UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2196

September Term, 2014

IN RE: MARIA W. AND DEWANE W.

Eyler, Deborah S.,
Graeff,
Berger,

JJ.

Opinion by Berger, J.

Filed: July 2, 2015

This appeal arises from an order of the Circuit Court for Somerset County, sitting as a juvenile court, modifying the permanency plan for Maria W. and Dewane W., Jr. (collectively, "the children") in a CINA proceeding.[1] Following a hearing on November 21, 2014, the circuit court changed the children's permanency plans from a primary plan of relative placement and secondary plan of adoption to a sole plan of adoption. Dewane W., Sr. ("Father") and Ericka W. ("Mother") (collectively, "the parents") both filed timely appeals.

On appeal, Mother raises the following questions for our review:

> 1. Did the court err in refusing to postpone court hearings after having received information and documentation of Mother's illness and inability to attend due to problems obtaining a substitute wheelchair?
>
> 2. Did the court err in holding a court hearing after being advised that [Mother's] counsel was having car trouble and thus he was not present?
>
> 3. Did the court err by refusing the parents' request to transfer the case to Delaware when all the parents resided in Delaware and where all of the parents' substantial contacts and support are located in Delaware?

Father raises the following questions for our review:

> 1. Did the court err by changing the plan to a sole plan of adoption?

[1] A "CINA," or "child in need of assistance," is "a child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Md. Code (2013 Repl. Vol.), § 3-901(f) of the Courts and Judicial Proceedings Article ("CJP").

2. Did the court err by refusing to grant a continuance?

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

FACTS AND PROCEEDINGS

We set forth much of the factual and procedural background relevant to this CINA matter in a prior opinion, *In re Maria W. and Dewane W.*, No. 803, Sept. Term 2013 (filed April 15, 2014). In that opinion, authored by Judge Graeff, we affirmed the juvenile court's order adjudicating the children to be CINA.[2] In the present case, we need not recite all of the facts relevant to the prior CINA proceeding. We do, however, set forth the facts and proceedings relevant to the present matter, as well as additional limited facts necessary to provide context.

Dewane W., Jr. (hereinafter, "Dewane"), born March 7, 2001, and Maria W. (hereinafter, "Maria"), born October 30, 2006, are the children of Mother and Father. Mother and Father are married. Mother also has two older children who are not the subject of this appeal. For most of the children's lives, the family resided in Delaware. The State of Delaware conducted multiple child protective services investigations concerning the children and their older siblings between 1998 and 2009. The investigations were based

[2] *In re Maria W. and Dewane W.* was consolidated with a case involving a third child, Allayah L. *In re Allayah L.*, No 945, Sept. Term 2013 (filed April 15, 2014). Mother is Allayah L.'s parent, but Allayah has a separate father. Both fathers appealed the CINA findings; Mother did not.

upon allegations of sexual abuse, lack of parenting skills, drug use, unexplained injuries to the children, family dysfunction, Mother's mental health issues, truancy, and homelessness.

In January 2011, Mother and the children were residing at a Holiday Inn in Ocean City, Maryland. After receiving a referral regarding concerns of instability and neglect, the Worcester County Department of Social Services began investigating the children and their parents. Mother and the children moved residences approximately eight times throughout 2011, resulting in investigations by the Worcester, Wicomico, Caroline, and Somerset County Departments of Social Services. The various departments attempted to provide services to Mother and the children in order to assist with housing, education, lack of income, and Mother's mental health issues. By the summer of 2012, Dewane -- then age eleven -- had come into contact with the Princess Anne Police Department due to alleged criminal activity. Workers from the Somerset County Department of Social Services ("the Department") continued to attempt to assist the family, providing temporary cash assistance benefits and arranging for the family to stay in a shelter. The children continued to reside in deplorable conditions, and the family was evicted from a hotel on August 19, 2012, after the hotel determined that Mother stole property from the hotel room and left the room filthy.

The Department ultimately filed a juvenile petition on August 28, 2012, alleging that the children were CINA. The children were taken into shelter care and the matter was adjudicated before a juvenile master over four days from November 2012 through February 2013. Mother and Father failed to appear for the first three days of the hearings but

appeared on the last day, February 1, 2013. The master recommended that the facts in the petition be sustained, that the children be found CINA, and that the Department be awarded custody of the children. On April 1, 2013, the court denied a motion for change of venue to Delaware, having deemed Somerset County, Maryland the proper jurisdiction.

Both parents filed exceptions to the master's recommendation, and the matter came before a judge for a *de novo* hearing on May 3, 2013 and May 10, 2013.[3] Mother did not appear on either date, or for pre-trial hearings, and the court dismissed Mother's and Father's exceptions. The court found the children to be CINA and placed them in the Department's custody. Father appealed, but Mother did not.[4] We affirmed the juvenile court's CINA determination. *In re Maria W. and Dewane W.*, *supra*, No. 803, Sept. Term 2013. We further affirmed the juvenile court's denial of the motion to transfer jurisdiction to Delaware, holding that the court considered the requisite standards when denying the motion to transfer and that "the factors favored keeping the case in Maryland." *Id.*, slip op. at 46.

While the appeal of the CINA case was pending before this Court, the juvenile court held periodic hearings for the children. On August 13, 2014, the juvenile court held a

[3] Mother was *pro se* at the time of the exceptions hearing. On March 15, 2013, Mother's attorney filed a motion requesting that the court strike her appearance because Mother was uncooperative and had threatened to file suit against her in federal court. The court granted Mother's attorney's motion on April 1, 2013. Thereafter, Mother did not seek representation from the Office of the Public Defender.

[4] The father of Mother's older child also appealed the related CINA matter for that child. We affirmed the CINA finding. *In re Allayah L.*, No 945, Sept. Term 2013 (filed April 15, 2014).

review hearing for Dewane, Maria, and Allayah. The court consulted with the children on the record and then postponed the matter.

On November 8, 2013, the court held an initial permanency plan hearing for the children. Mother and Father did not appear, and Mother's attorney was unable to attend. The court ordered that the permanency plan for both children would be a primary plan of reunification and a secondary plan of relative placement. After a permanency plan review hearing on March 28, 2014, the plan remained the same. Counsel appeared for both parents at the March 28, 2014 hearing, but neither Mother nor Father appeared.

The juvenile court conducted another permanency plan review hearing on May 28, 2014. Mother and Father did not appear.[5] Counsel for both parents requested postponements, which the court denied. The Department submitted documentary evidence including a court report. Counsel for both parents declined to cross-examine the children's therapists. After argument, the court modified both children's permanency plans. The court eliminated reunification as one of the permanency plans and ordered that the primary plan would be relative placement with a secondary plan of adoption. The modified permanency plan was formalized in a written order dated June 3, 2014. Neither parent appealed the modification of Dewane's and Maria's permanency plans.

[5] Mother and Father alleged that they were unable to attend because they were suffering from a contagious skin condition.

Another permanency plan hearing was held before the juvenile court on November 21, 2014. The court considered modifications to the permanency plans for Allayah, Dewane, and Maria. The court also held a review hearing in Dewane's delinquency case.[6] Mother and Father again did not appear, having submitted a written request to the clerk of court for a postponement. Counsel on Mother's and Father's behalf requested a postponement, which was denied. The Department submitted a written report without objection but subject to cross-examination. There were no proffers of Mother or Father's potential testimony. Following the hearing, the juvenile court modified the permanency plans from concurrent plans of relative placement (primary) and adoption (secondary) to a primary plan of adoption with no secondary plan.

Mother and Father filed timely appeals. Additional facts shall be included as necessitated by our discussion of the issues.

I.

We first address which of the issues raised by Mother and Father are properly before this Court on appeal. The issues raised by Father relate specifically to orders of the juvenile court related to the November 21, 2014 hearing. Specifically, Father challenges the juvenile court's denial of the parents' request for a continuance, as well as the juvenile court's substantive decision to modify the children's permanency plans.

[6] Dewane was on probation to the Department of Juvenile Services, having been found facts sustained for trespass on October 16, 2014. Dewane's probation officer was pleased with his progress while on probation.

Many of the issues raised by Mother, however, relate to prior hearings and orders of the juvenile court from which no appeal was taken. Specifically, Mother asserts that the trial court erred in the following ways: (1) by denying her motion to change venue or jurisdiction which was raised before the trial court on August 23, 2013 and November 8, 2013; (2) by denying Mother's request for a continuance on August 23, 2013; (3) by proceeding with the November 8, 2013 hearing when Mother's attorney was absent due to car trouble; (4) by denying Mother's request for a continuance on May 28, 2014; and (5) by denying Mother's request for a continuance on November 21, 2014.[7]

Pursuant to Maryland Rule 8-202(a), a notice of appeal must be filed "within 30 days after the entry of the judgment or other from which the appeal" is taken. When an "appeal is not filed within thirty days after the entry of an appealable interlocutory order, this Court lacks jurisdiction to entertain the interlocutory appeal." *In re Guardianship of Zealand W.*, 220 Md. App. 66, 78 (2014). Pursuant to CJP § 12-303(3)(x), an order "[d]epriving a parent . . . of the care and custody of his child, or changing the terms of such an order" is an appealable interlocutory order. *See also In re Joy D.*, 216 Md. App. 58, 73 (2014) ("To be appealable [as an interlocutory order pursuant to CJP § 12-303(3)(x)], an order must adversely affect the parent's rights."). When a notice of appeal is not filed within thirty days of the entry of the order, we have no jurisdiction to entertain an interlocutory appeal.

[7] Mother does not challenge the juvenile court's substantive decision to modify the children's permanency plans.

Zealand W., *supra*, 220 Md. App. at 79. Consequently, because the only appeal filed in the present case was in response to the November 21, 2014 hearing, only the issues raised with respect to the November 21, 2014 hearing are properly before us.

II.

Mother and Father both contend that the trial court erred by denying their request for a continuance in November 2014. We are unpersuaded.

At the beginning of the November 21, 2014 hearing, mother's attorney requested that the court postpone the hearing due to a "health emergency." Mother and Father had also faxed a typed letter requesting a postponement directly to the clerk of court, without serving other counsel.[8] The note included the following:

> We are only absence [sic] because our health will not permit us to be present at this time. [Father] is under a large amount of ongoing stress. He's worried about our children being adopted out as we're constantly threatened with this regularly. His blood pressure has been 179/129 for a while now and has not even gone down with medication. I'm going through another round of bleeding and it seems to be uncontrollable again. I bleed from various areas and even through my skin when it becomes uncontrollable. This occurs when I become overly stressed and I worry about my children every day. I realize we ha[ve] missed previous hearings, but every absence has been to do medicals or my wheelchair being broke down. These are

[8] The letter did include a comment that the parents were "not sure [whe]ther or not all attorneys [were] suppose[d] to get a copy of this or not." The letter continued: "If they are suppose[d] to get a copy of this, I do apologize, but no one informed me. So, I'm sending a copy of this request to [Mother's attorney] and I will ask him to hand out copies if everyone is suppose[d] to have a copy."

> reasons that can not be helped your honor and we're only asking you to please find it in your heart to see our point.

Attached to the typed letter were two handwritten notes on prescription pad paper. One note, which included Father's name, said: "Excuse from 11/09/14 to 11/21/14 as he was under my care." The other note, which included Mother's name, said: "Excuse pt on 11/21/14 as she was under my care." The notes included no further details.

The juvenile court found "that there [was] no meritorious reason for the request for the continuance or postponement." The court commented that, during the pendency of the children's CINA action, the court "ha[d] yet to meet [Mother and Father] anywhere particularly in this Courtroom." The court explained that the children, social workers, and attorneys were present, and that the hearing had been scheduled approximately six months previously. The court emphasized that Mother and Father had a pattern of requesting last minute postponements, observing that "at the last minute just like previously at the last minute we get a request to postpone." For these reasons, the juvenile court denied the postponement request.

A circuit court's denial of a motion for continuance is reviewed for an abuse of discretion. *Serio v. Baystate Properties, LLC*, 209 Md. App. 545, 554 (2013). We have explained:

> To grant or deny . . . a motion for continuance is "in the sound discretion of the trial court." *Das v. Das*, 133 Md. App. 1, 31, 754 A.2d 441 (2000) (quoting *Thanos v. Mitchell*, 220 Md. 389, 392, 152 A.2d 833 (1959)). We review the trial court's decision for an abuse of discretion and "unless [the] court acts arbitrarily

> in the exercise of that discretion, [its] action will not be reviewed on appeal." *Id.* at 26, 754 A.2d 441. We will reverse the circuit court only in "exceptional instances where there was prejudicial error." *Thanos*, 220 Md. at 392, 152 A.2d 833. *See also Das*, 133 Md. App. at 26, 754 A.2d 441. An abuse of discretion occurs "where no reasonable person would take the view adopted by the court" or if the court acts "without reference to any guiding rules or principles." *North v. North*, 102 Md. App. 1, 13, 648 A.2d 1025 (1994).

Id. A trial court's denial of a motion for continuance has been held to be an abuse of discretion in three circumstances: (1) "when the continuance was mandated by law," (2) "when counsel was taken by surprise by an unforeseen event at trial, when he had acted diligently to prepare for trial," or (3) "in the face of an unforeseen event, counsel had acted with diligence to mitigate the effects of the surprise." *Touzeau v. Deffinbaugh*, 394 Md. 654, 669-70 (2006) (citations omitted).

In the present case, the juvenile court acted within its discretion when denying the parents' request for a continuance. Their presence was not mandated by law. *See In re McNeil*, 21 Md. App. 484, 499 (1974) (explaining that it is, in certain circumstances, "permissible to hold a custody hearing in the absence of one or both parents"). Furthermore, as the juvenile court properly observed, the parents had a lengthy history of failing to attend their children's hearings.[9] At the time of the November 21, 2014 hearing, the most recent

[9] Mother and Father did not attend hearings in Dewane's delinquency matter on August 27, September 19, October 10, and December 12, 2012. Nor did Mother and Father attend CINA hearings held on November 27 and December 30, 2012; January 25, May 3, May 10, August 23, and November 8, 2013; and March 14 and May 28, 2014.

hearing which Mother and Father had attended was a CINA hearing on February 1, 2013 -- over twenty-one months prior.

Furthermore, although Mother and Father submitted a letter with attached notes on a prescription pad which stated they were "under [a medical professional's] care," the notes did not explain the nature of the medical care or why the parents were unable to attend. In their letter, Mother claimed to be going through "another round of bleeding" and Father claimed that he was suffering from high blood pressure due to stress. The juvenile court expressly found the parents' letter and the attached notes not credible.

The juvenile court's credibility determination was reasonable in light of the parents' past claims of unsubstantiated medical conditions. Indeed, Mother had failed to participate in four psychological evaluations scheduled on her behalf, had failed to provide any medical documentation to confirm her self-reported diagnosis of leukemia, and failed to provide any medical documentation of a condition which caused her to "bleed[] out of [her] skin."[10] Father also failed to participate in four psychological evaluations scheduled by the Department on his behalf. Father further failed to provide medical documentation of various conditions he claimed interfered with his ability to work and visit with his children, including an alleged heart attack, hospitalization, and stroke-like symptoms.

[10] Mother had told workers for the Department that these medical conditions were the reasons she had missed visits with the children.

The facts of this case differ significantly from those in which we held that a trial court's denial of a continuance constituted an abuse of discretion. In *McNeil*, *supra*, which involved a local department's exceptions to a master's recommendation that a child be returned to the mother, we emphasized that the trial court had failed to "mak[e] a realistic inquiry into the circumstances of [the parent's] absence" and had failed to "ascertain[] whether the parent had been guilty of a pattern of unconcern." *Id.* at 498. We further emphasized in *McNeil* that the parent's "testimony could have been very important" in that it had "probative value in determining whether the children's emotional and physical difficulties were actually caused by a bad maternal environment." *Id.*

The facts of this case differ significantly from those in *McNeil* in several critical ways. Notably, the hearing in *McNeil* involved the specific determination of whether a child should immediately be returned to a parent. Indeed, the hearing in *McNeil* involved the local department's exception to an master's order which would have returned the children to the parent. In the present case, there was no question at issue at the hearing with respect to whether Dewane and Maria should be returned to the parents. Reunification had already been removed from both children's permanency plans, and the parents had not even been granted unsupervised visitation. *See In re Yve S.*, 373 Md. 551, 587 (2003) (commenting that "where the child has been declared a [CINA] because of abuse or neglect, the trial court is" required "to deny custody to the parent unless the court makes a specific finding that there is no likelihood of further abuse or neglect."); Md. Code (1984, 2012 Repl. Vol.),

§ 9-101 of the Family Law Article ("FL"). Furthermore, the court considered the parents' history of failing to attend hearings in the past and had no reason to believe that the parents would actually attend a future hearing.

The record reflects that the court carefully considered the parents' previous pattern of conduct, as well as the unique facts and circumstances of the case, before concluding that a continuance was not warranted. Accordingly, we hold that the juvenile court did not abuse its discretion by denying the parents' request for a continuance.

III.

We turn next to the issue of whether the trial court's modification of Dewane's and Maria's permanency plans constitutes reversible error. "An order changing a permanency plan is subject to overall review for abuse of discretion." *In re James G.*, 178 Md. App. 543, 565 n.14 (2008) (citing *Yve S.*, *supra*, 373 Md. at 583).[11] An abuse of discretion exists

[11] We apply three different standards of review to various aspects of a trial court's decision in child custody cases. *Yve S.*, *supra*, 373 Md. at 586. The Court of Appeals has explained:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard of Rules 886 and 1086 applies. [Secondly,] [i]f it appears that the chancellor erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the chancellor founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the chancellor's decision should be disturbed only if there has been a clear abuse of discretion.

(continued...)

"where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *Yve S.*, *supra*, 373 Md. at 583 (internal quotation and citation omitted). "A trial court's exercise of discretion in changing a permanency plan will be reversed if the court's decision is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *In re Andre J.*, ___ Md. App. ___, No. 1845, Sept. Term 2014, slip op. at 19 (Ct. of Spec. App. June 1, 2015) (citing *In re Adoption of Cadence B.*, 417 Md. 146, 155-56 (2010) (quoting *Yve S.*, *supra*, 373 Md. at 584-84)).

Pursuant to CJP § 3-823, a juvenile court is required to determine an appropriate permanency plan consistent with a child's best interests. The juvenile court is further tasked with determining, at appropriate intervals, whether progress has been made towards the effectuation of the permanency plan. CJP § 3-823(h). The court is required to change the child's permanency plan if such a change is in the child's best interest. *Id.* When selecting a permanency plan, the juvenile court must consider the following factors:

> (i) the child's ability to be safe and healthy in the home of the child's parent;
>
> (ii) the child's attachment and emotional ties to the child's natural parents and siblings;

[11] (...continued)
Id. (alterations in original) (citation omitted). In this case, the challenge is to the overall change of permanency plan, and we apply the abuse of discretion standard.

> (iii) the child's emotional attachment to the child's current caregiver and the caregiver's family;
>
> (iv) the length of time the child has resided with the current caregiver;
>
> (v) the potential emotional, developmental, and educational harm to the child if moved from the child's current placement; and
>
> (vi) the potential harm to the child by remaining in State custody for an excessive period of time.

FL § 5-525(f)(1).

When determining the appropriate permanency plan for a child, "the juvenile court is to give primary consideration to the best interests of the child." *In re Ashley S.* 431 Md. 678, 686 (2013) (internal quotation and citation omitted). The various placement options are set forth in CJP § 3-823(e)(1)(i), in descending order of priority:

> 1. Reunification with the parent or guardian;
>
> 2. Placement with a relative for:
>
> A. Adoption; or
>
> B. Custody and guardianship . . . ;
>
> 3. Adoption by a nonrelative;
>
> 4. Custody and guardianship by a nonrelative . . . ; or
>
> 5. Another planned permanent living arrangement that:
>
> A. Addresses the individualized needs of the child, including the child's educational plan, emotional stability, physical placement, and socialization needs; and

> B. Includes goals that promote the continuity of relations with individuals who will fill a lasting and significant role in the child's life[.]

A primary purpose of the CINA subtitle is to "achieve a timely and permanent placement for the child consistent with the child's best interests." CJP § 3-802(a)(7).[12] The

[12] Eight purposes of the CINA subtitle are set forth in CJP § 3-802(a):

> (1) To provide for the care, protection, safety, and mental and physical development of any child coming within the provisions of this subtitle;
>
> (2) To provide for a program of services and treatment consistent with the child's best interests and the promotion of the public interest;
>
> (3) To conserve and strengthen the child's family ties and to separate a child from the child's parents only when necessary for the child's welfare;
>
> (4) To hold parents of children found to be in need of assistance responsible for remedying the circumstances that required the court's intervention;
>
> (5) Except as otherwise provided by law, to hold the local department responsible for providing services to assist the parents with remedying the circumstances that required the court's intervention;
>
> (6) If necessary to remove a child from the child's home, to secure for the child custody, care, and discipline as nearly as possible equivalent to that which the child's parents should have given;
>
> (7) To achieve a timely, permanent placement for the child consistent with the child's best interests; and

(continued...)

Court of Appeals has emphasized the significant detrimental effects of prolonged foster care on children, concluding that "[a] critical factor in determining what is in the best interest of a child is the desire for permanency in the child's life." *In re Adoption of Jayden G.*, 433 Md. 50, 82 (2013). The Court commented that "[l]ong periods of foster care are harmful to the children and prevent them from reaching their full potential." *Id.* at 83 (internal quotation and citation omitted). The Court cited to multiple studies which supported this conclusion. *Id.* The Court quoted as follows from Joseph Goldstein, *Finding the Least Detrimental Alternative: The Problem for the Law of Child Placement*, in Parents of Children in Placement: Perspectives and Programs 188, n.9 (Paula A. Sinanoglu & Anthony N. Maluccio eds., 1981) (quoting 296 speech by Art Buchwald):

> The status of a foster child, particularly for the foster child, is a strange one. He's part of no-man's land . . . . The child knows instinctively that there is nothing permanent about the setup, and he is, so to speak, on loan to the family he is residing with. If it doesn't work out, he can be swooped up and put in another home. It's pretty hard to ask a child or foster parent to make a large emotional commitment under these conditions . . . .

Jayden G., *supra*, 433 Md. at 83-84. The Court continued:

> Recognizing these needs, federal and state governments "have undertaken . . . steps to prevent childhoods spent in 'foster care drift' -- the legal, emotional, and physical limbo of temporary housing with temporary care givers." [*In re Adoption/Guardianship of*] *Victor A.*, 157 Md. App. [412,] 427-

[12] (...continued)

> (8) To provide judicial procedures for carrying out the provisions of this subtitle.

> 28, 852 A.2d [976,] 985 [(2004)]. Indeed, "[t]he overriding theme of both the federal and state legislation is that a child should have permanency in his or her life. The valid premise is that it is in a child's best interest to be placed in a permanent home and to spend as little time as possible in foster care." [*In re Adoption/Guardianship*] *No. 10941*, 335 Md. [99,] 106, 642 A.2d [201,] 205 [(1994)].

Jayden G., *supra*, 433 Md. at 84.

With this framework in mind, we turn to the juvenile court's substantive decision to modify the children's permanency plans in the present case. At the time of the November 21, 2014 permanency plan hearing, the children had already been in out-of-home placements for over two years. The parents had repeatedly failed to attend appointments and meetings arranged on their behalf by the Department, including educational meetings, mental health appointments, and various other services. Furthermore, the parents failed to visit regularly, attending only 30% of scheduled visits with the children. At visits the parents did attend, their conduct, such as repeatedly telling the children they would be returning home, proved detrimental to the children. Indeed, Maria's therapists recommended that visits and telephone calls between Maria and the parents be terminated due to their detrimental affects on her. Mother and Father also failed to provide verification of housing or employment, and neither parent paid child support.

Furthermore, the parents impeded the effectuation of the children's previous permanency plan. The previous permanency plan -- which was not appealed by either parent -- was a primary plan of relative placement and secondary plan of adoption. The parents

failed to provide the Department with any names of relatives who could serve as prospective placements for the children. This lack of cooperation from the parents greatly hindered the effectuation of the previous primary permanency plan.

The juvenile court, when issuing its ruling on the permanency plan modification, commented that this case was "one of the worst [neglect] cases [it had] seen." The court explained its ruling as follows:

> I mean when the children came into care remember that or remember the descriptions of the cleanliness, the health issues, the obesity. I still can't get out of my mind that Dewane had the roach stuck in his ear that was covered over by wax. And it just makes my skin crawl when I think about it. You think I have trouble hearing [but] I don't know how in the world he heard.
>
> I mean the Department has really tried to engage. I think you used that word, [children's attorney], and I think it's an appropriate word, to engage the parents. But . . . they have not engaged.
>
> We have one service agreement that's been signed. There have been multiple service agreements according to the [c]ourt summary. I think I read service agreements were provided to [Father] on February -- in February 2013, April 2013, May 2013, October 2013, January 2014, April 2014 and October 2014. Nothing happened.
>
> Discovery was a challenge, trying to get discovery. [Father] finally provided discovery. [Mother] has never provided discovery. [Children's attorney] points out in the almost two years that this [j]udge has been with this case I have yet to see the parents. And on at least three occasions including today at the last minute the parents have indicated they couldn't be here because of health or other reasons. They missed twelve out of seventeen visits with the children even though they may have some phone contact with the kids. It's really, you know,

> so frustrating. They had the opportunity to visit with the children that you profess to care very deeply about, don't want to see adopted and you can't make the visits. No child support paid. Gas cards are provided [and they] still can't make it.
>
> The permanency plan currently [is] relative placement [with a] secondary plan of adoption. I'm looking at the reason[able] efforts section on page five of the [c]ourt report and indeed the Department has made reasonable efforts in many instances to try to engage, to use that word again, the parents. They could not until very recently do much to effectuate the primary permanency plan o[f] relative placement because we didn't have any resources made available to the Department.
>
> The flip side of it is the children seem to be doing very well. Maria[,] what a delightful child she seems to be. A very attractive young lady appropriately dressed. She seems to be [doing] better in school. Dewane is doing better in school. His grades are good. He's staying out of trouble.
>
> So the [c]ourt thinks that it is in the best interest of the two minor children . . . that the permanency plan be changed from primary plan of relative placement secondary plan of adoption to a primary plan of adoption.

This ruling was not "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *In re Andre*, *supra*, slip op. at 19. Rather, the record reflects that the juvenile court carefully considered the evidence before it when determining that modifying the permanency plan was in the children's best interests. The juvenile court determined that the parents, who had been unwilling to avail themselves of various services provided by the Department in the past, were unlikely to engage in services in the future which would enable them to be a resource

for their children. *See In re Dustin T.*, 93 Md. App. 726, 731 (1992) (explaining that a parent's "past conduct is relevant to a consideration of his or her future conduct").

To the extent that Father argues that Dewane's permanency plan should not have been changed because Dewane informed the court that he wished to continue to have a relationship with his parents, we note that the trial court was in a much better position to interpret Dewane's testimony than we, on a cold record. The trial court could consider Dewane's mannerisms, eye contact, body language, and other visual cues -- all of which are unavailable to this court. Furthermore, Dewane's expressed wishes were only one factor for the court to consider among many. *See* CJP § 3-823(e)(2) and (k); FL § 5-525(f)(1).

We hold that, having considered all of the evidence before it and having considered the relevant factors, the juvenile court properly exercised its discretion when it determined that it was in the children's best interests for their permanency plans to be changed from a primary plan of relative placement with a secondary plan of adoption to a sole plan of adoption. Accordingly, we affirm.

JUDGMENTS OF THE CIRCUIT COURT FOR SOMERSET COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.