UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2373

September Term, 2014

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IN RE: AMBER B.

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Eyler, Deborah S.,
Graeff,
Arthur,

JJ.

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Opinion by Arthur, J.

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Filed: June 16, 2015

In June 2013, Amber B. was adjudicated to be a child in need of assistance ("CINA")[1] on the basis of parental neglect. The Circuit Court for Somerset County, sitting as juvenile court, removed Amber B. from the custody of her mother ("Ms. W.") and placed her into the custody of the Department of Social Services (the "Department"). The court later ordered an initial permanency plan of "another planned permanent living arrangement" ("APPLA").[2]

In an order dated April 22, 2014, the court maintained the APPLA permanency plan and suspended Ms. W.'s supervised visitation and telephone contact. In orders of June 2, 2014, and December 8, 2014, the court again continued the APPLA permanency plan and continued its suspension of Ms. W.'s visitation and telephone contact. On December 19, 2014, Ms. W. appealed the court's order of December 8, 2014.

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[1] A "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 (1974, 2013 Repl. Vol.), § 3-801(f) of the Courts and Judicial Proceedings Article ("CJP").

[2] CJP § 3-823(e)(1)(i) of the Courts and Judicial Proceedings Article enumerates five types of permanency plans, with the top priority of "reunification with the parent or guardian." An APPLA plan is an alternative arrangement that:

> A. Addresses the individualized needs of the child, including the child's education 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[.]

## QUESTIONS PRESENTED

Ms. W. presents three questions:

1. Did the trial court abuse its discretion when it denied Ms. W.'s motion for a continuance at the permanency plan review hearing on November 21, 2014?

2. Did the trial court err in holding a 2013 court hearing in the absence of Ms. W.'s counsel?

3. Did the trial court err by denying Ms. W.'s and Mr. W.'s 2013 requests to transfer Amber B.'s case to Delaware?

The Department has moved to dismiss the appeal for lack of appellate jurisdiction, because the order of December 8, 2014, is neither a final judgment nor an appealable interlocutory order under CJP § 12-303.

For the following reasons, we conclude that we have no appellate jurisdiction. Consequently, we shall dismiss the appeal.

## FACTUAL BACKGROUND

### 1. Initial Department Investigations

Amber B. was born in February 1997. She is the oldest of Ms. W.'s four children.[3]

Amber B. first came to the Department's attention in December 2011, when it received a Child Protective Services ("CPS") referral concerning her family because she and

[3] Amber B. was born in February 1997; Allayah L. was born in May 1999; Dewane W. was born in March 2001; and Maria W. was born in October 2006. The four children have three different fathers.

her siblings were not attending school.[4] A Family Services Case was opened, and a caseworker was assigned to the family. The case was closed in February 2012, however, because Ms. W. repeatedly declined to avail herself of the Department's services.

On August 3, 2012, the local police reported to the Department that on several occasions its officers had observed extremely poor living conditions at Ms. W.'s apartment in Princess Anne. The police noted that the home had minimal food and furnishings and that the children demonstrated poor hygiene, as evidenced by their strong body odors and their having repeatedly worn the same articles of clothing.

On August 14, 2013, Department social workers arrived at the apartment and found it to be filthy and in disarray, without adequate food or bedding. An eviction notice was attached to the front door, and the family was not there. The social workers located the family at a Holiday Inn in Salisbury, where they noted a strong, pungent odor in the hotel room and observed dog feces on the floor. Although she had recently received $800.00 in financial aid from CPS and was not paying for the hotel room,[5] Ms. W. professed to have no money available.

[4] Delaware, where Ms. W. and the children previously lived, had conducted 12 investigations into the children's welfare from 1998 to 2009.

[5] The Somerset County State's Attorney's office had paid for the room because Ms. W. requested lodging during its investigation of sexual assaults that Ms. W. claimed to have suffered while living at the Princess Anne apartment.

The Department was able to secure a space at a shelter, but the shelter later reported that it had forfeited that space because Ms. W. had never appeared. Soon thereafter, Ms. W. informed the Department that she and the children were living in the family vehicle in an undisclosed location.

**2. The CINA Determinations**

On August 28, 2012, the Department filed CINA petitions with the juvenile court, with respect to all four children. Pursuant to CJP section 3-817, a master held adjudicatory hearings and recommended four CINA determinations. Following exceptions filed by the various parents involved, the circuit court, in an order dated June 19, 2013, found all children to be CINA and placed them into the Department's custody. The court identified abundant evidence of parental neglect, highlighting, for example: "a large number" of unaddressed medical needs and issues;[6] the children's deficient home-school instruction, as evidenced by educational test performances far below the children's respective grade levels; various unattended and serious psychological issues, including Amber B.'s diagnosis with post-traumatic stress disorder; and the children's marked progress since being placed in foster care.

[6] At the time that the children entered foster care Amber B. and Allayah were found to suffer from "morbid obesity"; all children were significantly overdue for necessary vaccinations; Amber B. had a cystic lesion and a foot deformity and needed root canal surgery; and, after the removal of a considerable amount of earwax from Dewane W.'s ears, it was discovered that he had a "dead roach calcified in his ear."

Neither Ms. W. nor her father, Mr. W. (who had begun to re-enter Amber B.'s life), exercised their right to take an interlocutory appeal of Amber B.'s CINA adjudication. *See* CJP § 12-303(3)(x).[7]

**3. Permanency Plan Hearings and the Motion to Continue**

The circuit court on November 27, 2013, found that "the reasons for [Amber B.'s] removal have not been alleviated in such a way that would allow a safe return" to Ms. W.'s care. The court noted that, despite the Department's consistent efforts, Ms. W. "has not made any efforts toward reunification, except some visitation" and that Amber B. "does not wish to return to her mother and . . . does not wish to visit with her mother." The court established a permanency plan of APPLA and suspended Ms. W.'s previous grant of supervised visitation rights. Ms. W. did not appeal, even though the order arguably deprived her of the care and custody of her child or changed the terms of an order regarding the care and custody of her child. *See* CJP § 12-303(3)(x).

On April 22, 2014, following a permanency plan review hearing, the court continued the APPLA permanency plan and, because of Ms. W.'s continued failure to make any efforts toward reunification, maintained its suspension of Ms. W.'s grant of supervised visitation while also suspending Ms. W.'s telephone contact with Amber B. In an order of June 2,

[7] In an unreported consolidated opinion, this Court affirmed the CINA decisions with respect to Amber B.'s three siblings. *See In re Maria W. & Dewane W.*, No. 803, Sept. Term 2013; *In re Allayah L.*, No. 945, Sept. Term 2013 (Md. Ct. Spec. App. Apr. 15, 2014). Erika W. did not appeal the CINA decision in those cases; the children's fathers did.

2014, following another review hearing, the court maintained the status quo in all relevant respects.

At a review hearing on November 21, 2014, Ms. W. was not present. This in itself was not noteworthy: the last time when Ms. W. attended any court hearing in Amber B.'s case was on February 1, 2013, the last day of adjudicatory hearings before the master. Once the exceptions to the master's findings had been filed, Ms. W. did not attend a single court hearing. In all, she had missed a total of 10 such hearings over a 22-month period.

Although Ms. W. was not present at the November 21, 2014, hearing, her counsel was there. On her behalf, he moved for a continuance. As support, he cited a document titled "Request to Continue Hearing ETC" [sic] that Ms. W. had faxed to the court clerk (but not to her counsel) the night before. The request was accompanied by a note, written on a prescription pad, purporting to belong to one John T. Pearson, FNP-BC.[8] The note asked that Ms. W. be excused from the hearing, "as she *was* under my care." (Emphasis added.) Ms. W.'s request included the following claim: "I'm going through another round of bleeding and it seems 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."

[8] According to the American Nurses Credentialing Center, a FNP-BC is a board-certified family nurse practitioner. *Available at*: http://www.nursecredentialing.org/familynp. (last visited June 3, 2015).

The court denied the motion, finding "no meritorious reason for the postponement or the continuance[.]" The court observed that the medical practitioner's note was "not credible" and found it "troubling" that Ms. W. had not submitted the "last minute" note through counsel. The court questioned why the stress at the heart of Ms. W.'s stated injuries would not cause absences in future court hearings and emphasized that "if the parties had been present even one time before this Court[,] the Court might have looked upon this differently." The court added that it had "yet to meet Mr. and Mrs. [W.] anywhere[.]"

As it had done previously, the court maintained Amber B.'s APPLA permanency plan and maintained the suspension of Ms. W.'s visitation and telephone contact with Amber B. The court noted this determination in its written order of December 8, 2014, and Ms. W. noted her appeal 11 days later.

## DISCUSSION

The Department moves to dismiss this appeal on the ground that it is not authorized by statute. It contends that the juvenile court's order of December 8, 2014, is neither a final judgment nor an appealable interlocutory order. We agree and shall dismiss the appeal without reaching its merits.

Generally, parties may appeal from a final judgment entered by a circuit court in a civil case. CJP § 12-301. Parties may also take immediate appeals from certain categories of orders that are not final. Of particular pertinence here, "[a] party may appeal from . . . [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." CJP § 12-303(3)(x).

To be immediately appealable under this section, "'court orders arising from the permanency plan review hearing must operate to either deprive [a parent] of the care and custody of her children or change the terms of her care and custody of the children to her detriment.'" *In re Karl H.*, 394 Md. 402, 428 (2006) (quoting *In re Billy W.*, 387 Md. 675, 691-92 (2005)). Thus, our courts have held that a party may appeal a court order changing a permanency plan from reunification with a parent to a plan of foster care or adoption, *see In re Damon M.*, 362 Md. 429, 438 (2001); an order changing a plan from reunification to placement with a relative, *see In re James G.*, 178 Md. App. 543, 564-65 & n.14 (2008); and even an order establishing a concurrent permanency plan "that includes the option of adoption," *see In re Karl H.*, 394 Md. at 430-31.

However, "orders made in accordance with continuation of the same plan are not appealable because they do not change the terms of parental rights." *In re Ashley S.*, 431 Md. 678, 702 n.15 (2013); *see also In re Samone H.*, 385 Md. 282, 316-17 (2005) (holding that order denying mother's request for "bonding study" with children was not appealable under section 12-303(3)(x), as order maintained extant adoption permanency plan and thus did not affect mother's care or custody to her detriment).

Here, the record indicates that the December 8, 2014, order from which Ms. W. has appealed did not in any way alter the care or custody of Amber B. to Ms. W.'s detriment.

In fact, in all relevant respects, the order maintained the court's most recent orders of April 22 and June 2, 2014: it continued a primary permanency plan of APPLA, with no secondary plan in place; and it continued to suspend Ms. W.'s right to visit with Amber B. or communicate with her by telephone. All other relevant provisions remained unchanged, and the mere denial of the continuance motion does not transform the order into an order that deprived Ms. W. of the care and custody of her child. *See In re Samone H.*, 385 Md. at 316. Because the order is not appealable either as a final judgment or as an one of the immediately-appealable interlocutory orders under § 12-303(3)(x), we lack appellate jurisdiction.

Even if we were to consider the merits, we would hold that the trial court's denial of the continuance motion was well within its discretion. *See Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006). The Court of Appeals has held that denials of such motions constitute abuse when either (1) "the continuance was mandated by law," (2) "counsel was taken by surprise by an unforeseen event at trial, when he [or she] 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[.]" *Id.* at 669-70.

Here, Ms. W.'s presence, while naturally important, was not mandated by law. *See In re McNeil*, 21 Md. App. 484, 499 (1974). Moreover, the review hearing date, having been scheduled months in advance, could hardly qualify as an unforeseeable event that could not be overcome by diligent preparation. Most important, here the trial judge carefully

considered Ms. W.'s submitted note (and the peculiar method by which it was sent), as well as her obvious and continued absences from hearings – 10 over nearly two years of proceedings. The court considered Ms. W.'s past assertions of illness immediately prior to other, similar absences. The court concluded that Ms. W.'s note was not credible and also concluded, in light of Ms. W.'s stated reason for her absence and her demonstrated lack of interest in past proceedings, that her assertion of intent to attend in the future was also unconvincing.

We cannot see how the court's decision, in light of its thorough consideration of these factors, was improper. *Compare In re McNeil*, 21 Md. App. at 498-500 (holding trial court's refusal to grant continuance when mother failed to appear for CINA hearing "was so arbitrary as to constitute a denial of due process," where mother said to have been caring for sick child and court ruled "without making a realistic inquiry into circumstances of her absence, or ascertaining whether she had been guilty of pattern of unconcern").

Finally, we also lack appellate jurisdiction to consider Ms. W.'s second and third issues on appeal, which challenge, respectively, the trial court's holding of a hearing in the absence of Ms. W.'s counsel on November 8, 2013, and its denial of a motion to transfer the case to Delaware in November 2013. Even assuming that these orders were once appealable, the time for an appeal had long passed when Ms. W. filed her appeal in this case. *See* Md. Rule 8-202(a) (requiring that a notice of appeal "be filed within 30 days after entry of the judgment or order from which the appeal is taken"); *In re Guardianship of Zealand*

*W.*, 220 Md. App. 66, 78 (2014) (when interlocutory appeal "is not filed within thirty days after the entry of an appealable interlocutory order, this Court lacks jurisdiction to entertain [it]").

Both rulings predated the order in this appeal by a year. The trial court neither considered nor decided either of these two issues at the November 21, 2014, hearing that is the focus of this appeal. There is simply nothing to review.

**APPELLEE DEPARTMENT OF SOCIAL SERVICES' MOTION TO DISMISS APPEAL GRANTED. APPEAL DISMISSED. CASE REMANDED TO THE CIRCUIT COURT FOR SOMERSET COUNTY FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS ORDER. APPELLANT TO PAY COSTS.**