Circuit Court for Montgomery County
Case No. 06-I-21-000074

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2208

September Term, 2022

IN RE: A.R.

Nazarian,
Arthur,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: July 19, 2023

* At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

S.W. challenges a January 30, 2023 order of the Circuit Court for Montgomery County, sitting as a juvenile court, that suspended her visitation with her six-year-old daughter, A.R., and appointed a parent surrogate to make special education decisions for A.R. On appeal, S.W. raises two questions, which we have slightly rephrased for clarity:

> I. Did the circuit court err in suspending S.W.'s visitation with A.R. because: 1) S.W. was not given adequate notice of the Department's recommendation to suspend visitation, and 2) there was insufficient evidence that the suspension was in A.R.'s best interest?
>
> II. Did the circuit court err when it appointed a parent surrogate to make special education decisions for A.R. because: 1) the court lacked jurisdiction, and 2) the court failed to make specific findings of fact that the appointment was necessary?

For the reasons that follow, we shall affirm the judgment of the juvenile court.

BACKGROUND FACTS

1. Events leading up to September 2021 CINA proceeding

A.R. was born on April 24, 2017 to S.W. ("Mother") and S. R. ("Father").[1] A.R. is Mother's only child, and during the first few years of her life, Mother and child lived together in an apartment in Silver Spring. In June of 2019, when A.R. was a little more than two years old, the Montgomery County Department of Health and Human Services (the "Department") did a "risk of harm assessment" for Mother after receiving a report that Mother was experiencing sudden stress-induced seizures. The Department closed the case after referring Mother to various service providers.

[1] Father has not been involved in A.R.'s life and is not a party to this appeal.

Roughly two years later, on July 23, 2021, the Department did a second risk of harm assessment after receiving a report concerning Mother's mental health. It was reported that Mother kept four-year-old A.R. secluded in her bedroom for her own safety and, although child was potty trained, Mother had her use a portable toilet in the bedroom instead of the bathroom because Mother felt the peeling paint on the toilet made it unsafe for the child. Additionally, although the police had responded to Mother's home repeatedly because Mother reported that persons were breaking into her home, the police never found any evidence to support Mother's claims. A week after receiving the risk of harm report, the Department held a family team meeting with Mother, who agreed to participate in a mental health evaluation and to follow any recommendations. Mother never did. Instead, her mental health appeared to deteriorate.

Shortly after the family team meeting, Mother, who rented her home, sent several emails to the property management company accusing them of surveilling and entering her home without permission, and during a home visit by a Department social worker, Mother described her neighbors as "pedophiles, terrorists, illegals" and said "9/11 is coming." On August 31, 2021, Mother took A.R. to a police station where she called a Department social worker. During the call, Mother could be heard demanding three billion dollars from the police because they had raped A.R., and she said that details of the rape were in a comic book that she gave to a detective. Mother then left the police station with the child and was met in the community by the social worker. The Department placed A.R. in emergency shelter care, and Mother was taken and evaluated at Adventist Health Care Medical Center but discharged that day. Later that night, the police found Mother "wandering in the

community" while "experiencing a psychotic episode." Mother was brought back to the medical center and then transferred to Adventist Behavioral Health Hospital where she was emergently hospitalized.

The next day the Department filed a CINA petition for A.R. with a request for continued shelter care, which the circuit court granted. A.R. was placed in a foster home in Montgomery County where she has remained continuously. Mother and child were appointed separate attorneys. After a week of inpatient psychiatric care, Mother was discharged from the hospital where she was diagnosed with schizophrenia and prescribed, among other things, medication for psychosis.

In September 2021, the court sustained the allegations in the CINA petition (although Mother denied the allegations, she conceded that if the case had gone to trial, the Department could prove the allegations by a preponderance of evidence), and the case proceeded to a contested dispositional hearing. After the hearing, the court issued a written order finding that A.R. had been neglected and could not be returned safely to her Mother's care because of Mother's psychotic episode, recent psychiatric hospitalization, history of uncontrolled seizures, and lack of insight regarding her mental health issues. The court declared A.R. a CINA and awarded custody to the Department with Mother to have twice weekly supervised visits. Mother was ordered, among other things, to participate in a psychological and psychiatric evaluation, to follow all recommendations, and to sign releases to allow the Department to speak with her health care providers. Mother unsuccessfully appealed this order. *See In re: A.R.*, No. 1301, Sept. Term 2021 (Md. App. March 24, 2022).

2. Events leading up to February 2022 status review hearing

From mid-September until mid-December 2021, Mother received mental health therapy from All Day Family Care where she was diagnosed with a Psychotic Disorder with delusions and a Brief Psychotic Disorder.

On November 11, 2021, a court-ordered psychiatric assessment of Mother was completed by Katherine A. Martin, Ph.D. In preparing her report, Dr. Martin conducted several psychological tests on Mother; conversed with the Department's assigned social worker, Ms. Denise Michaels, LMSW; interviewed Mother; and reviewed various notes and filings in the case.

Dr. Martin diagnosed Mother with Paranoid Personality Disorder and Brief Psychotic Disorder. She noted in her report that Mother presented as "generally irritable and disagreeable [and] defensive" and "demonstrated very limited insight into how her mental health issues impacted" A.R. Dr. Martin further noted that Mother "exhibited a passive-aggressive interpersonal style and she appeared to have very little insight and awareness of her off-putting and abrasive interactions." Dr. Martin noted that although Mother was "not actively psychotic and there was no evidence of hallucinations or cognitive difficulties (e.g., disorganized thinking, distractibility), her thinking was highly suspicious and paranoid."

In her summary, Dr. Martin stated:

> [I]ndividuals such as [Mother] with PPD who experience a bout of extreme stress are at risk for developing a Brief Psychotic Disorder. The paranoia that is the hallmark of PPD may occur on a continuum which is impacted by stress ranging from interpersonal sensitivity to mistrust, to ideas of reference (the belief that innocuous events or coincidences have strong personal

> significance), to fixed delusions. . . . Although [Mother] no longer describes bizarre delusions, she exhibits a pattern of suspiciousness, paranoia, and irritability consistent with PPD. Individuals such as [Mother] exhibit a chronic and unrelenting mistrust and suspiciousness of others, even when there is no reason to be suspicious. She is always on guard, scanning for perceived attacks and efforts by others to demean, harm, or threaten her. [Mother] is hypersensitive and reads hidden meaning into the innocent remarks of others. She reacts to perceived threats with anger, irritability, argumentativeness, and stubbornness. [Mother] views herself as a good person surrounded by bad people, and this leads to suspicious actions such as tracking, recording, and "policing" behaviors. Individuals with PPD such as [Mother] are frequently described as "persistent litigants" because they repeatedly initiate legal battles, suing organizations or individuals who they believe are "out to get them."
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> Parents with PPD such as [Mother] have often experienced unstable family relationships with poor parenting modeling. [Mother] has considerable difficulty with perspective taking and recognizing how others feel. [Mother]'s challenges with emotional empathy can impact the parent-child relationship. Due to her rigid irritability, [Mother] is at risk for being controlling, critical, and authoritarian in her parenting style. Likewise she is at risk for being emotionally unpredictable, short-tempered, and reactive, and lacking in the positive social support that often offsets typical daily parenting stressors. Because she is hypersensitive, [Mother] may have difficulty tolerating [A.R.]'s normal negative feelings or behaviors (e.g., tantrums, crying, oppositionality, etc.) without personalizing them. Due to her suspiciousness, [Mother] may be overprotective regarding safety and danger, and this may limit [A.R.]'s normal developmental experiences. Moreover, children of parents with PPD are at risk for developing anxiety because their parent continually offers them reasons to worry and be fearful. Anxious children may exhibit behaviors such as hyperactivity, distractibility, or hypervigilance, and they may seek out excessive comfort.

Dr. Martin stated in her recommendations:

> Individuals with Paranoid Personality Disorder (PPD) typically do not seek mental health treatment because they do not see themselves as having a problem. Nevertheless, treatment for PPD is primarily psychotherapy. It is highly recommended that [Mother] participate consistently in at least weekly psychotherapy that focuses on improving coping skills, communication skills, and social interactions, including improving her social support system.

> Exploring [Mother]'s history of possible trauma may also be beneficial. Because [Mother] lacks trust in others and her behavior patterns are relatively ingrained, treatment is likely to be long-term and very gradual, and [Mother] is at risk for prematurely terminating treatment.

In a letter dated December 15, 2021, All Day Family Care advised that Mother sought to have her psychotic disorder with delusions diagnosis ruled out; had only participated in two therapy sessions, the last one on October 20; and had no future scheduled visits. Five days later, Mother revoked her consent for All Day Family Care to update the Department on her progress. Mother was ultimately discharged from treatment for non-attendance.

The juvenile court held status review hearings on February 2 and 14, 2022. The Department recommended that the court suspend visitations altogether. Mother's and child's attorney opposed suspension of visits. Ms. Michaels, the Department's assigned social worker, and Mother testified at the hearings, and Dr. Martin's report was admitted into evidence. Ms. Michaels testified that although there was "a connection and bond" between Mother and A.R., the relationship was characterized by "inconsistent trust" and "worries" on A.R.'s part.

At the conclusion of the hearing, the juvenile court made findings of fact based on the testimony and evidence introduced. The court found the report "very detailed and very thorough . . . [and] very persuasive." The court found credible Ms. Michaels' testimony that Mother's "suspiciousness has been evident during visits with [A.R.]. A number of these visits were very difficult in large measure because as the Department attempted to redirect [Mother]'s attention to having a positive visit with [A.R.], [Mother] resisted and

escalated before attending to [A.R.]." The court found that following visits with Mother, A.R. regressed and disrupted the foster home in a variety of ways including attempting to "triangulate" household members. Additionally, A.R.'s eczema flared up and she expressed significant unhappiness. The court found that Mother had terminated her mental health treatment with All Day Family Care and her treatment had "never got[ten] off the ground."

The juvenile court ordered that the permanency plan for reunification be continued but suspended Mother's visitation with A.R. in the child's best interest because of Mother's untreated mental health issues. The court concluded that Mother's "mental health treatment is critical" but Mother has "not fully engaged" in a treatment plan, and to "the extent of progress that has been made toward alleviating or mitigating the causes necessitating the Court's jurisdiction, not much progress has been made[.]" The court found that the visits were unworkable, noting A.R.'s reactions to visits with her Mother, including eczema flare ups. The court ordered that the visitations be suspended until Mother "is compliant with mental health treatment and consents to communication between the Department and her mental health providers." The court ordered Mother to participate in weekly psychotherapy and to follow all recommendations in her psychiatric assessment. Mother unsuccessfully appealed that order. *See In re: A.R.*, No. 41, Sept. Term 2022 (Md. App. August 9, 2022).

3. Events leading up to May 2022 permanency plan review hearings

Following the status review hearing, Mother again began mental health treatment, this time with Ms. Judith Walker at Medpsych Health Services. Mother also consented to Medpsych updating the Department on her progress. Mother participated in about 11 therapy sessions. In mid-April, Ms. Michaels called Ms. Walker for a progress report. According to Ms. Michaels, Ms. Walker told her, among other things, that Mother's progress had been "very limited" as she attributed "all of her problems to seizures and anxiety provoked by unclean visitation rooms and exterior influences[.]"

On May 10, 2022, Mother, without any communication with the Department, had a psychiatric assessment done by Dr. Mark Rosse at Medpsych, who diagnosed her with a "Brief psychotic disorder" possibly due to sleep deprivation. When the Department reached out to Dr. Rosse and provided him with a copy of Dr. Martin's report, Dr. Rosse responded by email:

> Yes, [Mother] was not forthcoming with me about her continued severe paranoia. She was evasive with me and denied any active paranoid thoughts. She said that she did not need medication or psychiatric treatment. Obviously, this is not the case. The patient may benefit from antipsychotic medication but often in a chronic paranoid delusional state like hers the medication may be of limited efficacy if the patient even agrees to take it at all.

On May 17 and 26, 2022, permanency planning hearings were held before a magistrate. Both Ms. Michaels and Mother testified at the hearing. The Department recommended Mother have hour long supervised visits with A.R. twice a month. Mother's and child's attorney requested visitation be returned to twice per week visits. Mother testified, among other things, that the day before the hearing she terminated her mental

health treatment with Medpsych because she did not trust Ms. Walker or Dr. Rosse after Ms. Michaels contacted them.[2]

The magistrate made findings and recommendations. The magistrate found that "[M]other's mental health concerns are the crux of the need for out-of-home care for [A.R.]." The magistrate further found that there was "some progress made in that [Mother] engaged in regular individual therapy from the end of February until mid-May 2022." The magistrate recommended that A.R.'s permanency plan continue to be reunification with parent; supervised visitations to resume once weekly; Mother to participate in weekly psychotherapy and follow all treatment recommendations; and Mother to sign releases for the Department to communicate with her health care providers. The magistrate also recommended that A.R. undergo a neuropsychological evaluation.[3] Mother filed exceptions to the magistrate's recommendations.

[2] Mother also testified that she had limited family connections – for the last eight years Mother has had no relationship with her foster mother and she has had limited relationships with her four sisters. One of Mother's sisters testified at the hearing that she offered to be a family placement resource for A.R. but when Mother found out she "cursed" her and told her to "stay the F. out of her business and away from her daughter." Since then, she has not offered her services as a placement or visited A.R. Additionally, Mother testified to her penchant for filing lawsuits, admitting that she had filed lawsuits against Safeway in 2016; Victory Van Lines in 2017; and Stepping Stones Shelter in 2018, all of which were dismissed with prejudice.

[3] Following the hearings before the magistrate, Mother advised the Department that she had begun mental health treatment with Thriveworks, a mental health provider she selected. When the Department sent releases to Mother and her attorney, no response was received. Mother subsequently advised the Department that she had begun mental health treatment with Home-Based Treatment Services, a mental health provider she selected. Again, when the Department sent releases to Mother and her attorney, the Department received no response.

Hearings on Mother's exceptions were held on July 25 and 26, 2022. Ms. Michaels and Mother testified at the hearings. At the beginning of the first day of hearings, Mother asked to speak to the judge privately, which the judge refused to do. During Ms. Michaels' testimony, Mother called her a "bitch" and said she felt "disrespected."[4] Mother became increasingly hostile and angry toward her attorney, whom she fired.

During the second day of hearings, Mother stated that she felt "disrespected" and "completely abused" and that she "don't really want to start reporting people" and she was "recording" the hearing. She called the judge "rude," "disrespect[ful]," "evil one," "witch," "bitch," and a "wetback." She referred to Ms. Michaels as "trash" and a "chump." She called the Department's attorney a "[f]ucking priss" and repeatedly called her "evil." She referred to the court process repeatedly as "disgusting" and "nasty." The court warned Mother that she was "bordering on threatening and you need to stop" and told her to "lower your voice" and to "[p]lease stop interrupting."

The court concluded that it had "concerns" about Mother's mental health, finding her paranoid, hostile, angry, and "sarcastic." The court affirmed the recommendations of the magistrate and denied Mother's exceptions. The court ordered that the permanency

[4] In the Department's Addendum to the Department's Permanency Plan Hearing Report, which was admitted into evidence at the July 25, 2022 hearing, Ms. Michaels related that on July 19, 2022, the Montgomery County Police found Mother wandering the streets barefoot and exhibiting paranoia. She was transported to Shady Grove Hospital for unspecified injuries. That evening, Mother and another sister called Ms. Michaels and advised that Mother was hospitalized at Suburban Hospital. The next day, the sister advised Ms. Michaels that Mother had been transferred to Sheppard Pratt Hospital because the doctors had stated that "she was not safe" and needed further evaluation.

plan continue to be reunification; supervised visitation would be reinstated at once a week for a minimum of one hour, but the visits would be suspended if Mother engaged in certain prohibited conduct[5]; A.R. was to continue with mental health and occupational therapy and have a neuropsychological evaluation; and Mother was ordered to participate in weekly psychotherapy and follow recommendations, receive a new psychiatric evaluation, and allow the Department to communicate with her health care providers.

4. Events leading up to January 2023 permanency plan review hearing and the subject of this appeal

A permanency review hearing was scheduled for November 4, 2022. In its report, the Department recommended reducing the supervised visits between Mother and A.R. from once a week to twice a month with the placement of the previously issued order controlling conduct. At the start of the hearing, Mother's attorney asked to withdraw. The court agreed and continued the permanency plan review hearing so Mother could hire an attorney. The Department subsequently issued an addendum to their report, recommending that the court order the appointment of a parent surrogate for A.R. for special education decision making. Mother's counsel and child's counsel opposed the Department's two requests.

The hearing was continued to January 30, 2023. Ms. Michaels and Mother testified at the hearing. Mother testified for about seven pages of typed transcript before the court

[5] During visitations with A.R., Mother was prohibited from: "hurtful or harmful language towards [A.R.], [] derogatory or accusatory commentary about the Department or foster parents, and [] discussion of concerns regarding the Department or foster parents[.]"

stopped her testimony and took a ten-minute break because of Mother's hostility, and unresponsive and sarcastic commentary. When the hearing resumed, Mother stated, "Fuck both of you Ni**ers." At this time, the Department sua sponte recommended that visitations between Mother and A.R. be suspended. The court proceeded to hear from the parties' attorneys, with Mother frequently interrupting and making unresponsive and sarcastic comments.

Following the attorneys' arguments, the court ruled as follows:

> [Mother]'s behavior in court, which was witnessed by the [c]ourt . . . gives the [c]ourt grave concern regarding the mother's mental health status and grave concerns regarding the safety and well-being of [A.R.]. The [c]ourt would have reached its conclusion without the request of the County. I had given [Mother] the opportunity to testify concerning the Department's recommendations of reducing the amount of visits per month and also the recommendation of the parent surrogate for educational and special educational services, but [Mother] was either unable or unwilling to comply. Instead, she constantly berated all of the parties and the [c]ourt, would not respond to her counsel's questions, and in general she was out of control. Therefore, the [c]ourt will suspend visits between [A.R.] and [Mother] until [Mother] is compliant with mental health treatment and such treatment is documented by her mental health providers.

As the court continued and Mother kept up her outbursts, the court advised Mother that she would be removed from the courtroom if she did not stop talking. Mother responded, "Bye," and was escorted out of the courtroom. The court also ordered that Mother participate in weekly psychotherapy and follow all treatment recommendations, undergo an updated psychiatric assessment, and sign release forms authorizing services providers to share information with the Department. The court further ordered that a parent surrogate be appointed to oversee the special educational services for A.R.

Mother appeals from this order. We shall provide additional facts where necessary to address the questions raised.

DISCUSSION

Standard of review

When we review the decision of a juvenile court, we "apply three different levels of review[.]" *In re Shirley B.*, 419 Md. 1, 18 (2011). We apply the clearly erroneous standard to factual findings; reviewing matters of law for error, unless the error is harmless; and apply the abuse of discretion standard to the juvenile court's ultimate conclusion. *Id.* (citing *In re Yve S.*, 373 Md. 551, 586 (2003)).

Visitation is part of a permanency plan, which is approved if it is in the child's best interest. *In re Ashley S.*, 431 Md. 678, 715 (2013). The burden of persuasion is on the parent seeking visitation. *In re G.T.*, 250 Md. App. 679, 696 (2001). Decisions concerning visitation generally rest "'within the sound discretion of the trial court'" and will not be disturbed on appeal "'unless there has been a clear abuse of discretion.'" *Id.* at 698 (quoting *In re Billy W.*, 387 Md. 405, 447 (2005)).

An abuse of discretion occurs where "'the decision under consideration [is] well removed from any center mark imagined by the reviewing court[.]'" *In re Shirley B.*, 419 Md. at 19 (quoting *In re Yve S.*, 373 Md. at 583-84). We are mindful that "'questions within the discretion of the trial court are much better decided by the trial judges than by appellate courts, and the decision of such judges should only be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action occurred.'" *Id.* (quoting *In re Yve S.*, 373 Md. at 583-84).

I.

Mother argues that the juvenile court erred in suspending her visitations with A.R. for two reasons. First, the Department failed to provide her with the statutorily required 10-day notice before the hearing that it was recommending suspending visits. Second, the juvenile court erred because it failed to provide any factual or legal basis to support its ruling to suspend visitation. Mother admits that she was "offensive and derogatory" at the hearing on January 30, 2023, but she argues that the juvenile court erroneously attributed her courtroom behavior to her mental health when her behavior was instead understandably provoked by her frustrations with the conflicting reports regarding her visits with her daughter. Moreover, she argues that there was no evidence that her failure to continue mental health treatments or that her behavior at the review hearing would endanger her child during visits. The Department responds that Mother's notice argument is not preserved for our review because she did not object below, and the juvenile court properly acted within its discretion to suspend visitation. We shall address each argument in turn.

A. Notice

Both parties agree that the Department provided timely notice of its recommendation to reduce visitation from once a week to twice monthly. After Mother's conduct at the hearing, however, the Department sua sponte asked the juvenile court to suspend visitation until Mother provided documentation of consistent mental health treatment. A.R.'s attorney responded by arguing that the court should not "entertain" the Department's request given that the Department had not given adequate notice. Mother's

attorney responded by arguing that suspending visits was contrary to the permanency plan of reunification and Mother was not a threat to A.R.

Mother did not argue below that the Department provided inadequate notice of its recommendation to suspend visits. Although A.R.'s attorney objected to the Department's lack of notice, that objection is not preserved on appeal because A.R. did not join in this appeal. *See Williams v. State*, 216 Md. App. 235, 254 (holding that "each defendant must lodge his own objection in order to preserve it for appellate review and may not rely, for preservation purposes, on the mere fact that a co-defendant objected."), *cert. denied*, 438 Md. 741 (2014). Accordingly, Mother has failed to preserve her notice argument for our review.

Even if preserved, we would find the Department's change of recommendation from reduced visits to suspension of visits harmless under the circumstances presented.

Md. Code Ann., Courts & Judicial Proceedings Art. ("CJP"), § 3-826(a) states that in CINA cases, the local department "shall provide all parties with a written report at least 10 days before any scheduled disposition, permanency planning, or review hearing[.]" The corresponding regulation provides the same. *See* COMAR 07.02.11.20B(2)-(3) (A local department shall provide all parties and the court with a written report at least 10 days before any scheduled disposition, permanency plan, or review hearing.).

We need not decide what, if any, exceptional circumstances might permit a local department to sua sponte offer a new recommendation during a CINA proceeding without giving the parties the ten-day statutory required notice. This is because the juvenile court specifically stated that it would have made the decision to suspend visitation regardless of

the Department's recommendation. Moreover, Mother has directed us to no law, and we are aware of none, that states that the juvenile court is bound to follow only the recommendations provided by the Department. Accordingly, any error resulting from the Department's lack of notice was harmless. As to the appropriateness of the court's decision to suspend visitation, see our discussion in section, **I. B.**, *infra*, on suspending visits.

B. Suspending visits

1. Law: Juvenile court's decision regarding visitation

A juvenile court must "provide for the care, protection, safety, and mental and physical development of any child" under its jurisdiction. CJP § 3-802(a)(1). The overarching concern for any provided program, service, or treatment is that it must be consistent "with the child's best interests[.]" CJP § 3-802(a)(2). Section 9-101 of the Family Law Art. ("FL"), Md. Code Ann., provides:

> (a) In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.
>
> (b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

Because a juvenile court is to make visitation determinations "in the best interests of the child, visitation may be restricted or even denied when the child's health or welfare is threatened." *In re Billy W.*, 387 Md. 405, 447 (2005) (citations omitted). "If the court determines, as an exception, that supervised visitation is appropriate, the court must assure,

at a minimum, that such visitation will not jeopardize the safety and well-being of the child." *Id*. at 448.

A juvenile court's authority over visitation is not only rooted in FL § 9-101. *Baldwin v. Baynard*, 215 Md. App. 82, 108 (2013) (citing *In re Mark M.*, 365 Md. 687, 705-06 (2001)). The court may also exercise its "parens patriae" authority in deciding visitation issues:

> Pursuant to the doctrine of *parens patriae,* the State of Maryland has an interest in caring for those, such as minors, who cannot care for themselves. We have held that the best interests of the child may take precedence over the parent's liberty interest in the course of a custody, visitation, or adoption dispute. That which will best promote the child's welfare becomes particularly consequential where the interests of a child are in jeopardy, as is often the case in situations involving sexual, physical, or emotional abuse by a parent. [T]he child's welfare is a consideration that is of transcendent importance when the child might otherwise be in jeopardy. Therefore, visitation may be restricted or even denied when the child's health or welfare is threatened.

Id. (quoting *In re Mark M.*, 365 Md. at 705-06).

2. Facts

At the January 30, 2023, permanency review planning hearing, Ms. Michaels initially recommended reducing the number of visits from weekly to every other week. She explained that five-year-old A.R. was "exhibiting an increased stress response in different areas, as observed by different people" because of the untreated mental health issues exhibited by Mother during visitations. Ms. Michaels believed more time between visits that were stress free would be helpful for A.R.

Ms. Michaels testified that four people were generally present during visits: herself; Ms. Sandie Fowler, who was a community service aid assigned to the case by the

Department; Mother; and child – unless there was an issue and security was needed in the room. Ms. Michaels testified that the visits have been "grueling" because Mother seems to believe that she personally can "fix" A.R. (in a few weeks during their visits) and address all the areas that have been identified for which the child needs support. Ms. Michaels explained that Mother would have A.R. sit at a table and told her that she could not "wander" at school. She would tell A.R. "be careful because people are watching. They're going to label you for everything you do." Ms. Michaels testified that if A.R. looks away while Mother is speaking, Mother will say, "What's wrong with you? Sit still. I told you to sit still. Put your hands on the table so it was . . . tense."

Ms. Michaels explained that A.R. reacts by becoming "very compliant, and at times tearful, at times fearful, saying that she doesn't want her mommy to be mad because she's not able to do what her mommy wants her to do." When Ms. Michaels continued testifying, Mother repeatedly interrupted Ms. Michaels and called her a liar. When the court instructed Mother to stop talking, Mother replied, "Devil, get thee behind me." Ms. Michaels continued that while the Department has encouraged Mother to "ease up" on some of the education focused activities and break them up with "fun" activities, Mother's response is that "daughter can do these things and she's fixing them during the visits." Ms. Michaels testified that although there have been times when Mother has been able to shift from her planned activities, Mother wants to keep to her planned agenda during the visits. The following colloquy then occurred:

> [THE DEPARTMENT]: And what if anything have you observed as to mother's continued paranoia during visitation?

[MS. MICHAELS]: It's, it's pervasive. It's always there. It's just that you may see it more frequently during one particular week than another. It may – mother just seems to perceive that people are against her.

It makes it hard to give any feedback. It makes it hard because it, it's perceived that way. So there's reference to Satan and haters, which is pretty – sometimes very directly directed to the support staff and I. Other times, it's just sort of thrown out into a visit.

There's talk about civil suits and lawsuits and being wronged. And it's just interspersed through, through the visits and conversation and activities. There's times when, just last week, when [Mother] became very fixated, kind of perseverated on that, and we sort of had to try to get her to shift. And she became combative.

And that was more combative than we've seen her in a while, but she became combative with each of us because she wouldn't be redirected from perseverating on this conversation about lawsuits during a visit with her daughter.

[THE DEPARTMENT]: And how does [A.R.] respond with mother's display of rigidity and paranoia?

[MS. MICHAELS]: [A.R.] will sort of adjust, wander kind of physically close to proximity to Ms. Fowler or myself. She gets quiet. She sometimes looks fearful. Kind of that, you know, uh-oh, I can't do anything look.

She can get overly compliant and sometimes very – she gets almost inaudible when she responds to her mother. I can -- it's almost like a whisper. I can't always tell what she's saying, her voice drops in volume.

[THE DEPARTMENT]: And what if anything have you observed as to mother's continued grandiose thinking during visitation?

[MS. MICHAELS]: It's very much present during visits and other, other conversations or emails with respect to services. I'll just say mother tends to – mother is, is very bright. But she tends to think that [A.R.] doesn't need services because she's bright like mother, and . . . we see it a lot.

Ms. Michaels testified that the Department had concerns that the stress during visits, especially in the last month, had worsened A.R.'s eczema.

As noted above, Mother testified for seven pages of typed transcript, but the juvenile court stopped the proceedings because of her hostility, and unresponsive and sarcastic outbursts. During the Department's closing argument, which Mother repeatedly interrupted, the Department sua sponte recommended that because of Mother's behavior in the courtroom, visitations be suspended until Mother could provide documentation of consistent mental health treatment. At one point during the Department's closing, Mother interjected that A.R. was not "ill-treated" while in her care but that the Department stepped in because of "mold and stuff that we had to live in" and "I got . . . insomnia[.]"

As already mentioned, the juvenile court ultimately ordered the suspension of visits between A.R. and Mother until Mother is compliant with mental health treatment and such treatment is documented by her mental health providers. That decision was based on the court's observations of Mother's behavior "in court from the beginning [of the trial] until the end[.]" The court stated that Mother's behavior "gives the [c]ourt grave concern regarding the [M]other's mental health status and grave concerns regarding the safety and well-being of [A.R.]." The court stressed that it had "given [Mother] the opportunity to testify concerning the Department's recommendations of reducing the amount of visits per month and also the recommendation of the parent surrogate for educational and special educational services, but [Mother] was either unable or unwilling to comply. Instead, she constantly berated all of the parties and the [c]ourt, would not respond to her counsel's questions, and in general she was out of control." The court found that visitation with Mother offers A.R. "comfort, reassurance, and connection, but visitation also had a confusing, distressing, and disruptive impact on her sense of stability and safety."

We find no abuse of discretion by the juvenile court in suspending visits between A.R. and Mother. The court appropriately considered Mother's continued failure to address her mental health issues and Mother's continued lack of insight as causing harmful behaviors during visitations with A.R. Although Mother questions the juvenile court's evaluation of her behavior during the hearing, and dismisses her behavior as no more than frustration, the juvenile court was in the best position to judge and weigh the evidence before it. Under the circumstances, we hold that the juvenile court did not abuse its discretion in ruling that visitation was not in A.R.'s best interest and that visits should be suspended until Mother began to address her mental health issues.

II.

Mother argues that the juvenile court erred in two ways when it ordered the appointment of a parent surrogate for A.R.'s special education needs. First, the court did not have "jurisdiction" over Mother because the parent surrogate recommendation was based on Mother being "unavailable" to approve special educational services for A.R. Second, Mother argues that the court failed to make any "specific findings as to the necessity and appropriateness" of an appointment. The Department responds that the court had jurisdiction to appoint a parent surrogate not because Mother was "unavailable" but because A.R. is and has been a ward of the State since she was declared a CINA. Additionally, the juvenile court did not abuse its discretion in ordering the appointment.

A. Legal authority to appoint a parent surrogate for special education purposes

Md. Code Ann., Education Art. ("ED"), § 8-412, concerning appointment of parent surrogates for children with disabilities, provides:

> (b) Public agency personnel shall request that the local school superintendent appoint a parent surrogate to represent a child at any point in the educational decision making process if it is suspected that the child may be disabled and if:
>
> (1) The child is a ward of the State;
>
> (2) The child is an unaccompanied homeless youth; or
>
> (3) (i) The parents of the child are unknown or unavailable; and (ii) the child's rights have not been transferred in accordance with § 8-412.1 of this subtitle.

The statute defines "Unavailable" as occurring where "a public agency, after reasonable efforts, cannot discover the physical whereabouts of a child's parent." ED § 8-412(a)(9). "Ward of the State" is defined as "a child for whom a State or county agency or official has been appointed legal guardian, or who has been committed by a court of competent jurisdiction to the legal custody of a State or county agency or official with the express authorization that the State or county agency or official make educational decisions for the child." ED § 8-412(a)(11).

Mother's argument that the court had no authority to order an appointment because she was not "unavailable" is without merit. Clearly, the juvenile court had the authority to order the Department to request appointment because there was evidence that A.R. may have a disability and A.R. has been a ward of the State since the CINA determination.

B. Sufficient findings of fact to support appointment of parent surrogate for special education

Mother argues that the juvenile court erred in appointing a parent surrogate because the court "made no record or specific findings as to the necessity and appropriateness of this drastic measure." The Department disagrees, as do we.

At the May 2022, permanency review plan hearing, the Department requested and the magistrate recommended that A.R. undergo a neuropsychological evaluation based on concerns expressed by A.R.'s day care program providers that A.R. will likely require specialized education services and accommodations when she starts kindergarten in the Fall of 2022. Mother excepted from the magistrate's recommendation, but the court denied the exception and ordered a neuropsychological evaluation of A.R. The resulting report recommended that, among other things, A.R. have an Individualized Education Program ("IEP").

At the January 30, 2023 hearing, Ms. Michaels testified that A.R.'s kindergarten school has identified additional areas of educational concern, specifically decoding, syntax, and attention. At a school meeting on January 5, 2023, to discuss these concerns, Mother, who participated by telephone, was adamant that she would not consent to special education services, and when questioned about her position, "she hung up." According to Ms. Michaels, Mother has since verbally indicated to Ms. Fowler that she would consent to an IEP, but Mother has also said at different times that she would not. Ms. Michaels testified that the Department was currently unclear about Mother's position.

Ms. Michaels expressed concern that Mother was unable to separate A.R.'s needs from herself as Mother has stated that she was placed in special education and has said that "she's not going to allow that to happen to her daughter." Ms. Michaels testified that "Mom's judgment is not based on the child's needs" and Mother's inability "to see that is impaired by her mental health, which prompted the request for a parent surrogate." She

testified that Mother's reaction to information that she does not consider positive is to "talk about her lawsuits" and "that's when we [] really see the mental health the most."

A second school meeting to discuss the IEP was scheduled for February 2, 2023, and Ms. Michaels testified that she did not know if Mother would sign off on A.R. having an IEP. Ms. Michaels testified that the neuropsychological report stated that it "would be harmful to hold [A.R.] back and keep her from addressing these areas." Ms. Michaels testified that "our best practice is that early, early intervention has better outcomes." Ms. Michaels expressed concern that if Mother did not consent, or did consent and then withdrew consent, it would postpone, delay or disrupt providing needed services to A.R.

Under the circumstances, we find no abuse of discretion by the juvenile court in appointing a parent surrogate for A.R. regarding special educational needs. The juvenile court made findings regarding Mother's untreated mental health needs and its corresponding negative impact on her ability to make decisions in A.R.'s best interest. Notwithstanding Mother's argument that the court made no specific findings regarding the appropriateness of the special education surrogate, we find that there was sufficient evidence before the court for it to direct, in A.R.'s best interest, the Department to request appointment of a parent surrogate. *See In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 738 (2014) (a juvenile court is "not required to recite the magic words of a legal test . . . if actual consideration of the necessary legal considerations [is] apparent in the record.").

JUDGMENT AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.