rights were previously terminated by this Honorable Court."

The second guardianship review hearing was held on January 30, 2023. At this hearing, both Mother and Father raised the same concerns as the previous two emergency hearing petitions and sought to introduce into evidence several exhibits[9] that related to Mr. A, as well as an affidavit from D's relative for consideration of them becoming an alternative to a non-relative placement for D. The court again sustained DSS' objections and agreed that Mother and Father's "right to participate" was limited to speaking only and did not include making motions or submitting evidence. Mother filed a timely interlocutory appeal and was heard for oral arguments on July 6, 2023.[10]

[8] The petition also stated "[t]hat Biological Mother notes that the criminal charges against Mr. A are 100 times worse than any allegation of abuse made against Respondent's biological father and that Respondent's biological father was required to leave the home under a safety plan immediately upon the allegations being made. That in CCDSS's Response (paragraph 4), it states that it is only now devising a safety plan."

[9] "The proffered evidence in that instance was several documents relating to Mr. A.'s sexual abuse issues, and an affidavit from D's relative attesting to their willingness to still be considered as placement options and the lack of prior review accorded to them by DSS."

[10] Subsequent to this appeal, Mother filed another appeal (Case number ACM-REG-0494-2023) which asks the following questions:

> (1) Did the lower court err when it denied B-B.-O.'s Motion to Intervene, without a hearing, where all the requirements for intervention as of right and permissive were met, in an order that failed to articulate any reason but apparently relied solely on B.B.-O.'s lack of standing?

Following the filing of Mother's appeal, she motioned to intervene as a party on April 5, 2023, and on April 14, DSS filed an Opposition. On April 26, the lower court denied Mother's motion without comment, annotation, or a hearing.[11]

The current procedural posture is that DSS has filed a motion to dismiss Mother's appeal on the premise that she does not have the right to appeal the guardianship review order because she was (1) not a party, and (2) the hearing did not yield a final judgment that is appealable, and no exceptions apply [interlocutory appeal]. If this Court declines to grant DSS' motion to dismiss, DSS is asking that this Court affirm the lower court's judgment.

STANDARDS OF REVIEW

As with child custody cases, when reviewing a guardianship order, the Appellate Court of Maryland utilizes three interrelated standards when evaluating a court's holdings. Factual findings are reviewed under a clearly erroneous standard. Questions of law are reviewed *de novo* without deference. If the court erred as to matters of law, remand is required unless the error is determined to be harmless. If the lower court's ultimate conclusion is "founded upon sound legal principles and based upon factual findings that

(2) To the extent In re L.B., 229 Md. App. 566 (Md. App. 2016) represents the larger proposition that post-termination, natural parents have no standing to challenge any action taken in a guardianship review hearing, should that premise be reversed or at a minimum severely cabined as it is inconsistent with the plain language of statutory scheme, legislative intent, and other holdings of the Maryland Supreme Court?

[11] Mother timely appealed the denial of the motion to intervene on May 9, 2023 and it is was heard for oral arguments by this Court on September 8, 2023.

are not clearly erroneous," the court's decision will be disturbed only if there has been a clear abuse of discretion. *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214 (2018). *See also In re Adoption/Guardianship NO*. 3598, 347 Md. 295 (1997) (stating "[i]f the standard is abuse of discretion (meaning: *did the trial court abuse its discretion when it ruled a certain way or did a particular thing*?), then we typically cannot overturn the decision of the trial court… unless… [ ] 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.") (citations omitted). Rulings clearly contrary to facts and logic also constitute an abuse of discretion. *See Shockley v. Williamson*, 594 N.E.2d 814, 815 (Ind.App.1992) (stating a ruling "clearly against the logic and effect of facts and inferences before the court" is an abuse of discretion).

DISCUSSION

This appeal is premised on the circuit court's denial of Mother's mode of exercising her right to participate at the 2022 guardianship review hearing. During oral arguments, Mother emphasized that understanding the context of what exactly is being appealed is key. Mother is not so much challenging guardianship or appealing a decision the court made about D—rather, she is appealing the court's refusal to admit her evidence on the rationale that "to be heard and participate" encompassed speaking only. According to Mother, the court did not deny her right to be heard or participate because the information wasn't germane. Rather, the court flatly denied Mother for lack of standing alone and did not weigh the evidence regardless of how much weight the court may have given the evidence.

Mother argues the current statutory scheme, initiated in 2005, gave former parents post-termination rights to be heard and participate that didn't explicitly exist in the earlier version of 5-319. At Oral Arguments, Mother asked this Court to:

(1) Consolidate the cases because both cases involve a common series of fact and issues of law;[12]

(2) Remand with very clear instructions on what it means to be heard and participate;

(3) Reintroduce D to her relative(s) to let her become familiar with them as a backup plan if her adoption cannot proceed and/or in consideration of an eventual relative-placement.

Prior to the 2022 Guardianship Review Hearing, Mother filed two petitions for emergency hearings to inform the court that D's foster father, Mr. A, had several charges of sexual abuse of a minor. The court granted both of DSS' motions to dismiss for lack of standing and struck the emergency review petitions from the record. Since then, DSS has not entertained adding relative-placement options for D. Mother wanted DSS to at least interview and perform the necessary placement studies on previously identified relative resources as a backup in case adoption with the A's did not work out.

Finally, Mother asserts that for about one year, DSS took no action to inform the court upon learning that Mr. A was arrested with a sexual abuse indication (that has not been overturned by the Office of Administrative Hearings). Mother [and Father] claim they

[12] As of the date of this opinion, no motion was made by either party to consolidate the two cases.

were the only individuals trying to do anything about it and inform the court by bringing forth this evidence to the court's attention because the foster father potentially posed a threat to D's safety and, as a result, her placement should be reevaluated.[13]

Mother also contends that there is a distinction between the rights of former parents[14] and the lesser rights of foster parents/other caregivers in that parents are given the additional right [by the General Assembly] to participate that affect this case.[15]

DSS maintains that Mr. A has not had any contact with D since the sexual abuse report and only began having supervised visitation with her in December 2022.[16] His foster care license has been revoked, and while he is still married to Mrs. A, he does not live at home.[17] In October 2022, Mrs. A informed DSS that she would not adopt D without Mr. A.

[13] Mother emphasizes that there are relative placement options that have not fully been tapped into which goes to the issue of what is germane at a guardianship review hearing.
[14] Note: for consistency purposes, this opinion refers to parents post-TPR as "former parent."
[15] According to §5-326(4)(i), a child's caregiver is only given seven days' notice to guardianship review hearings, as opposed to the living parent's thirty days' notice. Caregivers/foster parents have historically been given lesser rights. *See In re Adoption/Guardianship Nos. 11387, 11388,* 354 Md. 574, 588 (1999) (stating: "[t]he General Assembly has demonstrated a capacity to exempt persons from legal party status in family law proceedings when it desires to do so." *See* Maryland Code (1974, 1998 Repl.Vol.) "[Former]§ 3–826.1(g)(4) of the Courts and Judicial Proceedings Article *(expressly withholding automatic party status from foster parents, pre-adoptive parents, and childcare-providing relatives despite their rights to notice and the opportunity to be heard in Child In Need of Assistance proceedings*")) (emphasis added).
[16] Mr. A was detained from March 2022 until August 2022.
[17] At oral arguments, DSS admitted that if a person is married, they are not permitted to adopt without their spouse unless legally separated.

At oral argument, this Court asked DSS where an appeal could exist in the life of this case and DSS responded that an appeal could have potentially existed when the lower court denied the emergency hearings because that affirmatively denied their requests (by issuing an order denying the hearing on the basis that Mother did not have a right to ask for a hearing).[18] DSS said Mother can only appeal under the collateral order doctrine if the court completely excluded her from the guardianship review hearing,[19] but the collateral order doctrine is not available here because Mother is not "aggrieved" and did not argue as such other than that she was not permitted to admit a charging document.[20]

DSS asserts that even if the lower court erred, it was harmless because the court still inquired about D's safety in multiple ways. In response to the affidavit not being admitted about a possible relative-placement resource[21] with D's uncle, DSS points out that the uncle was not even there to be cross examined, nor had he been interviewed, nor had he even seen D in recent years.

DSS argues that there must be some distinction between being a party and not being a party (e.g., speaking and being allowed to offer evidence versus speaking and *not* being allowed to offer evidence). That Mother's right to notice, to be heard and to participate is not equivalent to having party status, nor does it carry a statutory right to appeal as was the

[18] Mother did not appeal either of the two denials for an emergency hearing.
[19] Note: The issue of collateral order doctrine was raised in Mother's reply brief to DSS' motion to dismiss. We decline to reach to address whether Mother could have succeeded on an appeal through using the collateral order doctrine.
[20] Here, as an argument that there was no abuse of discretion, DSS explains that the lower court's sole basis for its decision was not just that Mother [and Father] were not parties, but it was also in the best interest of D to remain in her current foster care placement.
[21]The nine-line affidavit states D's uncle is willing to be a resource for D.

case in a recent opinion by this Court in *Lee v. State,* 257 Md. App. 481, 292 A.3d 348 (2023), *reconsideration denied* (May 2, 2023*), cert. granted sub nom. Syed v. Lee,* 483 Md. 589, 296 A.3d 424 (2023).

I. Party Status

Before diving into the merits of this appeal, there are multiple postural issues that must be addressed to determine if Mother even has grounds to make this appeal. Generally, parties to guardianship and adoption cases may appeal to this Court in the following circumstances:

> (1) in an interlocutory appeal, from a denial of the right to participate in a guardianship case before entry of an order for guardianship;
> (2) in an interlocutory appeal, from a denial of the right to participate in an adoption case under Part III of this subtitle; or
> (3) from a final order.

MD. CODE ANN., FAM. LAW § 5-310.

Before we address whether the guardianship review hearing held on January 30th resulted in a final order pursuant to § 5-310, we must necessarily address the issue of whether Mother is a party with legal standing to make an appeal to a final judgment or an interlocutory order.

In arguing that Mother does not have standing as a party to make this appeal, DSS relies on *In re L.B.*—a case where the biological mother, Ms. H, consented[22] to the termination of her parental rights over her child, L.B.. *In re Adoption/Guardianship of L.B.,*

[22] Note: this case is distinguished from the case before us in that *In re L.B.* had consent originally, whereas neither of D's parents gave consent to the termination of their parental rights.

229 Md. App. 566, 583, 145 A.3d 655, 664 (2016). After guardianship of L.B. was awarded to DSS, Ms. H appealed on the grounds that her consent was defective. *Id.* at 583-84. This Court then remanded the case back to the lower court. *Id.* On remand, the circuit court granted DSS' petitions for guardianship, having found that Ms. H failed to comply with, among other things, drug treatment, therapy, stable housing and employment. *Id.* at 585. A written order was subsequently issued terminating Ms. H's parental rights. *Id.* at 586. Ms. H appealed, arguing that the lower court erred in terminating her parental rights. *Id.* at 588. Like in the present case, DSS argued that Ms. H lacked standing to challenge a guardianship decision. *Id.*at 593. Ms. H. asserted "that a parent retains the post-guardianship right to notice of the post-guardianship review hearings and the right to be heard and participate supports the proposition that parents have standing *vis a vis* the subject child even after their legal relationship has been extinguished." *Id.*at 594.

In *In re L.B.*, Ms. H was appealing a court decision to award guardianship to DSS at the same time she was appealing the decision to terminate her parental rights, thus her appeal challenging the TPR was not perfected yet. *Id.* at 594-97 (stating "[h]ere, however, Ms. H. has appealed the propriety of the court's order terminating her parental rights. The parties have not cited, and we have not found, any Maryland case addressing the issue whether, in an appeal challenging an order terminating parental rights, the parent retains standing to challenge the court's decision, made during the same proceedings, regarding guardianship of the children."). In a case of first impression, this Court held:

> [O]nce an order terminating parental rights becomes final, the parent has no standing to challenge future matters regarding the child. In the situation where a parent challenges the termination of parental rights on appeal,

> however, we hold that the parent retains standing to raise on appeal an issue relating to "any portion of the process terminating her rights," including the child's placement with the Department. Once the termination of parental rights is affirmed on appeal, however, the order becomes final, and the parent no longer has standing to challenge decisions relating to the child, including the circuit court's order regarding placement of the child. Accordingly, because we have affirmed the order terminating Ms. H.'s parental rights, she no longer has standing to contest the court's decision regarding guardianship.

Id. at 599.

In re L.B. has a different procedural posture than the present case in that Mother here isn't appealing her TPR *and* a guardianship placement decision, let alone simultaneously. The issue that was before this Court in *In re L.B.* is unlike the issue we're presently facing where the subject of the dispute is over "the right to participate," not a *decision* made regarding D's placement at a guardianship hearing. Still, despite that difference, this Court in *In re L.B.*, explicitly made clear that having the right to be heard and participate does not by itself make a former parent a party with grounds to appeal. *Id.* Former parents do not have standing to challenge guardianship review hearing decisions once their TPR appeal is affirmed and hence final. *Id.*

In the present case, once Mother's parental rights were terminated and affirmed by this Court on appeal in 2021, she lost standing as a party to appeal a final order resulting from future guardianships hearings involving D. Mother herself conceded this at the January 30 trial, stating, "[a]nd Your Honor on behalf of the mother, we would concede that we're not parties but the [sic] Statute also Family Law 5-326(a)(3)(i) also states that the parents at this stage of the proceeding and a guardianship review, have the right to be heard and to participate."

While § 5-326 (3)(ii) grants the right to be heard and to participate, (3)(iii) makes clear that this default right does not by itself make a former parent a default party to a guardianship review hearing. Therefore, in light of *In re L.B.* and in accordance with § 5-326, we find that Mother is not a party with standing to appeal decisions regarding D's placement. However, we do not find that a former parent may never having standing, as we will discuss later in this opinion.

Therefore, even if a guardianship review hearing did yield a final order in accordance with MD. CODE ANN., FAM. LAW § 5-310 (3), we still would find that Mother does not have standing as a party before this Court now to appeal a final order from the guardianship hearing held January 30, 2023.

II. Final Orders

Pertinent to our analysis of whether the guardianship review hearing at the center of this dispute yielded a final order that is appealable is MD. CODE § 12–301 of the Courts & Judicial Proceedings Article which provides that, "[a] party may appeal from a final judgment entered in a civil . . . case [when] entered by a court in the exercise of original, special, limited, or statutory authority, unless . . . expressly denied by law." Or unless there is an applicable exception [such as an interlocutory order pursuant to § 12–303].[23]

[23] CJP § 12-303 (3)(x) refers to both parent *and natural parent*, recognizing the remaining, albeit incredibly limited, rights former parents have in regard to permanency plan hearings.

In re Damon M., 362 Md. 429, 434, 765 A.2d 624, 626–27 (2001).[24] "Orders, rulings, even verdicts, do no harm to a litigant unless they lead up to [a] final judgment which does him harm. So it is on appeal from the final judgment that appellant has the opportunity to show that the judgment resulted from error by the judge in trial court." *Braun v. Ford Motor Co.*, 32 Md. App. 545, 549 (1976). *See also* MD. CODE, COURTS AND JUDICIAL PROCEEDINGS, §§ 12-301, 12-303.

DSS vehemently argues that orders arising from periodic review hearings that maintain permanency plans are not final judgments because subsequent hearings will continue to be held until D is adopted, therefore, the January 30 order was interlocutory, not final**.** We agree for the reasons set forth below.

A case that is helpful to our analysis and understanding the appeal rights of a former parent at periodic review hearings is *In re Samone H.* This case involved the question of whether an appeal was proper following a permanency plan review hearing where the trial judge denied the mother's requests to conduct a "bonding study" and to let the children

[24] *See also* MD. RULE 2-602 states:

> (a) Generally. Except as provided in section (b) of this Rule, an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action:
>
> (1) is not a final judgment;
>
> (2) does not terminate the action as to any of the claims or any of the parties; and
>
> (3) is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties.

testify at the hearing. *In re Samone H.*, 385 Md. 282, 312 (2005). Instead, the court continued the existing permanency plan for adoption and Mother appealed. *Id.* at 315-16. After this Court affirmed the lower court, the Supreme Court of Maryland granted certiorari and ultimately dismissed the appeal on the basis that the trial court's order denying the motion for a bonding study was neither a final judgment that was appealable nor did it constitute an interlocutory order under CTS. AND JUD. PROC. § 12–303(x). *Id.* In reaching that conclusion, the Court explained that "[b]ecause the order continuing the permanency plan did not adversely affect Katina M.'s parental rights or change the terms of the permanency plan to Katina M.'s detriment, the trial judge's actions [were] not reviewable by this Court."[25] *Id.*

Other cases also seem to suggest that guardianship review hearings and permanency plan hearings do not yield appealable final judgments. In *In re Ashley E.*, the Supreme Court of Maryland held that period review hearings are dispositional in nature, stating "[b]oth [disposition review hearings and permanency plan hearings] embody the purpose of disposition hearings: to determine "the nature of the court's intervention to protect the

[25] In our present case, in addition to continuing the permanency plan of adoption, a concurrent plan was added which stated: "[a]doption with a concurrent plan of custody and guardianship to an individual, because D [ ] is over the age of 10 and must consent to her adoption; she does not wish to be adopted by anyone other than A [ ]; D [ ] is an intelligent, articulate child; if Ms. A [ ] is unable to adopt D [ ], D [ ] wants her custody and guardianship to be awarded to Ms. A [ ]; and moving D from Ms. A [ ]'s home against D's [ ] wishes and where D [ ] has excelled places D [ ] at significant risk of further trauma."

[25] *See also In re Yve S.*, 373 Md. 551, 582, 819 A.2d 1030, 1049 (2003) (stating

child's health, safety, and well-being." *In re Ashley E.*, 387 Md. 260, 291, 874 A.2d 998, 1017 (2005). Likewise, in *In re Billy W.* this Court stated:

> [i]n the present case, both Ms. B. and Mr. B. are appealing orders of the Circuit Court emanating from a permanency plan review hearing that maintained the extant plans for the children but changed the visitation. Clearly, the orders cannot be regarded as final in nature; rather, the orders are interlocutory in nature. . . .

In re Billy W., 387 Md. 405, 425, 875 A.2d 734, 746 (2005).[26]

Like the case discussed above, our present case involves a guardianship review hearing assessing D's placement. At the January 30 hearing, the lower court (1) evaluated D's status in her current placement, (2) continued D's permanency plan, (3) added a concurrent plan, and (4) scheduled the next guardianship review hearing. However, just like the appellants in the cases we just discussed, changes to permanency plans at guardianship review hearings are not considered final orders because they are dispositional in nature and are therefore not appealable under MD. CODE ANN., FAM. LAW § 5-310 (3).[27]

[26] *See also In re Yve S.*, 373 Md. 551, 582, 819 A.2d 1030, 1049 (2003) (stating "[a]s *In re: Damon M.* observes, the purpose of a permanency plan is to set the direction in which the parent, agencies, and the court will work in terms of reaching a satisfactory conclusion to the situation. Once set initially, the goal of the permanency plan is re-visited periodically at hearings to determine progress and whether, due to historical and contemporary circumstances, that goal should be changed. It is not the purpose of the initial permanency plan hearing, however, to resolve all issues involved in that final resolution. If that were the case, there would be no need for review of how, on a regular basis, the plan is progressing or not.").

[27] MD. CODE ANN., CTS. & JUD. PROC. § 3-801 states a "[d]isposition hearing" means a hearing under this subtitle to determine: (1) [w]hether a child is in need of assistance; and (2) [i]f so, the nature of the court's intervention to protect the child's health, safety, and well-being."

On that basis, we find that even if Mother had standing, there is no final order here for her to appeal.

III. Interlocutory Appeal

a. Statutory Interlocutory Appeal

As the caselaw above demonstrates, an interlocutory appeal is the proper method to appeal guardianship review hearings in accordance with MD. CODE ANN., FAM. LAW § 5-310 and MD. CODE ANN., CTS. & JUD. PROC. § 12-303(x).[28] Mother proffers that *In re Adoption/Guardianship Nos. 11387, 11388* recognized that for ten to fifteen years the legislative scheme provided rights for parents during a transition time following a TPR because there was a valid basis for parents to have continued engagement with their biological child until adoption. Mother equivocates this to being a "de facto party" and that *In re 11387* defined those rights in caselaw as a right to notice, to be heard and participate—which entails the right to introduce evidence and make motions. *See In re Adoption/Guardianship Nos. 11387, 11388*, 354 Md. 574, 731 A.2d 972 (1999)

[28] MD. CODE ANN., FAM. LAW § 5-310: "A party to a case under this subtitle may appeal to the Court of Special Appeals:

> (1) in an interlocutory appeal, from a denial of the right to participate in a guardianship case before entry of an order for guardianship;
> (2) in an interlocutory appeal, from a denial of the right to participate in an adoption case under Part III of this subtitle; or
> (3) from a final order."

MD. CODE ANN., CTS. & JUD. PROC. § 12-303: "A party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case:

> (3) An order:
> > (x) Depriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order [] ."

[hereinafter *"In re 11387*"]. Mother argues that *11387* is still valid law and was not overturned by *In re L.B*; that the *In re L.B.* opinion operated under a different statutory framework that isn't applicable in this case.

DSS petitioned this Court to dismiss this case, arguing that while Mother does have a statutory right to be heard and participate, there is no statutory right to appeal if said rights were violated because Mother is not a party with standing according to §§ 12-301, 12-303, and under FL § 5-310. DSS insists the only exceptions to this are to intervene or through the collateral order doctrine which DSS argues does not apply to this case. DSS argues that *In re 11387* is no longer valid law because the statute relied on by the Supreme Court of Maryland giving appellants a "statutory conferred party status for review hearings" no longer exists.[29] *Id.* at 589.

[29] The prior statute DSS refers to is F.L. § 5–319. Delay in adoption after guardianship granted.

> (a) "*Disrupted placement*" *defined.*—In this section, "disrupted placement" means the permanent removal of a child to be adopted from the prospective adoptive family or adopting individual by a child placement agency before the entry of a final decree of adoption.
> (b) *In general.*—Except as provided in subsection (g) of this section, a guardian with the right to consent to adoption, including a guardian with the right to consent to adoption who was appointed without the consent of the *****natural parents, shall file a written report with the court and give notice of the child's status to each natural parent of the child under the guardianship and to the child's court-appointed counsel if:
>
> > (1) a placement for adoption is not made within 9 months of the decree of guardianship;
> > (2) a placement for adoption is made within 9 months of the decree of guardianship, but there is a disrupted placement, and a new placement is not made within 120 days of the disrupted placement; or
> > (3) a final decree of adoption is not entered within 2 years after placement for adoption.

First, "[a]s a threshold matter, we must consider whether the trial court's order is properly appealable." *In re Samone H.*, 385 Md. at 297. As discussed above, this appeal revolves around a guardianship review hearing for which the governing law is F.L. § 5-326 (3)(i), providing that:

> A juvenile court shall give at least 30 days' **notice** before each guardianship review hearing for a child to:
>
> 1. the local department;
>
> 2. the child's attorney; and
>
> 3. each of the ***child's living parents*** who has not waived the right to notice and that parent's attorney.

> (c) *Mailing notice.*—The guardian shall mail the notice required by this section to each natural parent at the last address known to the guardian.
> (d) *Waiver of notice.*—A natural parent may waive the right to notice under this section. The waiver shall appear expressly in:
> (1) the natural parent's consent to the guardianship; and
> (2) the decree of guardianship.
> (e) *Report to court.*—The written report required by this section shall:
> (1) be filed with the court; and
> (2) state the reasons for delay in placement for adoption.
> (f) *Hearing; orders.*—On receipt of the guardian's report under subsection (b) of this section, and every 12 months thereafter, the court:
> (1) shall hold a hearing to review the progress which has been made toward the child's adoption and to review whether the child's current placement and circumstances are in the child's best interest; and
> (2) shall then take whatever action the court considers appropriate in the child's best interest.
> (g) *Long-term placement.*—(1) Further reports, notices to the natural parents, and hearings are not required if the court determines after a hearing that it is in the best interest of the child to remain with a specified family which agrees to the long-term placement.

In re Adoption/Guardianship Nos. 11387, 11388, 354 Md. at 580–81.

> (ii) A parent is entitled to be heard and to participate at a guardianship review hearing.
>
> (iii) A parent is not a party solely on the basis of the right to notice or opportunity to be heard or participate at a guardianship review hearing. (Emphasis added.)

MD. CODE ANN., FAM. LAW § 5-326. The Committee Notes to the Rule, says:

> Subsection (a)(3)(ii) and (iii) and (4) of this section is new and added to define the rights and status of parents and caregivers. Although subsection (a)(3)(iii) of this section states that a parent is *not a party* to a guardianship review hearing, the Committee notes that a former *parent may file a motion to intervene* under Maryland Rule 2-214.

Id. (emphasis added). F.L. § 5-326 initially appears to be consistent with *In re L.B.* in that post-termination parents do not generally have status as parties to appeal decisions from guardianship review hearings. However, another statute, F.L. § 5-310, explicitly gives a party to a case under Subtitle 3 a right to an interlocutory appeal, stating "[a] party to a case under this subtitle may appeal to the [Appellate Court of Maryland]: (1) in an interlocutory appeal, from a *denial of the right to participate in a guardianship* case before entry of an order for guardianship." MD. CODE ANN., F.L. § 5-310.[30]

Further, CTS. AND JUD. PROC. § 12-303(3)(x), states "[a] party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case: [a]n order [d]epriving a parent, grandparent, or *natural guardian of the care and custody of his child*, or changing the terms of such an order." (emphasis added).

[30] Or alternatively *under*§ 5-310(2) "*from a denial of the right to participate in an adoption case under Part III of this subtitle."*

Looking at these laws together suggest the following. First, a *party* has a statutory right pursuant to F.L. § 5-310 to appeal the denial of their right to participate at the guardianship review hearing. As a *parent, grandparent, or natural guardian*, CJP § 12-303(3)(x) also gives a right to appeal interlocutory orders that relate to the care and custody of a child or that changes the terms of a prior order. DSS argues that because Mother is not a "party," these statutes do not apply to her.[31] That argument is not without merit. In fact, a footnote in *In re L.B.* suggest something very similar:

> [M]s. H. relies on: (1) Maryland Code . . . § 5–326 . . . [w]hich addresses guardianship review hearings; and (2) *In re Adoption/Guardianship Nos. 11387, 11388*, 354 Md. 574, 731 A.2d 972 (1999), which held, in addressing a prior statute regarding post-guardianship review hearings, that a natural parent whose parental rights had been terminated had a statutory right to participate in the hearing. As the Department points out, the cited case is of limited value because § 5–326 replaced the prior statute, and the new statute reflects the General Assembly's view that a parent who has had his or her parental rights terminated does not have party status in guardianship review hearings. FL § 5–326(a)(3)(iii) ("[A] parent is not a party [to a guardianship review proceeding] solely on the basis of the right to notice or opportunity to be heard or participate at a guardianship review hearing.").

In re Adoption/Guardianship of L.B., 229 Md. App. at 594, FN 19. However, both procedurally and contextually *In re L.B.* is not very helpful to us in determining whether Mother can appeal—not the court's decision regarding D's placement—but the court's decision regarding her right to participate.

[31] In its brief, DSS states, "[t]he order for guardianship of an individual 'terminates a parent's duties, obligations, and rights toward' the child and 'eliminates the need for further consent by a parent to adoption.'" *See* F.L § 5-325(a)(1), (2).

Much of the existing caselaw on interlocutory orders related to permanency plans focuses on CJP § 12-303(3)(x) (i.e., "changing the terms of such an order"). For instance, *In re Damon* reviews three to four cases that involved either guardianship review hearings or permanency plan hearings where the court orders changed the reunification plan to either (a) foster care, (2) long-term or permanent placement, or (3) adoption.[32] *See generally In re Damon*, 362 Md. 429 (2001). *In re Damon,* this Court erroneously held that there was not a final judgment that was immediately appealable because the trial court order "neither established conclusively or effected (sic) any actual change in Damon's custody; DHHS continued to maintain custody of Damon." *Id.* at 433. DHHS argued that petitioners (1) were not deprived of custody because they already did not have custody for quite some time; (2) petitioners were not aggrieved by the order because their visitation rights remained unaffected; (3) and the terms of custody weren't changed in a way that fell under CTS. & JUD. PROC. §12-303.[33] *Id.* at 433-34. However, the Supreme Court of Maryland held that "an order amending a permanency plan calling for reunification to foster care or adoption is immediately appealable." *In Re Damon,* 362 Md. at 438.

In another case, a father appealed a trial court's order that changed a permanency plan of a child found to be CINA from reunification with his father to adding a concurrent plan of placement with a relative for custody and guardianship. *See generally In re D.M.,*

[32] Note: Parents in the cases consolidated in *In re Damon* had not yet gone through TPR proceedings like Mother here.

[33] The Supreme Court of Maryland specifically did not address whether *other* types of orders from these hearings could be appealable but, in this case, found that the changes resulting from these orders were interlocutory and subject to appeal. *Id.* at 433 (*see* footnote 4).

252 Md. App. 541 (2021). In that case, DSS contended that "[t]o be immediately appealable under CJP § 12-303(3)(x), the change to the permanency plan must result in an immediate deprivation of a parent's fundamental rights." *Id.* at 559. This Court disagreed, stating "[f]or an order to be immediately appealable under statute permitting appeal from [an] order depriving [a] parent, grandparent, or natural guardian of the care and custody of his child or changing the terms of such an order, the change to the permanency plan *is not required* to result in an immediate deprivation of a parent's fundamental rights." *Id.* at 557-58. (emphasis added). This Court explained that:

> [T]he concurrent goal of custody and guardianship broadens the permanency plan, to Mr. M.'s detriment. "[T]he Department's focus [is] no longer limited to making reasonable efforts to reunify [the children] with [their father]." And the new order "ha[s] the potential to facilitate and accelerate a grant of full custody," and the power to make decisions on the children's behalf, to someone other than Mr. M. Because the order results in a "meaningful shift in direction" in the CINA case, it is immediately appealable under the reasoning of Joseph N.[34]

Id. at 559 (citing *In re Joseph N.*, 407 Md. 278, 965 A.2d 59 (2009) (holding that the "periodic review hearing order effectuated a detrimental change to mother's custody rights and, thus, was an appealable interlocutory order.").

Turning to our case, we find that Mother does not have a statutory basis to appeal under CJP § 12-303(3)(x) because, while D's permanency plan did in fact change at the

[34] "In summary, the sole permanency plan of reunification envisioned that Mr. M. would regain custody, but the concurrent plan of custody and guardianship by a relative broadens the permanency plan by providing a secondary goal that could deprive Mr. M. of the care and custody of his children. Thus, this change to the permanency plan could ultimately deprive Mr. M. of the fundamental right to the care and custody of his children 'in the future[.]'"

2022 guardianship review hearing,[35] it could not detrimentally affect Mother's right or ability to care for D.T. because she presently has no legal parental rights.

While we cannot find a statutory basis under CJP § 12-303(3)(x), we also disagree with DSS that Mother is prevented from appealing on the sole basis that she is not a party. We find that the word "party" was interpreted too stringently by DSS and the lower court and that "[c]ommon sense must guide courts in their interpretation of statutes, and courts seek to avoid constructions that are illogical, unreasonable, or inconsistent with common sense." *In re 11387,* 354 Md. at 579. Just as natural parents are described differently throughout both statute and case law (e.g., "living parent" or "biological parent" or "former parent" or "natural guardian")[36], "party" or "parties" have not been used consistently when it comes to discussing a former parent's status in the context of post-TPR hearings.[37] It would defy logic if we held that former parents—who have a unique right[38] to be heard and participate in hearings pursuant to § 5–326 and moreover, an ostensible right to appeal from the denial of the right to participate pursuant to §5-310—could not ever exercise either right intentionally provided to them by the legislature because they are "not a party."

[35] The permanency plan in this case continues to be adoption by non-relative with a [NEW] concurrent plan of custody and guardianship of the child by an individual.

[36] *See e.g.*, MD FAMILY § 5-3A-22. In subsection (a)(1) and (2) of this section, the former word "natural" is omitted, to reflect that the parental rights of a nonbiological--i.e., adoptive--parent can be terminated in the same manner as a biological parent's can.

[37] For instance, MD. CODE. CTS. AND JUD. PRO. §3-823(d), says that "*all parties* and the court" will be provided with a copy of the permanency plan at least ten days prior to the hearing.

[38] As opposed to foster parents who do not have the right to participate in these hearings and are accorded a lesser notice of seven days than former parents.

As evidenced below, even if they are not technically a party, DSS admits that even non-parties have some rights in certain situations:

> Maryland courts have limited non-parties' rights to situations where the non-party has an interest in an action that it must protect. See, e.g., *Bond v. Slavin*, 157 Md. App. 340, 361 (2004) (stating that non-parties have standing to challenge disclosure of records where they have a privacy interest); *Bhagwat v. State*, 338 Md. 263, 273 (1995) (stating that counsel for non-party witnesses may object to questions and assert a witness's privilege against self-incrimination).

As it currently exists, Maryland laws seemingly fail to delineate what exactly former parents are following the termination of their parental rights. Former parents appear to exist in a space where they are not a party yet they are also not excluded *absolutely* as a party—hence, § 5–326 stating "[a] [former] parent is not a party *solely on the basis* of the right to. . . ." [39]

The case that is most helpful in understanding under what circumstances former parent have rights (and what those rights are) is *In re 11387*. In this case, the Supreme

[39] Indeed, this discrepancy in the law is also illustrated in MD. CTS. & JUD. PRO. §3-801 where it defines a "parent" as a "natural or adoptive parent whose right have not been terminated" and a "party" as any of the following,

(i) A child who is the subject of a petition;
(ii) The child's parent, guardian, or custodian;
(iii) The petitioner; or
(iv) An adult is charged under §3-828 of this subtitle.
(2) "Party" does not include a foster parent.

Notably, provision (2), specifically *excludes* a foster parent from being a "party." MD. CODE ANN., CTS. & JUD. PROC. § 3-801. What we can glean from this provision as it relates to Mother is that she is not a "child," "petitioner," "parent," "guardian," "custodian." Yet, nor is she specifically excluded from being a "party" like foster parents are. She may be able to be a party pursuant to §3-828 but it is unclear from the record if she was ever charged as an adult in violation of this statute, and whether, if she was, it still allows her to be a party now.

Court of Maryland held that a post-TPR parent who had not waived their right to notice and whose child's adoption was delayed in accordance with then-existing law §5-319[40] had a "statutory conferred status" to participate in the review hearing. *In re 11387*, 354 Md. at 584. The Court explained that:

> [t]his right derives, first, from the statutory conferral of party status upon a natural parent attending a § 5–319 hearing, as indicated by the explicit provision of counsel, under § 5–323(b)(2) and Article 27A, § 4(b)(5)[.] [ ] Secondly, the right to participate in the review hearing, possessed by any natural parent who has not waived notice of the child(ren)'s status, evolves also from the implicit acknowledgment by the Legislature of *natural parents' "renewed" legal interest in their children in requiring that notice be given to them in the event of a delay in adoption*.

Id. (emphasis added). The Court further stated:

> The delay in adoption acts in some sense to permit a "renewed" legal interest of natural parents in their children with respect to whom their parental rights have been terminated. The judicial conclusion that such a parent stands as "a legal stranger to [the] offspring" in question, *Walker v. Gardner*, 221 Md. 280, 284, 157 A.2d 273, 275 (1960), is thus legislatively mitigated by a subsequent delay in adoption, which delay becomes the triggering cause for keeping natural parents notified as to their children's status once such circumstances arise.

Id. at 594.

As Mother pointed out, it's important to acknowledge that at the time of *In re 11387*, there was no statutory right to participate. In fact, it was this implied right to participate that led, at least in part, to what is now F.L. § 5-326 (i.e., the right to be heard and to participate). In reviewing the legislative history of the 2005 changes that each party to this

[40] Note: §5-319 which concerns delays in adoption proceedings after guardianship has been granted has since been repealed but the language of it is still valid and exist under MD. CODE ANN., FAM. LAW § 5-3A-23.

case cite to in their briefs, it is clear that *In re 11387* was given heavy weight in the development of the statute. *See* FAMILY LAW—PARENTAL RIGHTS—GUARDIANSHIP—ADOPTION, 2005 Maryland Laws Ch. 464 (S.B. 710)("COMMITTEE NOTE: Chapter 464 (S.B. 710), Acts of 2005, *amended provisions of this section to reflect that a parent has the right to participate in hearings after termination of parental rights if the parent's child has not been adopted*.") (emphasis added).

The two major changes that occurred in 2005 were (1) the right to be heard and *participate* became formally recognized by statute, and (2) post-TPR parents are not a party *solely on the basis* of their rights to notice, to be heard, and to participate. *See* F.L. § 5-326(3). However, adding the exclusion of party status did have an effect that did not exist at the time *In re 11397* was heard. The Court in *In re 11387* justified a "conferred party status" because, as they said "the General Assembly has demonstrated a capacity to exempt persons from legal party status in family law proceedings when it desires to do so." *In re 11387* at 588.

In 2005, the General Assembly *desired to do so* and made clear that post-TPR parents did not enjoy the same "statutory conferred status" that parents enjoyed prior to 2005. *Id.* However, making post-TPR parents a non-party, does not necessarily mean they have no rights as former parents at all. Such a conclusion—that former parents are lawfully recognized to have a participating role in post-TPR guardianship review hearings but do not have ANY guarantee to exercise those rights—would be void of logic. This Court has previously stated:

> [i]f the language alone does not provide sufficient information on the Legislature's intent, then courts will look to other sources to discern the Legislature's purpose.... Because the meanings of even common words may be context-dependent, ... we often proceed to consider other external manifestations of legislative intent, such as the amendment history of the statute, its relationship to prior and subsequent law, and its structure.

Armstead v. State, 342 Md. 38, 56, 673 A.2d 221, 229–230 (1996) (internal quotation marks and citations omitted). *See also id.* at 574 (stating "[w]hen words of statute are susceptible to more than one meaning, it is necessary to consider their meaning and effect in light of setting, objectives and purpose of enactment.").

We find it important to discuss the historical development of former parents' rights. The statute that preceded F.L. § 5-326 was F.L. § 5-319. In 1987, the General Assembly repealed the requirement [from 1982] that former parents receive notice of the review hearing before it could be held. *In re 11387* at 589-90. In *In re 11387*, DSS attempted to argue that repealing the requirement that notice be given to parents in order to conduct the review hearing meant that natural parents no longer enjoyed the same status and rights to participate as before. *Id.* at 593. In correcting DSS' erroneous conflation, the Supreme Court of Maryland clarified that:

> [a]lthough the repeal of the right to notice of the hearing ensures that hearings may be conducted and final actions taken irrespective of the natural parents' knowledge thereof, or interests therein, the repeal does *not* require that natural parents lose all status and rights. In short, *the fact that natural parents no longer have to be included in § 5–319 hearings does not necessitate that they be excluded.* It is our view that the General Assembly in 1987 purposefully went only so far as necessary to ensure that *delayed adoptions be acted upon quickly and appropriately by the circuit court.* We therefore hold that the 1987 amendment of § 5–319 did not rescind natural parents' party status or their right to participate in § 5–319 hearings; instead, it revoked their status as parties *necessary* to such hearings. In essence, the

> repeal of the right to notice of the hearing placed a greater burden on natural parents whose parental rights have been terminated to be more proactive in bringing about reunification with their child(ren). Rather than wait to be notified of any hearing conducted under the possibility of such a result, it is now incumbent upon natural parents to keep informed of their child(ren)' s status as well as the related proceedings and actions being undertaken. *For while a natural parent should certainly be able to rely on the guardian agency to fulfill its duty of notification in the event of a delay in the adoption process*, it would seem that after 1987, failure by the guardian to notify natural parents of the status of their child(ren) in the event of such a delay cannot be grounds either for preventing a § 5–319 review hearing from occurring without their presence, or for voiding the hearing after its occurrence. [41]

Id. at 592-93. (emphasis added).

Applying that same rationale to the present case, just because § 5-326 explicitly says natural parents do not have party status *solely on the basis* of their right to notice, to be heard, and to participate does NOT mean that they can NEVER be parties in guardianship

[41] We note that DSS failed to inform the circuit court of the events around D's removal from A's home prior to the 2022 Guardianship Review Hearing due to A's sexual abuse allegations. Nor did DSS inform Mother as required by the statute. § 5-326 ((b)(1) provides that:

> [w]henever a juvenile court orders a specific placement for a child, a local department may remove the child from the placement before a hearing only if:
>
> (i) removal is needed to protect the child from serious immediate danger;
>
> (ii) continuation of the placement is contrary to the child's best interests; or
>
> (iii) the child's caregiver asks for the child's immediate removal.
>
> (2)(i) On the next day on which the circuit court sits after a local department changes a placement under this subsection, the juvenile court shall hold an emergency review hearing on the change.
>
> (ii) A juvenile court shall give reasonable notice of an emergency review hearing to:
>
> 1. the child's attorney;
>
> *2. each of the child's living parents who has not waived the right to notice and that parent's attorney; and*
>
> 3. each other party's attorney.

review hearings on different[42] or additional bases, such as having their right to participate denied, or learning of something so important that is related to the wellbeing of the child such that the court needs to be informed in order to keep the child safe in its placement in accordance with § 5-326(a)(8), or a delay in adoption. Interpreting the 2005 changes this way is most consistent with the legislative intent of the General Assembly not just in 2005 but in the decade before then, as explained by the Supreme Court in *In re 11387*:

> [I]t is evident from the original enactment and history of the provisions relating to a delay in adoption after guardianship, particularly the right-to-counsel guarantee and the two notice requirements, that the General Assembly has been seeking continually to balance the interests of natural parents in the possible reunification with their child(ren) against the paramount concerns that review hearings occur relatively quickly and that the court be enabled to assess the children's best interests and take appropriate action in a timely fashion. . . . [I]t is clear that the Legislature intended that the proceedings not be delayed by the inability to serve notice upon both parents.

Id. at 590-91.

In the same vein the *In re 11387* Court thought their assessment was "in accord with the legislative history of the 1987 amendment," we also find that saying that Mother has no legal standing to appeal her right to be heard and participate at D's guardianship hearing would be inconsistent with the 2005 revisions which were meant to ensure that former parents *do* have standing in some capacity following TPR.[43]

[42] i.e., intervening.

[43] *See* FAMILY LAW—PARENTAL RIGHTS—GUARDIANSHIP—ADOPTION, 2005 Maryland Laws Ch. 464 (S.B. 710) COMMITTEE NOTE: Chapter 464 (S.B. 710), Acts of 2005 (stating the "amended provisions of this section to reflect that a parent has the right to participate in hearings after termination of parental rights if the parent's child

This lack of official party status may be overcome in certain circumstances. For instance, if there has been a delay in adoption since the granting of guardianship such as in *In re* 11387. In this case, a post-TPR mother was found not to have standing to participate in a review hearing in the form of testifying and presenting evidence. Addressing the issue of standing, the Supreme Court of Maryland held that:

> [T]he delay in adoption acts in some sense to permit a "renewed" legal interest of natural parents in their children with respect to whom their parental rights have been terminated. The judicial conclusion that such a parent stands as "a legal stranger to [the] offspring" in question [ ] is thus *legislatively mitigated* by a subsequent delay in adoption, *which delay becomes the triggering cause for keeping natural parents notified as to their children's status once such circumstances arise.*

Id. at 594. (emphasis added).

Though Maryland does not yet have a statute that directly reinstates parental rights, case law has clearly shown that TPR parents' interest in their child is renewed in some circumstances such as if a delay in adoption beyond two years has occurred. *See id.* at 594-95. However, as DSS points out, this renewed interest is not automatic—it requires parents to be proactive, as stated in *In re 11387* here:

> [N]onetheless, parallel to our discussion above regarding the statute's framework and history, § 5–319's implicit recognition of natural parents' possible "renewed" legal interest in their children once a delay in adoption occurs does not invest automatically or by default. Natural parents whose parental rights have been terminated must actively pursue reunification. In undertaking such a pursuit, natural parents may rely upon and avail themselves of the right to participate in a § 5–319 review hearing. Moreover, *it is the natural parents' active pursuit, comprised in part by their attendance*

has not been adopted.") (citing to *In Re Adoption/Guardianship Nos. 11387 & 11388*. 354 Md. 574, 731 A.2d 972 (1999).

> *at the review hearing, rather than the court's discretionary leave, which is the grounds for participation as of right.*

Id. (emphasis added). Looking towards other states, about twenty-five states now have laws reinstating the rights of parents who previously had them terminated. Eighteen of these twenty-five states allow a petition to be filed requesting reinstatement of parental rights if permanent placement has not been achieved within two to three years depending on the State.[44] Even Maryland law recognizes the significance a delay in adoption causes as evidenced by its requirement that DSS file a report stating the reason for the delay in accordance with MD. CODE ANN., FAM. LAW § 5-3A-23 which requires a report and notice be given whenever a child has not been adopted after two years.[45]

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[44] Arkansas (3 years), California (3 years), Colorado (3 years), Delaware (2 years), Georgia (3 years), Hawaii (1 year), Illinois (3 years), Maine (1 year), Minnesota (4 years), New York (2 years), North Carolina (3 years), Oklahoma (3 years), Oregon (18 months), Texas (2 years), Utah (2 years), Virginia (2 years), Washington (3 years), and Wisconsin (1 year).

[45] *See* F.L. § 5-3A-23 (a)(1) (stating:

> A child placement agency shall file a written report with a court with jurisdiction over a child whenever:
>
> (i) the child placement agency fails to place the child for adoption with a preadoptive parent, as defined in § 3-823(i)(1) of the Courts Article:
>
> 1. within 270 days after being awarded guardianship; or
>
> 2. within 180 days after permanently removing the child from another placement; or
>
> *(ii) a court does not enter a final order of adoption within 2 years after the placement.*
>
> (2) A report under this subsection shall state each reason for the delay in placement or adoption.
>
> **Notice**
>
> (b)(1) Whenever a child placement agency files a report under this section, the child placement agency shall mail notice of the child's status:

MD. CODE ANN., FAM. LAW § 5-3A-23. (emphasis added). While Maryland does not yet have a statute that explicitly paves a path for reunification following a delay in adoption, *In re 11387*, combined with § 5-3A-23, bridges the gap at least in part by finding that parents have renewed interests when a delay in adoption occurs so long as they have not waived their rights and have actively sought reunification, which that Court clearly stated could be achieved simply by participating in guardianship review hearings.[46] We also note that *In re L.B.* is inapplicable as it relates to a delay in adoption because the mother's appeal in that case was immediately after her rights were terminated.

(i) *to each of the child's living parents* who has not waived the right to notice and, if represented, counsel; and

(ii) if a court appointed counsel for the child under this subtitle, to the child's last attorney of record.

(2) A waiver of rights under this subsection is not valid unless the waiver appears expressly in:

(i) the parent's consent to guardianship; and

(ii) the guardianship order.

Hearing

(c)(1) Whenever a court receives a report under this section, the court shall hold a hearing to:

(i) review the progress that the child placement agency has made toward adoption of the child; and

(ii) *take all actions that the court considers to be in the child's best interests.*

(2) Each year after a hearing under paragraph (1) of this subsection until the court's jurisdiction terminates, the court shall hold another review hearing.)

[46] "Stated another way, we left open the question concerning delayed or disrupted adoptions as to whether the trial court was authorized to reinstate the rights of a natural parent who had previously consented to adoption." *In re 11387*, 354 Md. at 578.

Here, Mother has clearly been very proactive in these last two years since her parental rights were terminated. D has also experienced a delay in being adopted, and the presumptive adoptive parents, who D lived with for four years, will not be adopting her now. Maryland laws are not clear on what rights former parents have in exercising their rights, let alone appealing their rights. Further, caselaw is scant in regard to dissecting this particular issue (*i.e., former parents' rights to participate*) which appears to exist in its own universe that hasn't been visited too much since *In re 11387*. *In re L.B.* is informative as to making it clear that parents do not have status to appeal placement decisions, but it is not instructive on the facts of this particular case. We also note that *In re L.B.* did not overturn the entirety of *In re 11387,* especially regarding any delays in adoption because that case did not involve a delay. We find that *In re 11387* still has some relevance as to the rights of former parents, particularly when a delay in adoption is involved.

b. Common Law Interlocutory Appeal through the Collateral Order Doctrine

In Mother's Reply Brief to DSS' Motion to Dismiss [entitled "Appellant B.B.-O.'s Reply Brief And Additional Response To DSS' Motion to Dismiss"], Mother argues that if she cannot appeal under either CJP § 12-303 nor F.L. § 5-310, an appeal through the collateral order doctrine is only bolstered. We agree with Mother and find that even if we did not conclude that Mother had a right to an interlocutory appeal as outlined above, she would have a basis under the collateral order doctrine. DSS argues that in order to use the collateral order doctrine, there needed to be an order that altogether prevented Mother from

being heard or participating.[47] DSS contends that Mother cannot succeed on prongs one and three. Specifically**,** that the court denying Mother's mode of participation was not "conclusively determining or resolving" D's permanency plan. Mother countered that DSS misconstrued the collateral order doctrine—that where it comes to collateral order doctrine, what matters is whether the rights were important and why. The scope of the rights is immaterial. Mother argues that "even if [she is] not granted separate statutory rights to appeal as a non-party, her abilities to challenge denials of her rights to participate in and be heard in review hearings may be brought as collateral orders to enforce her rights now during proceedings as they would be rendered meaningless after a final order."

Generally, a party can only appeal "a final judgment entered in a civil or criminal case by a circuit court." CJP § 12-301. "There are, however, three exceptions to the requirement of a final judgment: (1) appeals from interlocutory orders specifically allowed by statute; (2) immediate appeals permitted when a circuit court enters final judgment under Maryland Rule 2-602(b); and (3) appeals from interlocutory rulings allowed under the common law collateral order doctrine." *In re O.P.*, 470 Md. 225, 250, 235 A.3d 40, 55 (2020) (citation omitted). Here we address the third exception.

For an interlocutory order to be appealed under the collateral order doctrine:

(1) it must conclusively determine the disputed question;
(2) it must resolve an important issue;
(3) it must be completely separate from the merits of the action; and

[47] The State said that Appellant could have potentially used the collateral order doctrine to appeal the denial for an emergency hearing because that was a final order, whereas DSS argues here that nothing was changed during the guardianship hearing and no argument was made on how Appellant's rights were hurt.

(4) it must be effectively unreviewable on appeal from a final judgment.

Kurstin v. Bromberg Rosenthal, LLP, 191 Md. App. 124, 148, 990 A.2d 594, 608 (2010), aff'd, 420 Md. 466, 24 A.3d 88 (2011). "[T]he collateral order doctrine is a very narrow exception to the general rule that appellate review ordinarily must await the entry of a final judgment disposing of all claims against all parties." *Kurstin*, 191 Md. App. at 144.

i. Prong One

In this case, under prong one, the disputed question that was conclusively determined[48] at the guardianship review hearing was whether Mother could participate in the form of admitting evidence and making motions. DSS claims that

> [t]he January 30 order did not conclusively determine or resolve D.T.'s placement and permanency plan; it merely assessed D.T.'s current placement and her current permanency plan. The juvenile court must hold ongoing review hearings to assess the merits of these issues until its jurisdiction terminates. Fam. Law § 5-326(a)(1)(ii). The court scheduled the next review hearing on both issues for August 2023. At that hearing, and each review hearing after that, the juvenile court must "determine whether: (i) the child's current circumstances and placement are in the child's best interests; (ii) the permanency plan that is in effect is in the child's best interests; and (iii) reasonable efforts have been made to finalize the permanency plan that is in effect." Fam. Law§ 5-326(a)(2).

DSS argues that under *In re Katerine L.*, "[t]he court's continuing duty to assess these factors shows that D.T.'s placement and permanency plan have not been conclusively decided or resolved." *See In re Katerine L.*, 220 Md. App. 426, 442-43 (2014) (denying appealability by way of the collateral order doctrine and holding the circuit court's denial

[48] As evidenced, the lower court decisively decided this question when it stated "I do not think you have that right to admit evidence and submit reports. So, that's the ruling on that issue."

of a "*request* for genetic testing [did] not conclusively determine the question of parentage."). In that case, the circuit court denied DSS' *request* for a paternity test of the presumed father because it was not in the best interest of the child, K. *Id.* at 433-34. Importantly, they noted in their finding that the presumption could be rebutted if they locate the suspected father who could then be tested. *Id.* The court's holding was based on valid law at the time of that case in Maryland that "[w]hen paternity is in question for a child born during a marriage, the Estates and Trusts Article applies 'because it presents the 'more satisfactory' and 'less traumatic' means of establishing paternity,' and creates a presumption of legitimacy for children born to a married mother." *Id.* at 432. (citation omitted).

DSS misapplied our holding in *In re Katerine* which is inherently different than our present case, where Mother cannot come back and participate at a subsequent guardianship review hearing if she is not given the full panoply of her participation rights at a prior review hearing. DSS and the presumptive Father in *In re Katerine* were not left without the opportunity to come back before the court and rebut the paternity presumption by making another *request*; it was even suggested by the court that finding the alleged biological father would be helpful in granting their request for paternity testing. In other words, they were free to continue to challenge paternity once they could successfully rebut the presumption of legitimacy.[49]

[49] DSS and the presumptive father (as the legal father whose rights were not terminated) maintained the right to petition the court upon having additional evidence to rebut his presumed paternity. *See In re Caya B.*, 153 Md. App. 63, 78, 834 A.2d 997, 1006 (2003)

Whereas, here, the question before our Court is different in nature. Not only are the appellant parties situated very differently, but the question before us now isn't over an alleged *request*, rather it's over a *right*. First, Mother's terminated parental rights leaves her only with the remaining rights to be heard and participate. The disputed question is over the court's decision to deny the exercise of the right without any way or time to raise it again. More precisely, in *In re Katerine*, DSS and the presumptive father were not being denied an affirmative *right* to *request* genetic testing. Here, Mother is arguing that she was denied the *right* to participate by way of presenting evidence. The difference between these two cases is simply that the court did not get to the exercise of discretion, as was done in *In re Katerine*, by weighing the Mother's proffered evidence and then denying its admission, rather the court prematurely denied *considering* admitting Mother's evidence because it ruled she had not right to admit evidence.[50]

(stating, "[i]f a permanency plan calls for custody and guardianship by a relative but does not contemplate adoption, the court may issue a decree of guardianship to the relative and may then close the case; parental rights are not terminated in such a situation, as parents are free at any time to petition an appropriate court of equity for a change in custody, guardianship, or visitation….").

[50] While not involving the collateral order doctrine, *In re Caya B* offers a similar logic when it said "[t]he court had discretion either to order formal visitation or to deny visitation as no longer appropriate. It did not have discretion to leave the matter in the hands of Steven and Michelle." *In re Caya B.*, 153 Md. App. 63, 81, 834 A.2d 997, 1008 (2003). Similarly, there is a difference between a judge having the right to exercise its discretion as it did in *In re Katerine* and our case where the lower court did not have the discretion to blanketly deny a right to participate.

ii. *Prong Two*

The issue per prong two is whether the order resolves an important issue. The relevant important issue here is the court's decision on Mother's right to participate which can undoubtedly affect what information a former parent can bring to the court's attention which, in turn, can substantially affect the court's ability to make decisions in accordance with its obligations under § 5-326 (a)(2) regarding the child's best interest. [51] When the Court ruled that Mother's right to participate did not include admitting evidence or submitting reports, it conclusively decided, or resolved, the important issue of Mother's ability to exercise that right.[52] The lower court's decision regarding this issue effectively prevents Mother from participating or even challenging it decision at any future guardianship review hearing.

iii. *Prong Three*

Under prong three, the *order* must determine an issue that is completely separate from the merits of the *action*. The order in this case is the court's ruling that the "right to participate" did not include admitting evidence and submitting reports, compared to the

[51] At oral arguments, DSS argued that only if Mother's right to participate was fully denied would the collateral order doctrine be available to her—but that difference is one of degree, not kind.

[52] *Compare with Kurstin v. Bromberg Rosenthal, LLP*, 191 Md. App. 124, 149, 990 A.2d 594, 608 (2010), aff'd, 420 Md. 466, 24 A.3d 88 (2011) (stating "[i]t is further required that Judge Mason's ruling shall have 'resolved' that issue. For the reasons given in our discussion of the first requirement, this important issue will not have been resolved until the trial judge rules upon the ultimate admissibility of the evidence at the trial of the legal malpractice case. Judge Mason's ruling was but a preliminary skirmish in an impending battle yet to be fought. It was a harbinger but not a final resolution.").

action of assessing D's placement. In their brief, DSS asserts that Mother fails on prong three because "the [c]ourt's assessment of [D's] current placement and plan is not completely separate from the merits of [D's] case because that assessment is central to the ultimate issues: guardianship and potential adoption of [D]."

Yet again, DSS conflates what precisely prong three is focused on. The focus needs to be on the issue of the law, or the right being denied, *not* the facts of the case. *See Dawkins v. Baltimore City Police Dept.*, 376 Md. 53, 63, 827 A.2d 115, 121 (2003) (stating ". . . makes clear that the third prong—the conclusiveness of the adjudication—is not ordinarily satisfied unless the [ ] issue can be resolved as a pure issue of law, without the court having to assume any material facts or inferences that are in dispute."); *see also Artis v. Cyphers*, 100 Md. App. 633, 651, 642 A.2d 298, 307 (1994), aff'd, 336 Md. 561, 649 A.2d 838 (1994)(stating "[a]n appellate court reviewing the denial of the defendant's claim of immunity need not consider the correctness of the plaintiff's version of the facts, nor even determine whether the plaintiff's allegations actually state a claim. All it need determine is a question of law [ ]."") While the extent of the right to participate at a guardianship review hearing may unquestionably affect the outcome of the hearing, the singular issue of the right to participate remains entirely distinct from the overall merits of the action which concern the placement of D. Therefore, we find that Mother does not fail as to prong three.

iv. *Prong Four*

The final prong required to be satisfied is that the issue is effectively unreviewable after the case concludes and yields a final judgment. A 1949 U.S. Supreme Court case

clarifies what makes an issue unreviewable. In *Cohen v. Beneficial Indus. Loan Corp.*, the Court stated:

> But *this order* of the District Court *did not make any step toward final disposition of the merits of the case* and will not be merged in final judgment. *When that time comes, it will be too late effectively to review the present order*, and the rights conferred by the statute, if it is applicable, will have been lost, probably irreparably. We conclude that *the matters embraced in the decision appealed from are not of such an interlocutory nature as to effect, or to be affected by, decision of the merits of this case.*

Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546 (1949). Giving birth to the collateral order doctrine, the Court then specified what small class of cases would fall under it, stating,

> [T]his decision appears to fall in *that small class* which finally determine *claims of right separable from and collateral to rights asserted in the action* too important to be denied review and *too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.*
> . . . .
> We hold this order appealable because it is *a final disposition of a claimed right which is not an ingredient of the cause of action and does not require consideration with it.* But we do not mean that every order fixing security is subject to appeal. Here it is the right to security that presents a serious and unsettled question.

Id. at 546-47. Maryland courts still rely on the *Cohen* principles today. *See Kurstin*, 191 Md. App. 140-41 (stating "[a] decision that an accused is incompetent to stand trial appears to fall in that *small class which finally determines claims of right separable from, and collateral to, rights asserted in the action,* too important to be denied review and *too independent of the cause itself to require that appellate consideration be deferred* until the whole case is adjudicated) (citation omitted).

Here, by not allowing Mother the right to participate because she was a non-party at the guardianship review hearing, the lower court effectively crystallized mother's non-party status as a barrier that would prevent her from ever being able to appeal or enforce her rights in the future. Notwithstanding the fact that we have already stated that Mother cannot appeal under F.L. § 5-310(3), if Mother was forced to wait until D's expected adoption by the A's to share with the court that D was potentially at risk with the A's, it would be too late by then for a court to enforce Mother's right to participate. We therefore find that Mother can successfully make an interlocutory appeal under the collateral order doctrine.

IV. The Merits of the Appeal—The Scope of Being Heard and Participating

Having found that Mother had standing to make an interlocutory appeal, we next address the merits of this case—whether the lower court erred in finding that participating at a guardianship review hearing did not include admitting evidence. Mother argues that the Supreme Court of Maryland's majority opinion in *In re 11387* inferred party status on the Mother even though she wasn't technically a "party" based on the following factors:

1. She was accorded notice under the prior statute
2. She was accorded counsel under the prior statute
3. Supreme Court looked back 20-30 years and found there is a reason to have natural parents involved in subsequent guardianship hearings (e.g., circumstances changed, valuable sources of updates or resources)—worth keeping them engaged Majority inferred from her right as a "defacto party" included the right to introduce evidence and move the court into action.

In her brief, Mother further argued that:

> "[A]lthough the exact scope of parents' rights in these contexts is a relatively gray area within the law, the statutory language and scheme

> both suggest while those rights may not be co-extensive with those enjoyed by parents prior to termination, they certainly go beyond mere spectatorship. Moreover, equating parents' rights to participate and be heard to at least encompass core processes such as introducing evidence and moving the court to take action, serves valuable public policies such as ensuring a court is as well-informed as possible when deciding what is in a minor's best interests.
>
> Indeed, in this case where DSS purposely withheld information and potentially intentionally misled the lower court for nearly a year about the foster father's indicated sexual abuse finding, and DSS only belatedly made disclosures after the mother's actions, ensuring any type of oversight over DSS would appear to be especially vital. Had B.B.-O. not independently discovered these issues and brought them to the court's attention, it is unclear if the court would have learned of them at all, much less been provided perspectives of alternatives."

In their Brief, DSS said "[a]s non-parties, they [Mother and Father] could not introduce evidence, particularly evidence of very limited value, if any." DSS argued that even if Mother was permitted to admit the charging documents, that they were not reliable or material, and that "the affidavit of the biological uncle did not provide the court with any means of assessing its reliability or its value as a factual proposition."

To start, we find DSS' proposition that the exhibits Mother tried to introduce were "not probative" to be bewildering, especially considering why Mother's parental rights were terminated to begin with. Outstanding charges of sexual abuse, whether they will lead to a conviction or not, are probative where it comes to the imminent safety of a child living with those charged. Notwithstanding, Mr. A's charges were probative enough that he was detained for five months and his foster care license was revoked. Only after nine months, was he allowed supervised visitation with D—all the while, all of her stability and future stability were completely upended as a consequence of the events that lead to Mr. A's child

sexual abuse charges and indicated finding of child sexual abuse.[53] Secondly, the question of whether the affidavit of the biological uncle was reliable or not was never reached by the lower court because it prematurely ruled that Mother did not have the right to admit the affidavit.

"[I]f it appears that the [juvenile court] erred as to matters of law, further proceedings in the [juvenile] court will ordinarily be required unless the error is determined to be harmless." *In Re: Yve S*, 373 Md. 551, 586, (2003).[54] "[W]here the order involves an interpretation and application of Maryland statutory and case law, [we] must determine whether the lower court's conclusions are 'legally correct' under a *de novo* standard of review." *Walter v. Gunter*, 367 Md. 386, 391–92, 788 A.2d 609, 612 (2002) (citation omitted).

Here we are looking at the lower court's interpretation of the right to participate pursuant to F.L. §5-326(a)(3)(ii). We agree with Mother that while the rights of parents post-TPR are not equivalent to those prior to termination, "they certainly go beyond mere spectatorship." In the present case, the lower court erred in its interpretation of the statute F.L. §5-326. In pertinent part, F.L. §5-326 states:

> (3)(i) A juvenile court shall give at least 30 days' notice before each guardianship review hearing for a child to:
>
> 1. the local department;
> 2. the child's attorney; and

[53] One of the charging documents Mother attempted to admit into evidence listed fourteen different charges, ranging from assault to sex offense of a juvenile to rape to sex abuse of a minor.

[54] Here, neither party argues, nor do we find any error in the lower court's factual findings in this case.

> 3. each of the child's living parents who has not waived the right to notice and that parent's attorney.
>
> (ii) A parent is entitled to be heard and *to participate* at a guardianship review hearing.
>
> *(*iii) A parent is not a party solely on the basis of the right to notice or opportunity to be heard or participate at a guardianship review hearing.

MD. CODE ANN., FAM. LAW § 5-326. (emphasis added). At the guardianship review hearing, the lower court did not allow Mother to both be heard *and* participate. Mother challenged the court and argued that "the right to participate" includes the right to introduce and admit evidence.[55] After conceding that they are a "non-party", the court clarified and stated, "do you want to be heard on that point or do you concede to stipulate that you can't enter into exhibits any of these pre-filed (sic)?" Mother responded with "[i]f I am not permitted [to enter the three pre-filed exhibits], I would request that they be marked for identification purposes at least. I do not know whether I have, if I am aggravated (sic) if

[55] The transcripts below punctuates the fact that the lower court was confused from the beginning as to the rights former parents have at guardianship hearings:

> THE COURT: So, I'm a little confused as to why all the other parties are here today, well your non-parties. I'm.. I'm going to see if there's something that you would like to put on the record but. . .
>
> . . .
>
> FATHER'S COUNSEL: ..I would note that the rules do allow ah, the parents in this type of a situation to ah, participate...
>
> THE COURT: In what type of a situation.
>
> FATHER'S COUNSEL: In the guardianship review proceedings. Specifically would point to Maryland Rule 11—316 subsection D indicates that the biological parents are entitled to be heard and to participate in the guardianship review hearing.
>
> THE COURT: So, is that with the caveat that it's even after then. have a TPR has occurred?
>
> FATHER'S COUNSEL: Correct.

my client is aggravated by this proceeding whether or not I can appeal. I guess that would be a decision for the appellate court."[56]

Mother then tried to admit three pre-filed exhibits to which DSS objected. After DSS reiterated that Mother is no longer an interested party with standing to challenge the proceeding, the court correctly reframed the issue to DSS, stating "[b]ut I think the point that we're trying to settle on now is with regards to the exhibits." DSS objected to Mother's exhibits, once again averring that Mother did not have the right to admit exhibits as a nonparty.[57]

The court then took a brief recess and after reading *In re. L.B.* (provided by DSS), the Maryland rules and statutes, found the following:

> Okay, so I have heard all of your points and read the.. a little bit of the case law that you supplied, but it really wasn't on point (sic) was the two...(sic) that was for a different point. I read the rule, Maryland Rules as well the Statute and I think under prior law you would have been entitled to submit your reports but as the law is currently drafted I do not think you have that right to admit evidence and submit reports. So, that's the ruling on that issue.

Just as DSS purported that Mother could not present evidence because there must be a distinction between "parties" and "non-parties", we find that there must also be a distinction between "being heard" and "participating." Otherwise, why did the legislature not stop at adding being "heard"? Why give former parents the additional right to

[56] The Court responded with: "I don't really think there's any point in that, so I'm not going to accept as exhibits to this. You object [?] [A]ny objections?"

[57] DSS Counsel: I object to the exhibits…

The Court: Okay.

DSS Counsel: …and I don't think they have the right to admit exhibits as non-parties.

"participate"? These additional rights were added in 2005 partly because the legislature found *In re 11387* to be persuasive.[58] *See supra* 2005 Committee Notes p. 25.

Interestingly, DSS relies on *In re 11387* in their brief, stating that "[a]lthough biological parents may be able to 'avail themselves of the right to participate in a review hearing' when they were 'actively pursuing reunification' [Mother] was not seeking reunification at the January 30, 2023 Guardianship Review Hearing." However, *In re 11387* also made clear that "pursing reunification" includes, attending and participating at guardianship review hearing.[59] It is apparent to this Court that Mother never wavered in "pursuing reunification" as outlined in *In re 11387*. This is clearly evidenced by her active presence and participation attempts at both guardianship review hearings since the termination of her parental rights. It is further evidenced from her petition for an emergency hearing upon discovering Mr. A's allegations. When the lower court denied her petition for a hearing for lack of standing, Mother did not stop and tried again with an amended petition for an emergency hearing. We will not find, as DSS suggest, the level of pursuing reunification to be a barrier to Mother's appeal.

[58]Compared to *In re L.B., In re 11387* is more factually similar to our case at hand because it plainly addresses the right to participate in the context of TPR.

[59] "Natural parents whose parental rights have been terminated must actively pursue reunification. In undertaking such a pursuit, natural parents may rely upon and avail themselves of the right to participate in a § 5–319 review hearing." *In re. 11387*, 354 Md. at 594–95.

In re 11387 further, this case demonstrates that the right to participate includes the right to make motions, cross-examine witnesses, submit evidence.[60] *In re 11387* states:

> [T]he issue we must decide in this case is whether a natural parent whose parental rights were terminated as a result of her failure to respond to a petition for guardianship is entitled to present evidence in a status hearing conducted pursuant to Maryland Code § 5–319 of the Family Law Article. We shall hold that a natural parent, who has not waived the right to notice of the status of his or her child(ren) provided by § 5–319(b) and who attends a hearing under § 5–319(f) to review that status, has a statutory right to participate in the hearing, **and thus is entitled to present evidence.**[61]

(emphasis added). Other cases also support the notion that "participating" includes more than speaking. *In re Adoption/Guardianship No. T97036005*, is suggestive that the right to counsel, notice, and to participate all encompass the right to make motions and file objections. *See In re Adoption/Guardianship No. T97036005*, 358 Md. 1, 18, 746 A.2d 379 (2000). While the above case is about a court denying children's request for a hearing to contest the termination of their parents' rights, the same principle behind that finding

[60] *See In re 11387*, 354 Md. at 578. (stating that "[a]lthough the trial court had allowed Petitioner to cross-examine DHHS's single witness, the social worker then assigned to the case, the court refused to permit Petitioner to testify or present other witnesses, ruling that Petitioner 'simply has no standing in this matter any longer, except for provisions ... where she is entitled to notice if the adoption is not completed or there has been a change in the adoption plan.'"

[61] *But see In re Ashley E.*, 387 Md. 260, 296, 874 A.2d 998, 1020 (2005) (stating "[b]ecause we find that permanency planning hearings under Section 3–823 of the Courts and Judicial Proceedings Article and disposition review hearings under Maryland Rule 11–115d. are substantively identical, we conclude that the application of the Rules of Evidence is not mandatory during permanency planning hearings.").

applies here. The right to be heard and participate flows from the right to notice and the right to counsel, which are hallmarks of due process.[62]

DSS said something must distinguish a party [or a parent] from a non-party [or a former parent] but failed to suggest what that distinction is. Further, DSS didn't even address what differentiates the rights of caregivers or foster parents under 5-326(a)(4) with the additional rights accorded to [former] parents under 5-326(a)(3). On its face, parents have the additional rights of greater notice and *the right to participate*. Participating cannot be limited to only speaking because that is essentially the same as being heard. Participating must include something more, but also something less than a parent whose rights have not been terminated. We therefore find that the lower court erred insofar that it took the position that Mother was precluded from offering evidence, which we hold includes the right to make motions and submit evidence to be weighed at guardianship review hearings.

While we find that the lower court erred to the extent that it held that Mother did not have the right to admit evidence and submit reports, the court did not abuse its discretion in declining to enter Mother's proffered materials into evidence. The court listened to Mother extensively as she reviewed her exhibits.[63] "Decisions of trial judges

[62] The current statute, F.L. 5-3A-23, states under "Due Process" that a "[n]atural mother did not have due process right to participate in children's pre-adoption status hearing, where fundamental right at issue, mother's right to raise her children, had been terminated before hearing was commenced." *In re Adoption/Guardianship Nos. 11387 and 11388*, 1998, 707 A.2d 926, 120 Md. App. 566, certiorari granted 711 A.2d 871, 350 Md. 279, ***reversed*** 731 A.2d 972, 354 Md. 574. (emphasis of reversal added).

[63] Mother's Counsel: "But um, if I'm not permitted to um, submit these um, into evidence. I will be at least referring to them in reading them to the Court just to, so that the Court is aware of what's in them. Um, so that you are making educated decisions."

should only be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred." *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 210 A.3d 850 (2019)(citation omitted).

As shown in the discussion below the court actively engaged with Mother and DSS about Mr. A's charges and potential relative placements:[64]

> COUNSEL FOR MOTHER: But I will go over some of the things that are readily available to the Court. Mr. A [ ] was criminally charged with sexually abusing a child. Probable cause was found for these twenty-six charges. D's [ ] father was never criminally charged with sexually abusing any child. The two documents that I submitted as proposed exhibits, are the charging documents against Mr. A [ ]. I believe that they are relevant to this Court in understanding the risk factors to D [ ] in that home. And I would request that they be marked for identification purposes and used by this Court.
> THE COURT: Objections Counsel?
> DSS: Yes Your Honor. And Your Honor I'd also add, you know they're charging documents they are not a criminal conviction...
> THE COURT: Right.
> DSS: and those, there was no criminal conviction.
> THE COURT: Yes, I know and under our laws that renders them to be in the same situation, neither one of them has been convicted of anything. So, they're both innocent of those charges.
> COUNSEL FOR MOTHER: Correct.
> THE COURT: So essentially being treated the same.
> COUNSEL FOR MOTHER: NO, Your Honor they're not.
> THE COURT: Okay...
> COUNSEL FOR MOTHER: Um...
> **THE COURT: Well for purposes accepting those, I'm going to rule in favor of the Department here, I'm not going to accept them.**
> COUNSEL FOR MOTHER: Okay. I will say that there were charges in Dorchester County and they were twelve charges which include rape, and in Caroline County there were thirteen charges and I believe this is the one.. there were two Charges of rape of a minor
> THE COURT: In Caroline County?
> COUNSEL FOR MOTHER: Yes, Your Honor.
> THE COURT: Okay, so thirteen...

[64] Mother's Counsel went on without interruption from page 28-37 of the transcripts.

After Mother discussed relative-placement options, the following discussions occurred between the Mother's Counsel, the court, DSS, and D's attorney:

> COUNSEL FOR MOTHER: And then R [ ] came back to this state, Or… and came back and lived with Uncle F [ ]. So DSS knows about Uncle F [ ] and he can be investigated as well. I will remind the Court that custody and guardianship to a relative is a Preferred permanency plan over adoption by a non-relative. And this should be especially true when the nonrelative is an indicated child abuser for whom probable cause was found.
> . . . .
> It is my client's position to this Court, that D [ ] should be removed from the A [ ]'s home, it is not.. it is not safe and it is not in her best interest to be there.
> . . . .
> The plan for D [ ]should change from adoption by nonrelative to custody and guardianship of a relative. That can be either Uncle J [ ], R [ ] or Uncle F [ ].
> . . . .
> This Court should treat D [ ]as it would its own child. We would request an early review so that the investigation of relatives can be concluded.
> THE COURT: Thank you.
> COUNSEL FOR MOTHER: And um, can these just be marked for identification purposes the three documents that I mentioned for the record?
> THE COURT: I don't really think there's any point in that, so I'm not going to accept as exhibits to this. You object.. any objections?
> DSS: I do object.
> THE COURT: And the basis for your objection Madam?
> DSS: One that they are not parties and they're not entitled to present exhibits and that um, in terms of charges, they're charges, not convictions. And in terms of an affidavit from a relative, I mean [DSS] has stated, you know her position regarding that relative, and I think that's simply sufficient that, you know he is saying.. he'd be a resource. That's there before the Court, so she's entitled to say that. I don't l think that the affidavit provides anything further. It doesn't allow me to cross-examine him or in any way challenge that affidavit.
> THE COURT: With regards to the two individuals, the two uncles that she is...
> DSS: If I understand it there's just an affidavit from one of them.
> THE COURT: Uncle J I believe.
> DSS: Right, Uncle J.

> COUNSEL FOR MOTHER: Correct... I had not been able to get in touch with Uncle F.
> THE COURT: Mmm-hum.
> DSS: So, we don't, I mean she stated that but I would ask the Court not to...
> THE COURT: Mmm hum.
> DSS: ...or mark it in that, you know there's no opportunity for me to cross-examine him regarding his interest. Certainly he was here at the TPR and as [DSS] stated you know there's already been a decision, we're not here to relitigate the TPR. There was a
> decision, there was an appeal, the Court of Special Appeals...
> THE COURT: Right, but they're here... I'm sorry to interrupt but this is a guardianship review and they're asking that the guardianship not be continued and that the Department investigate other possibilities of placement with the family rather then a nonfamily placement.
> DSS: Well, I don't think that the guardianship not continue. I don't think they have that right to ask the guardianship with the Department not continue. There is no CINA proceeding, she's in the custody and guardianship of the Department. The decision terminating parental rights has been affirmed. So, she's in the Department's custody, I think you know what's before the Court, certainly we can't undo the guardianship proceeding.
> . . . .
> D's COUNSEL: As far as the relatives, the uncles they were already vetted before and determined not to be appropriate resources throughout the TPR proceeding. I will note that R [ ], the Department did talk to R [ ] about um, the possibility, if D [ ], if she would take D [ ] (unintelligible) if it came down to that. And basically she said that she was not interested in doing that. And fortunately D [ ]did not want that, and D [ ] has been clear that she doesn't want (unintelligible).
>
> D's COUNSEL: I was just reiterating that I'm in agreement with the Department's recommendation to keep D [ ]in her current placement and that is again D's [ ]'desire, she does have considered judgment. This Court has spoken with her several times both through the TPR [ ].

Nevertheless, the court still proceeded to engage with all parties and nonparties, including D (in an interview prior to this proceeding), her attorney, and her CASA, about much of what Mother raised. This gave the court an opportunity to hear the evidence and consider it from multiple perspectives, the most important of which was the information affected D's placement.

> Counsel for Father: I also have questions, and I support the idea, the request that's been made by the Department to add a concurrent plan of custody and guardianship. I do have some questions um, has someone been identified as a potential resource for a custody and guardianship. What efforts are planned in order to carry out a plan of custody and guardianship, and what is the time frame for that? How are the... how are these two concurrent plans going to be handled concurrently at the same time? So, um, I... I clearly have questions. I... the suggestion that we don't need to come back for another year to review what's going on here, I don't get that. I think that there should be a review much sooner then... then what has been suggested here. If there's... there's some type of a legal proceeding that's planned for May. And if the suggestion is that, the result of that proceeding is going to determine how this case goes forward I think that, this Court needs to be looking at what happens at that time. The, it doesn't make sense to delay taking
> further action in this case beyond the May or June time frame. So, those would be my comments Your Honor.

When discussing D's safety at her placement with the As, D's CASA offered the following opinion:

> D's CASA: ...um, I believe were allegations that were made.. made recently but from a time before D [ ] was in that home. Not something that was an allegation that was made since she's been in the care.
>
> THE COURT: I see.
>
> D's CASA: However, the allegations against her biological father she was in the home and she was witness to some of that activity. That has not been the case (unintelligible). So, I fully, the one change that I would like to recommend is um, when Mr. A [ ]'s hearing, hopefully that happens [ ] and you know I think no more then [sic] six months should we come back and you know and have, a review um, again, I am fully understanding that, I thought that the TPR had, you know that was a done situation and I'm fully for her remaining in the home and once these.. this hearing takes place for Mr. A [ ] and you know review it and hopefully at that point we can proceed with adoption by Mr. and Mrs. A [ ]. (Unintelligible...)
>
> THE COURT So, you're satisfied as to the safety?

D's CASA: I am.

THE COURT Of D [ ] in the home?

D's CASA: I am. Yes. She has given me no reason, she.. we've talked at length about it and she is very much.. and she is as you, as you were able to witness she's a very intelligent girl, she can articulate what she thinks and feels and she fully is safe there.

Mother had the burden to show that not admitting the evidence resulted in "prejudice as well as error" and she failed to show how she was prejudiced. *See Flores v. Bell*, 39 Md. 27, 33 (2007).

We agree with DSS that "[w]hen other admitted evidence provides a sufficient basis for a court's findings without reference to the questioned evidence, there is no prejudice or reversible error". *In re Adoption/Guardianship of T.A., Jr.*, 234 Md. App. 1, 29 (2017). Here, the court heard Mother's evidence; heard about D's well-being from multiple sources; and reviewed the Department's report, which also corroborated much of what Mother raised. We do not find it probable that the court would have rendered a different decision for D had Mother been able to admit the three exhibits. Therefore, the error made by the lower court was ultimately harmless and as such, no remand is required.

JUDGMENTS OF THE CIRCUIT COURT FOR CAROLINE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/2175s22cn.pdf