Circuit Court for Montgomery County
Petition Nos.: 06-I-16-175 and 06-I-16-176

CHILD ACCESS

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2677

September Term, 2018

IN RE: K.M.-L. and M.M.-L.

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: June 10, 2019

Appellant, Ms. B.M. ("Mother"), challenges the decision by the Circuit Court for Montgomery County, sitting as a juvenile court, to grant custody and guardianship of her two minor daughters to the girls' paternal grandmother, Ms. D. L. ("Grandmother"), and to close their Child in Need of Assistance ("CINA")[1] cases. The children's father, Mr. D.L. ("Father"), was a party in the underlying proceedings, but is not a party to this appeal.

The children, M.M.-L., born July 21, 2013, and K.M.-L, born December 12, 2016, were taken into care by the Montgomery County Department of Health and Human Services ("Department") shortly after the birth of K.M.-L. and placed in kinship care with their Grandmother. This intervention was prompted by the sudden death of Mother's two-year-old child, G.M.-L, and the almost simultaneous birth of K.M.-L. The family and the Department did not find out until almost a year later, when the coroner issued his report, that G.M.-L had died of natural causes—an undiagnosed heart defect.

In the meantime, on January 3, 2017, after the parties agreed to the allegations set forth in the Second Amended CINA Petition, the children were adjudicated CINAs. The Department recommended, and the juvenile court ordered, Mother and Father to attend therapy and parenting classes, maintain stable housing, and subject themselves to drug and alcohol testing.

The original permanency plan was reunification. That plan continued until a

[1] A CINA is a child who requires court intervention because the child has been abused or neglected, or has a developmental disability or mental disorder, and whose parents, guardian, or custodian cannot or will not give proper care and attention to the child and the child's needs. Maryland Code (2013 Repl. Vol., 2018 Supp.), § 3-801(f) of the Courts and Judicial Proceedings Article.

permanency planning review hearing on March 15, 2018, at which the Department requested, and all parties and the court agreed, that the permanency plan would be changed to a concurrent plan of reunification and custody and guardianship to a relative. About five months after the change to concurrent plans, the Department moved to close the case and to award custody and guardianship to Grandmother. Mother and Father opposed the Department's motion, and the parties met for a contested hearing before the juvenile court on September 11, 2018. At the end of that hearing, the court implemented the permanency plan of custody and guardianship to the paternal Grandmother and closed the case. The court, in its written order, found that the Department had not made reasonable efforts to support reunification with Mother or Father, but that it had made reasonable efforts to support Grandmother's custody and guardianship of the children. Mother now appeals that order, having filed her timely notice on October 12, 2018. She presents one question for our review, which we have rephrased:[2]

Did the juvenile court err by awarding custody and guardianship to Grandmother when the court explicitly found that the Department failed to make reasonable efforts toward reunification with the parents?

[2] The original question was phrased as follows:

> "Did the juvenile court err by granting custody and guardianship to the paternal grandmother and closing the case where the court found that [the] Department failed to make reasonable efforts to reunify the girls with their mother by failing to create a service plan or monitor the mother's compliance with the case, among other derelictions, and where the lack of efforts lead to unreliable information, which formed the basis of the court's opinion?"

BACKGROUND

A. The Department's Involvement with the Family

Mother gave birth to M.M.-L. in 2013. The Department first became involved with the family the next year, in 2014, when Mother gave birth to G.M.-L. G.M.-L. was born premature, at 27 weeks' gestation, and was placed in the Neonatal Intensive Care Unit ("NICU") for two and a half months. At that time, Mother tested positive for marijuana. When G.M.-L. was cleared to return home, Mother and Father disclosed to a social worker that they planned to move the family to Washington, D.C. At a Family Involvement Meeting, they agreed to leave the children with Grandmother until they were settled in D.C., to complete substance abuse evaluations, to seek mental health treatment for Mother, to allow the children to be evaluated by Infants and Toddlers Services,[3] and to take the children to doctors' appointments. When Mother and Father failed to follow through with these agreements, the Department filed a CINA petition on behalf of G.M.-L., but a juvenile court denied shelter care and dismissed the petition.

The Department re-entered Mother's life on December 23, 2015, when she delivered a baby at 25 weeks' gestation. The baby passed away of natural causes. Mother confessed to smoking marijuana weekly while pregnant, and her urinalysis was positive for marijuana. She claimed that she did not know she was pregnant.

[3] The Infants and Toddlers Program provides "a statewide, community-based interagency system of comprehensive early intervention services to eligible infants and toddlers, from birth until the beginning of the school year following a child's 4th birthday, and their families." Maryland Code (1978, 2018 Repl. Vol.), Education Article, § 8-416(a)(2).

B. Underlying CINA Petitions

The Department became involved with the family again on December 11, 2016, when G.M.-L. passed away. At that time, Mother, Father, M.M.-L., and G.M.-L., lived at the home of the children's paternal grandmother. The home was shared with Father's two siblings, aged 14 and 19. Grandmother had cared for the children since birth, as Mother had only recently moved into the home because she was about to give birth to another child.

That evening, G.M.-L. and M.M.-L. had been fighting over a toy. Mother and Father were watching them while Grandmother rested in her bedroom. Mother noticed G.M.-L.'s lips turn blue and called 911 as G.M.-L.'s body began to stiffen. G.M.-L., aged two, was pronounced dead at Holy Cross Hospital. The following day, on December 12, 2016, Mother gave birth to K.M.-L.

The day after G.M.-L.'s death, the Department filed the CINA petitions underlying this appeal in the circuit court, sitting as the juvenile court. In the CINA petitions, the Department alleged that Grandmother expressed concerns that, prior to G.M.-L.'s death, Mother had not bonded with the children, Mother and Father did not have stable housing, and that Mother and Father did not have the necessary supplies for a newborn baby. Mother also would not permit G.M.-L. to receive physical therapy for a deformed hand through Infants and Toddlers services. Mother also refused behavioral health services.

The CINA petition also noted that about two months before G.M.-L.'s death, Father was charged with armed robbery, robbery, two counts of first-degree assault, two counts of second-degree assault, theft, and using a firearm after a violent-crime conviction. Father

also had a prior conviction from 2013 for driving while impaired, for which he received probation.

C. Shelter Care and CINA Adjudication

The same day the Department filed the CINA petitions, December 13, 2016, the court held a shelter care hearing, which Father, Mother, and their attorneys attended. The juvenile court continued proceedings until the next day but found that remaining in the home would be contrary to the children's welfare and ordered shelter care for the children and limited guardianship for the Department.

On December 15, the court entered orders of limited guardianship granting the Department and Grandmother the right to make caretaking decisions regarding K.M.-L's education, medical, and travel needs. The court entered two orders on December 22, ordering, *inter alia*, that it was in K.M.-L.'s best interest to be placed in the temporary care and custody of the Department and in kinship care with Grandmother. The court awarded the parents supervised visitation.

On January 3, 2017, the Department amended its CINA petition, adding that the "family had concerns that Mother needed mental health treatment and was not receiving any." Attached to the petition was a document entitled "Recommendations for Disposition." The Department recommended that M.M.-L. and K.M.-L. be found CINA and placed in Grandmother's care; that M.M.-L. receive therapy; that K.M.-L. be assessed by Infants and Toddlers; that Mother and Father undergo psychological and substance abuse evaluations, and follow any treatment recommendations; and that Father participate in "responsible Father's Program," which he could defer in favor of grief counseling.

Also on January 3, the parents and their attorneys met before the court for a "pretrial/settlement hearing." The court adjudged the children CINA, finding that the parents had neglected the children and that reasonable efforts had been made to prevent the children's removal. The court committed the children to the care of the Department and in kinship care with Grandmother. The parents were awarded supervised visitation with the children a minimum of twice weekly. Finally, the court ordered that an adjudication and disposition hearing be held on May 9, and that a permanency planning hearing be held on October 26.

D. Professional Evaluation

On February 10, 2017, the Department filed a letter with the court informing it that the children had been assigned social worker Mary Aguilar De Rivas ("Aguilar").

On March 3, 2017, the Department filed a line with the court, attaching the parents' psychological evaluations. Father's report generally rehashed the background contained in the CINA petition. Mother's psychological report gave the family history in further detail. Her father did not support her decision to continue her pregnancy, so she moved in with Grandmother. The parents got their own apartment but left the children with Grandmother. They eventually returned to Grandmother's home when they could not afford their apartment. The report noted Mother's difficulty in understanding her predicament: "In this particular case, neglect was not substantiated, but [Mother] cannot understand why the parents' prior failure to cooperate with [the Department] was a major factor in the decision to remove the children." The psychiatrist propounded several targets for treatment, including "grief counseling[,] domestic violence issues[,] building a greater

sense of responsibility[,] maturational progression[, and] monitoring of possible paranoid ideation[.]"

Aguilar also filed a report, which described M.M.-L. as "a healthy three year old girl who is thriving at her placement" and is "bonded and attached to [Grandmother]." A psychiatrist noted that M.M.-L. shows "significant trauma symptoms" and "difficulty separating from [Grandmother] in social situations"; he recommended "trauma-focused therapy[.]" M.M.-L. attends weekly therapy sessions and also attends full-time "daycare/preschool." K.M.-L. was also doing well and was described as "a four month old growing baby" who is "thriving in her placement" and "reaching all of her developmental milestones." She is "bonded and attached" to Grandmother, and "gets excited and smiles at [Grandmother] when she hears [her] voice or sees her face."

Aguilar reported that Mother was an administrative assistant at the same car detailing shop where Father works, and she earned $13 per hour. She lived with her aunt in Silver Spring. Aguilar noted that Mother had participated in four urinalyses and had tested negative for drugs but positive for alcohol in all four instances. Although Mother began behavioral health counseling, she failed to attend subsequent therapy sessions. She was referred to parenting classes and planned to attend weekly therapy sessions. Father attended Mother's supervised visit, despite the instruction that the parents must visit the children separately so that Aguilar could judge their respective parenting skills and refused to leave for a time. The conflict frightened M.M.-L., who called for Grandmother.

Aguilar concluded that Mother is "just starting to address the issues that brought the family to the attention of the Department," and that she "is young and lacks insight as to

why the case" came before the Department. Mother inconsistently attended therapy and had "not had regular visits with her daughters." Father had "barely engaged in services and [] refused to complete a substance abuse evaluation" or participate in therapy and had many pending felony charges. Aguilar doubted Father's "ability to be a resource for his children[.]" She recommended that the children stay with Grandmother, because they "would not be safe if they were returned to their parents as the parents have not actively addressed the issues that brought the children to the attention of the Court and the Department."

E. Adjudication and Disposition Hearing

On May 9, 2017, the juvenile court held a six-month status review hearing. The court found that reasonable efforts had been made by the Department to finalize the permanency plan, and the court recommitted the children to the Department and kinship care with Grandmother.

In its order entered May 18, the court explained that it "continues to be necessary and appropriate for [K.M.-L.] and [M.M.-L.] to remain in" Grandmother's home. While the parents and the Department had "made extensive efforts to comply with the appropriate case plan," the "process [wa]s ongoing and not complete[.]" The court ordered Mother and Father to participate in domestic violence therapy, substance abuse treatment, urinalysis, and parent education, and to obtain stable employment and housing. Each parent was awarded "supervised, minimum twice weekly" visits with the children.

F. Permanency Planning Hearings

1. First Permanency Planning Review Hearing

On October 20, 2017, the Department filed a report ahead of the hearing taking place on October 26. In the report, the Department recommended "that the permanency plan remain [r]eunification with a parent at this time." It also recommended that the children continue to be adjudged CINA that the Department continue limited guardianship of the children, that Grandmother continue kinship care, that the parents' visitation occur at least twice weekly, and that the parents continue therapy and substance abuse treatment. Reasonable efforts to reunite the family, since the last hearing, included face-to-face visits with the children, an inspection of Grandmother's home, connecting and encouraging the parents to participate in the children's therapy and medical appointments, the purchase of items for the children and reimbursement to Grandmother for children's expenses, and referral of the parents to services.

Specific to M.M.-L., the Department reported that her therapist, Dr. Burch, "noted 'significant trauma symptoms'" and that Grandmother "may have been underreporting or minimizing [M.M.-L.'s] trauma symptoms." Further, the "unpredictability and unstructured nature of the visits between [M.M.-L. and Mother] added stress to [her] life." Another therapist, Dr. De Palma, noted that M.M.-L. had "significant separation anxiety" beginning in July, and "continues to show symptoms of anxiety," including getting "startled by noises," and appearing "fearful when she sees people in the hallway." The therapist expressed concerns that Grandmother and the parents do not have a thorough "understanding of the trauma [M.M.-L.] has been through," and noted that they "report that

[M.M.-L.] is 'doing well' and that she is 'fine' and do not observe the behaviors" observed by therapists. The therapist described K.M.-L. as "a happy ten-month-old baby" who was "thriving in her [k]inship placement." She completed physical therapy at Infants and Toddlers and her case was closed there.

The Department reported that Mother had completed her substance abuse treatment but had not yet addressed her behavioral health needs because of issues connecting to care. Since the last hearing, Mother's urinalysis tested negative for both alcohol and drugs. Mother had secured a one-bedroom apartment for herself and continued to work full-time as an administrative assistant at the car detailing business.

The report also detailed the parents' participation in 11 parenting education sessions. Michaelyn Woofter, the parent educator, noted that the children are "very bonded with [Grandmother] and that the parents interact with the children more on the level of a babysitter or older sibling[.]" Woofter was concerned about Mother's mental health and grief processing and with the parents' inability to "process trauma with their children."

Father had not participated in substance abuse evaluations, urinalysis, and had not provided proof of employment or housing. Father's therapists suggested that Father had "demonstrated insight" about the Department's involvement in his family and that he had "made some progress on his goals." Father still denied domestic violence in his relationship with Mother.

Regarding domestic violence, Grandmother had reported to the Department that "the couple has a long history of domestic violence and that they have always been an unstable couple who used to 'fight too much.'" Grandmother "was called in the middle of

the night" many times "to go pick up [M.M.-L.] when the couple was living in Washington, D.C. because they were fighting and 'tearing the house up.'" M.M.-L. was "present during those fights and was terrified." Grandmother had permitted the couple to live in her basement but moved to a smaller house because "she could not deal with their constant fights anymore." Grandmother asserted that M.M.-L.'s "trauma symptoms began much earlier than when she witnessed her sister pass away" as a result of her parents' fighting, but the symptoms "worsened when her sister passed away." Mother claimed that Grandmother "is 'making up' those allegations" and disputed "that there was domestic violence in her relationship with [Father]."

The Department reported that Grandmother's two-bedroom apartment was too small for Grandmother, her two sons, and M.M.-L. and K.M.-L. The Department planned to assist Grandmother in breaking her lease to secure a larger home.

The Department concluded that M.M.-L. was "attached and bonded to her father and is developing an attachment with her mother," and that the children were "attached and bonded with their paternal grandmother where they have lived for most of their lives." "The potential harm of moving the children at this time is high," as their needs are being met in their current placement and because the "parents have demonstrated that they lack knowledge on their children's development and need." Neither parent had participated in either child's recent medical appointments.

On October 26, the parties participated in the hearing before the juvenile court. The Department recommended supervised visitation because "unsupervised visitation may expose the children to an unhealthy level of conflict between the parents[.]" Unsupervised

visitation would be "contingent on the fact that [] [M]other w[ould] not allow any contact with [] [F]ather during the visits and w[ould] participate in the recommended services."

Counsel for the children agreed with the Department that unsupervised visitation by Mother was appropriate. Counsel noted that Mother had followed through with her obligations and had "not presented as a danger to either of the children," and Mother's hope for an expedited reunification was in part so that Grandmother would not have to move to another home. Counsel requested that Mother attend at least one substance abuse meeting per week.

Father's counsel noted Father's agreement to Mother's unsupervised visits with the children. Father would agree to not contacting the children during Mother's visits, but he clarified that he would not agree to no contact whatsoever with Mother, as he wanted to communicate about the children and other topics. Mother's counsel presented two exhibits. The first was a letter from Mother's psychiatrist, who attested that Mother had "stabilized and improved," and had been in therapy for trauma related to G.M.-L.'s death. The second exhibit was a letter from the Office of the Chief Medical Examiner for the State of Maryland. It explained that G.M.-L. had a "cardiac (heart) abnormality[,]" and that "[a]lthough the exact etiology of the heart abnormality [wa]s unclear, there was no indication or evidence of trauma, abuse, or neglect[.]" Mother also reported that she obtained full-time employment in January of 2017 and moved into a one-bedroom apartment in April.

Mother's counsel noted that the parties agreed to stipulate, rather than call Mother's current therapist as a witness, to Mother's good mental health: that Mother did not have a

"flat affect" when seen by her recent therapist and that she does not "meet the criteria for . . . an adjustment disorder." Further, Mother was paying child support and attended grief counseling, which was discontinued and recontinued because of a gap in her insurance coverage. Mother agreed with the Department's recommended schedule for unsupervised visitation.

In its oral ruling, the court found that all parties agreed that the permanency plan remain reunification. The court then proceeded to address the factors under Section 5-525(f) of the Family Law Article to determine the children's best interests. Based on those factors, the court concluded that it would adopt the permanency plan of reunification and adjudged the children CINA and to remain in kinship care with Grandmother under the limited guardianship of the Department. Because "there [wa]s no further likelihood of abuse or neglect," the court ordered unsupervised access to the children "based on all the progress that [Mother] has made since the last court hearing."

2. Second Permanency Planning Review Hearing

Ahead of the next review hearing, the Department filed a report, entered on December 13, 2017. The report indicated that Mother began therapy on November 7 and had attended four sessions. Her therapist stated that she was "responsive to the therapeutic process, cooperative and receptive to therapy." Mother continued urinalysis and tested positive for alcohol once, which she attributed to a PAP smear conducted earlier in the day. Father had still not participated in substance abuse counseling, urinalysis, and had not provided proof of stable housing or employment. Neither parent had continued parenting education classes because Woofter had taken an extended leave and no other educator

could accommodate the parents' limited availability. Grandmother reported to the Department that Mother had unsupervised visits with the children only twice a week for one to one and a half hours. Mother reported to the Department that she had visited with the children five times per week and supported this assertion with a visitation log. The Department stated that it could not recommend unsupervised overnight visits because of Mother's positive urinalysis.

On December 20, 2017, the parents and their attorneys, the children's attorney, and Aguilar met before the juvenile court for the review hearing. The Department began by requesting "six weeks of clean urine before overnight visitation begins" and for the court to order Mother's "participation in AA."

The children's attorney disagreed with the Department, arguing that overnight visits should begin. Counsel reported being "really pleased actually with how" visits had gone and noted that M.M.-L. was "very, very happy with how visits ha[d] gone." Children's counsel stated that Grandmother had hoped that Mother would have the children for Christmas Eve, and that Grandmother "[wa]s completely happy with the care that [M]other is providing at this point."

Mother's attorney opined that Mother had passed numerous breathalyzer tests, that Mother "absolutely didn't" have a drink, and that incidental exposure to hand sanitizer, vanilla, cough syrup, and mouthwash could have thrown the urinalysis results. Counsel reminded the court that the Department had come into the family's life, not because of alcohol or substance abuse issues, but because of G.M.-L.'s death. "[T]o wait another six

weeks because [of] one potentially incidental exposure to alcohol" would be "incredibly punitive[.]"

Father's attorney noted Father's support for mother's overnight visits with the children. Father's counsel also reported that Father had attended all his mental health therapy appointments but one, completed a substance abuse evaluation, and was willing to do the urinalysis. Father would not agree to participate in the Abused Persons program because he and Mother did not acknowledge domestic violence in their relationship.

The Department acknowledged that "[t]hings [we]re moving in the right direction but requested that Mother exhibit "a little bit more of a track record of compliance before" the transition to overnight visits.

Regarding overnight visitation, the court stated that "a reasonable response is somewhere in between what the [D]epartment is seeking and what Mo[ther] is seeking." The court thus ordered that overnights begin immediately, but at Grandmother's house, rather than at Mother's apartment. If Mother continued to test negative for alcohol for three weeks, then the court assured it would order unsupervised overnights in Mother's home. The court entered its findings in a written order, entered on December 22, 2017, and scheduled another permanency planning review hearing for March 15, 2018.

Emergency Hearing

On February 23, 2018, the Department filed "a request for an emergency hearing regarding [] [M]other's unsupervised overnight visits" with the children. M.M.-L. recently told Aguilar that "Mommy sleeps on the couch and Daddy sleeps on the floor" because their bed "popped." Mother had disclosed that Father sometime visited, but not for

visitation, and did not spend the night. The court's most recent order prohibited Father's presence during visitation.

Additionally, Aguilar reported that Mother "threatens [M.M.-L.] with corporal punishment," which Mother and Grandmother confirmed. M.M.-L. "cries and becomes anxious when discussing [] [M]other's threats to hit her," and M.M.-L.'s therapist expressed that the threats are detrimental to her treatment for separation anxiety and post-traumatic stress disorder ("PTSD").

Mother filed a response motion entered on February 23, 2018. She asserted that abruptly ceasing visitation would "create a sense of chaos for the children." She explained that she is bonded with the children, that she has been taking M.M.-L. to therapy appointments and M.M.-L. "has become so attached to [M]other that [M]other ha[s] to stay with the child and her therapist during" therapy. Additionally, she had "engaged in her own therapy and [was] making so much progress that her therapist ha[d] reduced the therapy from once a week to once every two weeks." Moreover, "[t]here is no provision in the current order that allows the Department to unilaterally suspend visits." Mother nevertheless requested an immediate hearing.

On February 27, the juvenile court held an emergency hearing on the Department's motion. The Department stated that "M.M.-L. does have PTSD" and has "been showing some misregulation with the transitioning between [M]other's overnight visits in the home[.]" M.M.-L.'s therapist found the threats of corporal punishment to be "harmful" given that M.M.-L. suffers from PTSD.

Counsel for the children opined that the request for an emergency hearing "was unfortunate and not the best decision making . . . to put M.M.-L. and K.M.-L. through this." Counsel asserted that "M.M.-L. is only a little girl [and] doesn't even understand that what she said caused so much turmoil or upheaval in her own life." What "is in the best interest at this point in time is to be disrupted as little as possible." Counsel requested that Grandmother, who is "just an outstanding caretaker for the[] children," supervise the visits until the March 15 hearing.

Father's counsel likewise requested that visitation be supervised at Grandmother's home. Mother's counsel requested that the court continue allowing her unsupervised overnights. She argued that Mother had been steadily employed for the past year, had her own apartment, paid child support, completed therapy, and took her children to therapy. Counsel acknowledged that when Father was unable to see the children because of his new job, Mother "foolishly allowed [] Father to see the child[ren] when [they] were with her." Mother "acknowledge[d] her mistake," but counsel opined that "we can't derail the entire case because of that." Particularly because M.M.-L. had "become very attached to her mother, such to the point where she suffered separation anxiety."

As to corporal punishment, Mother offered that she simply told M.M.-L., "if you don't calm down I'm going to spank you[,]" when M.M.-L. had a tantrum. Mother's counsel requested that the court keep in mind that every member of the family suffers from PTSD because of the loss of G.M.-L. Counsel concluded by stating that if the court would not continue unsupervised visitation, then Mother would request visitation supervised by Grandmother.

The Department briefly retorted that Mother had been warned that Mother risked "derailing a year and a half of progress" by "allow[ing] contact between [] [F]ather and the children during her unsupervised access," and that her failure to heed that warning merited elimination of her unsupervised visitation.

The court found that its order was "clear that the children's father could not have unsupervised visitation," and rescinded Mother's unsupervised visitation. The court ordered the children to continue to live with Grandmother, that visitation to be supervised by Grandmother in her home, and that the parents should not threaten the children with corporal punishment. The court entered a written order to this effect that same day, February 27, 2018.

3. Third Permanency Planning Review Hearing

The juvenile court held a third review hearing on March 15, 2018. The Department opened the hearing by proposing a concurrent plan of custody and guardianship and reunification, meaning concurrent plans to reunify the children with Mother or to grant custody to Grandmother. The Department also agreed to "a slight adjustment in visitation" whereby Mother would have unsupervised visits in Grandmother's home for up to four hours, and visitation by Father would be supervised by Grandmother. The children's counsel agreed to the suggested changes, stating that "the children are both settled" and "doing well" in Grandmother's home.

Father's counsel stated that Father had completed his substance abuse evaluation but requested that the Father be excused from urinalysis if the evaluation did not indicate

substance abuse. Father completed Responsible Fathers and provided proof of housing and reported that he had completed the recommended therapy.

Mother's counsel stated that Mother was "in agreement to the concurrent permanency plan and to the [D]epartment's recommendations." She confirmed with the court that the unsupervised visits include unsupervised overnights, and that Mother could have "any regularly scheduled" visits supervised by Grandmother.

The court concluded that "from the [D]epartment's report dated March 5, 2018 that the [D]epartment made reasonable efforts during the review period to achieve the permanency plan of reunification." It then proceeded through each of the best-interest factors under FL § 5-525(f) and concluded that the children's best interest was served by the Department's recommended permanency plan of concurrent reunification and custody and guardianship to a relative.

In its written order entered the same day, March 15,[4] the court reiterated its oral ruling, adding that "there are **compelling reasons** why the Department has not filed a Petition for Termination of Parental Rights; specifically, [K.M.-L.] and [M.M.-L.] remained bonded to their parents as well as [to] [] [G]randmother, who has been their primary caretaker since December 2016." (Emphasis in original.) The court ordered Mother to continue therapy, abstain from alcohol and drugs, attend the children's medical appointments, and continue to provide proof of stable housing. The court ordered Father

[4] In its order filed on March 15, 2018, the juvenile court erroneously identified the concurrent permanency plans to be "Another Planned Permanent Living Arrangement (APPLA) and Custody and Guardianship to a Relative," but this error was corrected in an amended permanency planning review hearing order entered on August 20, 2018.

to do the same, as well as to participate in the Abused Persons Program and Responsible Father's Program and to provide documentation of successful completion. The court scheduled the next review hearing for August 16, 2018.

Mother's Motion for Expanded Unsupervised Visitation

On March 23, the children were assigned a new social worker, Deyana Cox. On June 7, 2018, Mother moved for further visitation. Noting that Grandmother had difficulty bringing K.M.-L. to therapy, Mother requested expanded visitation to "allow her to transport [the children] to and from therapy to [e]nsure that therapy occurs on a regular basis." Mother asserted that she was "successfully discharged" from therapy, had abstained from drugs and alcohol, and maintained stable housing.

The Department filed a response motion on June 29, approving of the expanded visitation, provided that Mother submit another negative urinalysis and that Father would not be present during visits.

The court granted Mother's motion that same day but crossed out a line which would have permitted Mother "additional unsupervised visitation with the children in the community."

G. Department Moves to Close the Case

Approximately one month later, on August 1, 2018, the Department filed a "Motion to Rescind Commitment and Terminate Court Jurisdiction." The Department requested that the court grant custody and guardianship to Grandmother, rescind the children's commitment to the Department, cancel the review hearing scheduled for August 16, and terminate the juvenile court's jurisdiction over the case. Included with the motion was a

report dated July 27, 2018, wherein the Department explained that it was unable to contact Father. Father's therapist informed the Department that he had last spoken with Father about closing his case because Father had attained therapeutic goals, but Father did not follow up and his case was closed by default. Father was sentenced to serve a six-month home detention after pleading guilty to robbery. His other felony charges were nol prossed but, Grandmother reported that Father was recently charged for possession with intent to distribute a controlled substance in Washington, D.C.

The report stated that the children had been in out-of-home placement for 19 months and needed permanency. The Department advocated custody and guardianship to Grandmother because Father had not communicated with the Department, had picked up another criminal charge, inconsistently visited with the children, and denied domestic violence. While Mother had achieved her therapeutic goals, she had not maintained employment, had not participated in the children's therapy per the court order, and had visited inconsistently. The Department recounted M.M.-L. stating, "My mommy didn't come see me for Mother's Day," and reported that Mother did not attend M.M.-L.'s fifth birthday party. The Department stated that "the parents['] limited interaction with the children suggest that the children are not a top priority[.]"

The Department also included a home study of Grandmother's home, which asserted that all State requirements were met, and recommended that Grandmother be the children's guardian.

1. September 11 Hearing

The court held a hearing on the Department's motion on September 11. The Department's report, filed the day of the hearing outlined the family's progress under supervision. The report stated that Mother was working two jobs but had not supplied the Department with proof of employment. Mother completed her therapy and provided Cox the address of her new apartment. The report reiterated that Mother had not participated in the children's therapy, even after the court granted her extended unsupervised visitation to help with transportation. The Department was still unable to contact Father, who was released under pre-trial supervision pending his most-recent charge. Grandmother confirmed that the parents' visitation was sporadic, and that M.M.-L. had stopped asking for her parents. The Department remained concerned with Mother's "stability, denial of domestic violence, and limited involvement in the children's care." Additionally, Mother's therapist was unable "to implement a psychoeducational domestic violence component to her treatment" because of her denial of domestic violence. The children had remained with Grandmother for 20 months and "neither parent ha[d] made sufficient progress in completion of court ordered services . . . the Department remain[ed] concerned that the children would not be kept safe if they [we]re returned to their parents['] care."

In its opening statement at the hearing, the Department recognized that Mother had taken "some steps" but argued that the parents' involvement was still inconsistent. The Department was particularly concerned with Father's recent criminal charges. The children's attorney expressed agreement with the Department's recommendation of granting custody and guardianship to Grandmother. Father's attorney asserted that custody

should go to Mother and proclaimed that Mother "has done everything that she was [] asked to do." Mother's counsel concurred and requested that the permanency plan be reunification. She agreed that the Department made reasonable efforts toward the plan of custody and guardianship but asserted that the evidence would show that the Department "made no efforts at reunification" and requested that the court find as such.

Evidence at the Hearing

The Department first called Cox to testify. Cox testified that the children were now five and two years old, and that they still reside with Grandmother. Cox recounted reasonable efforts to achieve the concurrent plans of reunification and custody and guardianship, including her visits with the children, visits with the children's therapists, communication with Father's probation agent, and attempts to contact Father. She had never spoken with or met Father. She stated that she was unable to monitor visitation between the parents and the children, and that she instead relied upon Grandmother's updates for information about how the visits were progressing. Cox professed no concerns with Mother's housing. She reiterated the Department's recommendation that custody and guardianship be granted to Grandmother.

On cross-examination, Cox responded that the domestic violence influenced the Department due to the 2015 police report, Grandmother's concerns, and her predecessor, Aguilar's, concerns. Cox was unsure as to whether Father was still in in-home detention, but she admitted that she never sent a letter to his attorney, never contacted anyone in his pretrial release program, and she did not recall ever contacting the Motor Vehicle

Association to ascertain his address. She also did not ask Grandmother if she could send his mail to Grandmother's address.

Cox acknowledged that she had spoken with Mother only once, over the telephone, during the previous six-month period since she began handling the family's case. Cox never requested a visit to Mother's new residence and never attempted to verify Mother's employment status with Mother. When Cox learned that Mother had found a job, she did not contact her. Cox admitted that before writing her report, she made no effort to contact Mother to inquire as to what was "happening in her life," nor did she try to observe a visit between Mother and the children. Regarding the inconsistent visitation complained of in the report, Cox agreed that she did not include the parents' Facetiming with the children on occasion when they were unable to visit. Moreover, regarding the allegation that Father had not participated in M.M.-L.'s birthday, Cox clarified that she had misunderstood Grandmother, and that Father had indeed been present for the entirety of M.M.-L.'s fifth birthday. When questioned as to whether Grandmother had informed her that Mother had stopped by the night before M.M.-L.'s birthday party, with balloons and a cake, Cox stated that she was not so informed and that she never communicated with Mother about participation in birthday festivities. Regarding Mother's Day, Cox admitted that she did not realize that M.M.-L. meant that Mother had not attended a Mother's Day school event, and that Mother was in fact with the children on actual Mother's Day, which fell on a Sunday. On the allegation that Mother spent only an hour or so with the children, when she was allowed four under the court's order, Cox acknowledged that she was unaware that the children were in daycare all day, arrived home at 5:00 or 6:00 p.m., and that a weekday

four-hour visit would require Mother to be with the children until 10:00 p.m., way past their bedtime. Cox was also unaware that Grandmother sent the children to a relative's house every weekend, and that because Mother was precluded from visiting the children anywhere but Grandmother's house, Mother was unable to visit with the children on weekends.

Cox testified that she did not have Mother sign an updated service agreement, and that there was no such agreement in place from March through August. Regarding the claim that Mother did not attend the children's therapy, Cox acknowledged that the therapy was intended to improve Mother's bond with the children but admitted that she never asked Grandmother whether there was an issue with parent/child bonding. Cox was also unaware that Mother spent the night before M.M.-L.'s first day of kindergarten to help M.M.-L. get ready for school, and that Mother went to Grandmother's house again the next evening to discuss M.M.-L.'s first day of school with her.

Grandmother was the next to testify. Grandmother testified that she had lived with K.M.-L. since she was born and with M.M.-L. for 20 months. Grandmother stated that she was "okay" with closing the case and with her custody and guardianship of the children. Grandmother testified that Father's visits with the children go well. Mother's visits also go well, and Mother typically helps M.M.-L. with her homework. Grandmother stated that she did not believe that Mother "take[s] advantage of her full time," and that "there have been times where [she had] asked [Mother] to keep the kids and [Mother] has said that she's not able to." Recently, out of a total of 28 days, Mother had visited seven times. Grandmother stated that Mother "loves her girls," but she felt that "[Mother] takes care of

them when it's convenient for her and when she can." Grandmother expressed concerns about Mother's ability to afford daycare but had no concerns about Mother picking up and dropping off the children from school and daycare.

Father's counsel cross-examined Grandmother on the issue of domestic violence. Grandmother testified that the parents had "fought physically in [her] home," but that they had not fought in two and a half years. Mother's counsel cross-examined Grandmother on the issue of inconsistent visitation. Grandmother testified that she did not report to Cox that she had not heard from the parents for weeks at a time—she told Cox that she had not heard from the parents, at times, for only a matter of days. Mother's counsel entered screenshots of text messages into evidence, wherein Grandmother remarked to Mother that Father saw the children often because he stayed at her house every night. On whether Grandmother felt comfortable with Mother spending overnights at her house, or overnights at Mother's house, Grandmother testified that she did indeed feel comfortable. Grandmother also acknowledged that Mother works two jobs, one in Washington, D.C., and that Mother works until 6:00pm., so she typically arrived at Grandmother's house at 7:30pm because of her commute.

Father's counsel introduced the police department's 2015 incident report from the incident of domestic violence between Mother and Father. The report stated that Mother and Father "were involved in a verbal altercation which led to them physically assaulting each other, causing scratches to [Mother's] neck. [Father] sustained scratches to the face, neck, back and cuts to his right hand." The police, "unable to determine the primary

aggressor," placed both parents under arrest and charged both with simple assault. Father was also charged with destruction of property for "destroy[ing] [] vehicle windshields."

The next to testify was Theresa Marducci, Cox and Aguilars' supervisor at the Department. Marducci testified that the parents are obligated to be proactive in contacting the Department, and that neither parent had been proactive. She thought the case should close with custody and guardianship to Grandmother because Grandmother had "virtually taken care of both of these children their whole lives" and because "there was domestic violence between" the parents that was not addressed. Marducci also acknowledged that the Department failed to fulfill its statutory duty to create a new service agreement every six months. She testified that even if social workers had investigated whether Mother's residence was appropriate, the Department's recommendation would not have changed because of the domestic violence concerns.

Mother testified last. Her counsel introduced as evidence an email Mother sent to the Prince George's County Circuit Court on September 4, 2018. The email stated that Father had "obtained new criminal charges and used [her] address." Father neither "live[d] with [her] nor [wa]s [her] address on his driver[']s license," and she requested that her address be removed from his records.

Mother testified that no one from the Department had requested a visit to her home. She described her full-time job at SERVED Academy and her additional part-time job in Audi Field. She pays $500 per month in child support, which would reduce to $362 when an arrearage was paid off. The part-time job was to meet her child support obligation, and she would quit that job if she had custody of the children.

Mother testified that domestic violence was discussed during her therapy, and that she learned about the cycle of domestic violence and how to identify signs of it. She reasserted that she and Father did not have a domestic violence issue. Mother testified that she was very bonded with K.M.-L. and reported that "[i]f people try to pick her up while [she] is around . . . [K.M.-L.] doesn't want to get picked up and she'll run to [her] immediately." Mother testified that she and M.M.-L. love each other very much, and that when Mother cannot visit, M.M.-L. calls her on Facetime, crying. Mother stated that she does not spend the night at Grandmother's often because the Department made her move out, and that when she does stay over, she sleeps on the sofa. Grandmother's teenage sons then wake her up in the middle of the night, which is "uncomfortable" and "inconvenient" with her work schedule. Mother testified to visiting the children at least three times per week and explained that she discontinued the children's therapy because the therapist requested that Grandmother attend as well, and Grandmother was unable to attend. She recounted trying to see the girls over the weekend, but Grandmother did not respond to her texts and sent the girls to a relative's house, instead. Mother requested reunification with the children, and if not, then at least four overnights per week with them.

2. The Custody Order

The court entered its written order on October 1, 2018. The order acknowledged that the Department had not made reasonable efforts to achieve reunification:

> **THAT** during this review period the Department **has not made reasonable efforts** to achieve the concurrent permanency plan. Reasonable efforts were made to achieve Custody and Guardianship to a Relative, as outlined on pages four [] and five [] of the Department's report, but reasonable efforts were not made to achieve Reunification. During this review period, the

> Department made one telephone call to Mother, failed to follow up on information regarding Mother's new employment and housing, failed to create a service agreement, failed to exercise due diligence in locating a mailing address for Father, and failed to demonstrate thorough knowledge of the history of services provided to, and completed by, Mother and Father.

(Emphasis in original).[5] Nevertheless, the court proceeded through the factors outlined in Section 5-525 of the Family Law Article that it must consider when determining a permanency plan. The court made the following findings:

a) It would not be safe for the children to return to the home of the parents because of unaddressed concerns about domestic violence and M.M.-L.'s PTSD, and because of Father's criminal charges.

b) Mother did not take full advantage of the visitation allowed under the court's order and did not take the children to therapy.

c) The children are very bonded and attached to Grandmother, having lived with her for 21 months.

d) The children would suffer "significant emotional, developmental, and educational harm" if they were moved from Grandmother because Grandmother is an excellent caregiver and is involved with the children's therapy.

e) The children have been in state custody for nearly two years, and the children have become accustomed to Grandmother's home.

Based on these findings, the court ordered the case closed and custody and guardianship be awarded to Grandmother. The court ordered unsupervised visitation with Mother for at least eight hours per week, and for Father, visitation supervised by Grandmother, for a minimum of eight hours a week.

Mother filed her timely notice of appeal to this Court on October 12, 2018.

[5] The order incorrectly stated that Mother had waived her presence at the September 11 hearing. The court amended its order to reflect that Mother was present during the hearing in an order entered on October 16, 2018.

DISCUSSION

I.

Mother argues that the juvenile court's award of custody and guardianship of M.M.-L. and K.M.-L. to Grandmother, after explicitly finding that the Department failed to make reasonable efforts to reunify the children with their mother, was in error. The Department's error, she claims, is twofold: it failed to create a service plan, as is required under Maryland law, and it failed to properly monitor her compliance with the court's order. The latter error was compounded when the juvenile court based its ruling on incorrect and inaccurate information, as it was unaware that Mother "demonstrated compliance with all of the requirements of the prior court order[.]" Such insufficient monitoring constitutes a "failure to provide reasonable reunification efforts" and is sufficient ground for reversal. On the whole, Mother claims that the court's order violated her constitutional right to parent.

The Department argues that the juvenile court exercised its discretion properly by awarding custody to Grandmother because the court properly considered the factors it "must consider before granting custody and guardianship of a CINA to an individual who is not a parent" pursuant to CJP § 3-819.2(f), as well as the six factors a court must consider under FL § 5-525. In the Department's view, a juvenile court may award custody pursuant to a concurrent plan without "consider[ing] the Department's efforts to reunify the child[ren] with the parents" or "find[ing] that additional efforts toward reunification would be futile." Moreover, the Department continues, the complained-of "unreliable" information does not merit reversal because the court's "expressed concerns about domestic violence between Mother and Father" were "ample evidence to support [it]s

determination." The Department concludes that any unfairness to Mother must be weighed against the children's needs, which are paramount. Further, according to the Department, Mother and Father "retain standing as parents and may later seek custody of the children if circumstances have changed and reunification is in the children's best interests."

A. Standard of Review

Maryland Courts apply "three different but interrelated standards of review" in child custody disputes:

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

In re Adoption of Cadence B., 417 Md. 146, 155 (2010) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). With respect to questions of statutory interpretation, we recognize that the provisions of the Maryland Code Family Law Article and Courts and Judicial Proceedings Article that deal with the same subject are read together as "one family law scheme." *See Henriquez v. Henriquez*, 413 Md. 287, 305 (2010). We read a statutory provision's "plain language 'within the context of its statutory scheme,' and 'consider the purpose, aim, or policy of the Legislature in enacting the statute[.]'" *In re O.P.*, 240 Md. App. 518, 557-58 (2019) (brackets omitted) (quoting *Espina v. Jackson*, 442 Md. 311, 322 (2015)).

B. The CINA and Family Law Scheme

Parents have the right, guaranteed by the Fourteenth Amendment to the United States Constitution, "to raise [] children free from undue and unwarranted interference on the part of the State," and the legal preference is thus for children to remain with their parents. *In re Adoption/Guardianship of Rashawn H. ("Rashawn H")*, 402 Md. 477, 495 (2007). The Supreme Court, and "Maryland, too, has declared a parent's interest in raising a child to be so fundamental that it cannot be taken away unless clearly justified." *Boswell v. Boswell*, 352 Md. 204, 218 (1998) (quotations omitted).

Consistent with this, the Maryland Code exhibits an explicit preference that children remain with their natural parents. "Maryland has adopted, in termination of parental rights, adoption, and custody proceedings, a prima facie presumption that a child's welfare will be best served in the care and custody of its parents rather than in the custody of others." *In re Yve S.*, 373 Md. 551, 572 (2003). "Courts must address the presumption accorded to parents, rather than deciding at the outset what living arrangement is in the child's best interests." *In re Adoption/Guardianship of H.W. ("H.W.")*, 460 Md. 201, 226 (2018). Otherwise, the court risks placing "the natural parents and a third party [] on the same footing." *Id.* (internal citations omitted).

This preference for parental custody, however, must always yield to the best interest of the children. Maryland statutory and decisional law, alike, make clear that "[a] parent's right may not be absolute" and the child's best interest takes precedence when those interests conflict with the rights of the parents. *In re Karl H.*, 394 Md. 402, 416 (2006) (citing Code of Maryland Regulations ["COMAR"] 07.02.11.07(A)). Yet, the showing

required for removing children from their parents remains is high. Indeed, "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." *In re Adoption/Guardianship Nos. J9610436 & J9711031*, 368 Md. 666, 672 (2002). Maryland courts reconcile the parent's fundamental right to raise his or her own children with the children's-best-interest standard through application of the "substantive presumption [] of law and fact [] that it is in the best interest of the children to remain in the care and custody of their parents." *Rashawn H.*, 402 Md. at 495. The State can rebut the presumption that a child's best interests are served by the parents when "weighty circumstances" dictate otherwise. *In re Ashley S.*, 431 Md. 678, 687 (2013). Such weighty circumstances are established "by a showing either that the parent is 'unfit' or that 'exceptional circumstances' exist which would" render the parents' custody contrary to the child's best interests. *Rashawn H.*, 402 Md. at 465.

C. CINA Permanency Plans

Children in Need of Assistance

The purposes of CINA proceedings are, among other things, "[t]o conserve and strengthen the child's family ties[,]" "to separate a child from the child's parents only when necessary for the child's welfare," and "[t]o hold parents of children found to be in need of assistance responsible for remedying the circumstances that required the court's intervention." CJP § 3-802(a)(3)-(4). In CINA cases, "the court's role is necessarily more pro-active," *In re Mark M.*, 365 Md. 687, 706 (2001), as "[c]ourts have a higher degree of

responsibility where abuse [or neglect] is proven." *Yve S*, 373 Md. at 573. Finding a child to be CINA triggers certain family services from the State, including "housing, visitation, mental and physical assessments, parental courses, psychological therapy, drug rehabilitation, and educational services for the family." *Karl H.*, 394 Md. at 416.

Parents have the right to due process during their child(ren)'s CINA proceedings. *Id.* The process due includes reasonable notice and "an adjudicatory and disposition hearing to determine whether the child is a CINA." *Id.* (citing CJP § 3-819). "At this hearing, the court will determine whether a child requires assistance, and if the court makes such a determination, it will then decide the intervention necessary 'to protect the child's health, safety, and well-being.'" *In re C.E.*, 456 Md. 209, 218 (2017) (quoting CJP § 3-801(m)).

Additionally, when the Department elects to commit the child to the local department, it "is required to develop a permanency plan that is in the best interest of the child." *In re Blessen H.*, 392 Md. 684 696 (2006) (citing FL § 5-525). The permanency plan must, "first and foremost," consider reunification with the children's parents. *Id.* (citing the statute now-codified at FL § 5-525(f)(2)). Indeed, "[t]he statutory mandate requires that reunification of the child with the parent be the goal of the permanency plan if there is competent and credible evidence that future abuse or neglect is not likely." *Yve S.*, 373 Md. at 618. The permanency plan may, however, be a "concurrent permanency plan," which involves "taking concrete steps to implement both primary and secondary permanency plans, for example, by providing time-limited family reunification services

while also exploring relatives as resources." *Karl H.*, 392 Md. at 418 & n.13 (quoting COMAR 07.02.11.03(B)(11)).

Permanency Plan Hearings

Within 11 months from determining a child is CINA, and generally every six months thereafter while the child remains CINA, the court must hold a hearing to review the child's permanency plan. CJP § 3-823. At the hearings, the court must revisit the goal of the plan to evaluate progress toward the permanency goal and to assess whether the permanency plan should be changed based on current circumstances. *In re Andre J.*, 223 Md. App. 305, 322 (2015) (citing *Yve S.*, 373 Md. at 582). The court must determine the following:

> *Determinations to be made at hearing.* — (1) At a permanency plan hearing, the court shall:
>
> **(i)** Determine the child's permanency plan, which, to the extent consistent with the best interests of the child, may be, 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 under § 3-819.2 of this subtitle;
>
> 3. Adoption by a nonrelative;
> 4. Custody and guardianship by a nonrelative under § 3-819.2 of this subtitle; or
> 5. Another planned permanent living arrangement[.]
>
> * * *
>
> (2) In determining the child's permanency plan, the court shall consider the factors specified in § 5-525(f)(1) of the Family Law Article.

CJP § 3-823(e) (emphasis added). *See also* FL § 5-525(f):

> *Development of a permanency plan.* — (1) In developing a permanency plan for a child in an out-of-home placement, the local department shall give primary consideration to the best interests of the children, including

consideration of both in-State and out-of-state placements. The local department shall consider the following factors in determining the permanency plan that is in the best interests of the child:

(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;

(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.

(2) **To the extent consistent with the best interests of the child** in an out-of-home placement, the local department *shall* consider the following permanency plans, **in descending order of priority**:

(i) **returning the child to the child's parent or guardian**, unless the local department is the guardian;

(ii) placing the child with relatives to whom adoption, custody and guardianship, or care and custody, in descending order of priority, are planned to be granted;

(iii) adoption . . . ;

(iv) another planned permanent living arrangement[.]

FL § 5-525(f)(1)-(2) (emphasis added).

The Department's Reasonable Efforts

As a corollary to these provisions, FL § 5-525(e) "requires the Department to make 'reasonable efforts' in support of a permanency plan of parental reunification established under [CJP] § 3-823(e)(1)." *In re James G.*, 178 Md. App. 543, 570 (2008). Specifically, FL § 5-525(e)(1)-(2) provides:

(e) *Reasonable efforts.* – (1) Unless a court orders that reasonable efforts are not required under § 3-812[6] of the Courts Article or § 5-323 of this title,

[6] The Court of Appeals has instructed that "CJP § 3-812 plays an important role in CINA litigation. . . . The juvenile court, pursuant to CJP § 3-812(d) may waive the

> reasonable efforts shall be made to preserve and reunify families:
>
> (i) prior to the placement of a child in an out-of-home placement, to prevent or eliminate the need for removing the child from the child's home; and
>
> (ii) to make it possible for a child to safely return to the child's home.
>
> (2) In determining the reasonable efforts to be made and in making the reasonable efforts described under paragraph (1) of this subsection, the child's safety and health shall be the primary concern.

The Court of Appeals has explained that a determination of the reasonableness of the Department's efforts is "case-specific" and "must be considered in light of the services at the Department's disposal." *In re Shirley B.*, 419 Md. 1, 7 (2011) (quotation marks omitted). Reasonable efforts to reunite the child with his or her parents may be made concurrently with reasonable efforts to place a child with a legal guardian.[7] FL § 5-525(e)(3).

At review hearings, the juvenile court must consider, among other things, whether the commitment remains necessary and appropriate, whether reasonable efforts have been made to finalize the permanency plan that is in effect, and the extent of progress that has been made "toward alleviating or mitigating the causes" that necessitated commitment.

Department's reasonable reunification effort obligation if it finds, by clear and convincing evidence, one of the conditions listed in CJP § 3-812(b)." *In re C.E.*, 456 Md. 209, 219 (2017). Those conditions include subjecting the child to chronic abuse, chronic and life-threatening neglect, sexual abuse, or torture; being convicted of a crime of violence against the child, another of the parent's children, or another parent or guardian of the child; or the involuntary loss of parental rights of a sibling of the child. CJP § 3-812(b).

[7] Legal guardianship in this context means that the guardian "has legal custody of the child unless the court that appoints the guardian gives legal custody to another person." CJP § 3-819.2(d).

CJP § 3-823(h)(2)[8]; *Yve S.*, 373 Md. at 581.

Specifically, in a review hearing conducted pursuant to CJP § 3-823, the juvenile court *must* "make a finding whether a local department made reasonable efforts to[] . . . [f]inalize the permanency plan in effect for the child." CJP § 3-816.1(b)(2)(i). The court must also require the Department "to provide evidence of its efforts" before the court reaches its determination and must "assess the [Department's] efforts since the last adjudication of reasonable efforts" rather than relying on efforts the Department had made in advance of a prior review hearing. CJP § 3-816.1(b)(4)-(5). Section 3-816.1(c) also mandates that the court must consider the Department's reasonable efforts in its ultimate determination and, *inter alia*, whether "[t]he caseworker is knowledgeable about the case" and "whether a local department has provided appropriate services that facilitate the achievement of a permanency plan for the child." If the court concludes that the local

[8] CJP § 3-823(h)(2) provides that "[a]t a review hearing, the court shall:"

(i) Determine the continuing necessity for and appropriateness of the commitment;

(ii) Determine and document in its order whether reasonable efforts have been made to finalize the permanency plan that is in effect;

(iii) Determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating commitment;

(iv) Project a reasonable date by which a child in placement may be returned home, placed in a preadoptive home, or placed under a legal guardianship;

(v) Evaluate the safety of the child and take necessary measures to protect the child;

(vi) Change the permanency plan if a change in the permanency plan would be in the child's best interest; and

(vii) For a child with a developmental disability, direct the provision of services to obtain ongoing care, if any, needed after the court's jurisdiction ends.

department has not made reasonable efforts toward reunification, then the court must "promptly send its written findings to[] the director of the local department[,] the Social Services Administration[,]" and other agencies. CJP § 3-816.1(f).

Permanent Placements

Among the goals of these hearings is "to effectuate a permanent placement for the child within 24 months after the date of initial placement." CJP § 3-823(h)(3). Although the court may, pursuant to CJP § 3-819.2, award custody and guardianship of the child to a relative or non-relative, the court's decision should be "guided by the hierarchy of permanency plans codified in CJP § 3-823(e)(1) and FL § 5-525." *In re: Adoption/Guardianship of C.E.*, ___ Md. ___, ___, No. 77, September Term, 2017, slip op. at 30 (filed June 7, 2019). As set out above, custody and guardianship with a relative under CJP § 3-819.2 is third in this hierarchy after the top priority of reunification with the parent or guardian, and the secondary priority of adoption by a relative. *See* CJP § 3-823(e)(1); *see also Adoption/Guardianship of C.E.*, ___ Md. at ____, slip op. at 30-31 (listing the hierarchy of priorities for placement).[9] "An order granting custody and guardianship to an individual . . . terminates the local department's legal obligations and responsibilities to the child." CJP § 3-819.2(c). In making such a determination, a juvenile court must consider the factors set forth in CJP § 3-819.2(f):

[9] When a permanency plan changes to adoption, CJP § 3-823(g) requires the court to: "(1) Order the local department to file a petition for guardianship in accordance with Title 5, Subtitle 3 of the Family Law Article within 30 days or, if the local department does not support the plan, within 60 days; and (2) Schedule a TPR hearing instead of the next 6-month review hearing."

(i) Any assurance by the local department that it will provide funds for necessary support and maintenance for the child;

(ii) All factors necessary to determine the best interests of the child; and

(iii) A report by a local department or a licensed child placement agency, completed in compliance with regulations adopted by the Department of Human Services, on the suitability of the individual to be the guardian of the child.

D. K.M.-L. and M.M.-L.

Returning to the case before us, we hold that the juvenile court's decision to award custody and guardianship to Grandmother and close the case under the circumstances presented was in error, and because this error was not harmless, we must remand for further proceedings. *In re Adoption of Cadence B.*, 417 Md. at 155. We explain.

Reunification as Priority

Although Mother and Father agreed to concurrent plans, the primary goal of the underlying CINA proceedings was reunification with the child's parent or guardian. *See* CJP § 3-823(e)(1); *see also Karl H.*, 394 Md. at 422 (outlining the problems with concurrent plans). Subsection (e)(1) of CJP § 3-823 lists "reunification with parent or guardian" as the priority, and § 3-823 (e)(2) states that the court "shall consider the factors specified in [FL] § 5-525(f)(1)." The considerations enumerated in FL § 5-525(f)(1) also begin with "the child's ability to be safe and healthy in the home of the child's parent." Despite the clear-cut priority for reunification with the child's parents, and the statutory requirement that the Department make reasonable efforts to enable reunification, the Department failed to do so. The Department surpassed the problem of "creating the impression that the natural parents and a third party stood on the same footing[,]" *H.W.*,

460 Md. at 226, by presenting the court with custody and guardianship to Grandmother as the only viable plan.

The Department insists that § 3-819.2(f) does not require the court to consider the Department's reunification efforts. The Department would have us read that singular statute in isolation and not together "as one family law scheme." *See Henriquez*, 413 Md. at 305. When the juvenile court found, correctly, that the Department failed to make reasonable efforts at reunification with Mother, under the facts and circumstances presented in this case, the court should have required the Department to fulfill its statutory obligation under FL § 5-525(e).[10] Heading into the CJP 3-819.2(f) hearing, the parties were operating under a concurrent plan of reunification and guardianship. Without waiver under CJP § 3-812 or exceptional circumstances present, it was error to award custody and guardianship to a relative without the necessary information regarding the reunification with Mother. In doing so, the court ignored the stated purpose of the CINA law, and, more specifically, the court's requirement under CJP § 3-816.1(a)(2) to consider the Department's reasonable efforts pursuant to FL § 5-525(e). Recognizing the family law statutes' common preference for family reunification and the need to interpret CJP § 3-819.2(f) within its greater statutory scheme to achieve the overall legislative purpose, *O.P.*, 240 Md. App. at 557-58, we conclude that the juvenile court in this case erred by proceeding to its analysis of CJP § 3-819.2 (and FL § 5-525(f)(1)) without first requiring

[10] Although the juvenile court may, if exceptional circumstances exist, waive the Department's obligations to make reasonable efforts toward reunification pursuant to CJP § 3-812, the court did not do so here—nor has the Department alleged that any grounds for such a waiver were present in this case. *Cf. C.E.*, 456 Md. at 218.

the Department to make reasonable efforts toward reunification with Mother as contemplated under the concurrent plan in place at the time.

We also reject the State's attempts to diminish the effect of the juvenile court's decision. The State offers, at footnote 6 of its brief, that "Mother and Father retain standing as parents and may later seek custody of the children if circumstances have changed and reunification is in the children's best interests." The facts of this case and the juvenile court's rationale, however, significantly limit the prospect of reunification. The juvenile court based its custody determination, in large part, on the children's bonding and attachment to Grandmother: that they lived with her for 21 months as of September 2018; that they were accustomed to Grandmother's house; and that the children could potentially suffer "significant emotional, development, and educational harm" if removed from Grandmother's care given that Grandmother is an excellent caregiver who is involved in the children's therapy.[11] Under these circumstances, unless *the Grandmother's* circumstances change, the passage of time will only further engrain the children in the setting upon which the juvenile court justified awarding custody and guardianship to Grandmother.[12] It seems that it would be difficult for Mother to show a change of

[11] Another reason the juvenile court gave for awarding custody and guardianship to Grandmother was Father's most recent arrest. It is curious how Father's criminal conduct could militate custody with the children's paternal grandmother over Mother when the record suggests that Father is no less likely to be around Grandmother's house than Mother's apartment.

[12] Last week, the Court of Appeals reiterated that when considering the termination of parental rights, the "[p]assage of time, without explicit findings that the continued relationship with [the father] would prove detrimental to the best interests of the children, is not sufficient to constitute exceptional circumstances." *In re Adoption/Guardianship of*

circumstances by improving her own circumstances, since it appears from the record that the Department has already acknowledged that Mother's circumstances improved since the children were declared CINA and that Mother has taken steps toward improving her fitness as a parent, including completing therapy and attaining treatment goals. The facts of this case demonstrate why it is so important that the juvenile court enforce the statutory mandate that the Department work toward familial reunification while the children are still CINA and within the juvenile court's continuing jurisdiction, rather than prioritizing finality or a concurrent, but secondary, plan.

Lack of Permanency

The Court of Appeals in *Adoption/Guardianship of C.E.* considered a juvenile court's decisions emanating from a termination of parental rights ("TPR") proceeding under FL § 5-323. The court declined to terminate the father's right to parent C.E., a CINA child, and instead, changed the permanency plan to custody and guardianship with a relative under CJP § 3-819.2. ___ Md. at ____, slip op. at 30. The juvenile court in that case determined

> (1) that the Department had made reasonable efforts to enable reunification; (2) that neither parent exhibit[ed] "essential safe parenting skills;" (3) that Father lacked housing in which C.E. could reside; (4) that, on the whole, neither parent had accomplished a material change to the circumstances rendering C.E. a CINA; (5) that C.E. ha[d] full adjusted to his placement with [his aunt and uncle]; (6) that neither parent had contributed support for C.E.'s

C.E., ___ Md. ___, ___, slip op. at 29 (filed June 7, 2019) (quoting *In re Adoption/Guardianship of Alonza D.*, 412 Md. 442, 463 (2010)). As the Court cautioned in *Alonza*, if bonding with a potential adoptive parent were "the dispositive factor, without consideration of whether a continued relationship with the biological parent would be detrimental to the best interests of the children, then reunification with the parent would be a mere chimera." 412 Md. at 464.

> care and maintenance; and (7) that reunification with the natural parents [wa]s unachievable within the foreseeable future, if ever.

Id., slip op. at 26. The juvenile court also found, however, that C.E. knew and was attached to his father, and rather than terminate the father's parental rights, granted custody and guardianship to C.E.'s aunt and uncle. *Id.*

The Court of Appeals reversed, holding that the juvenile court abused its discretion in declining to terminate the father's parental rights under the unfitness prong. *Id.* at ___, slip op. at 32. The Court reviewed its earlier decision *In re Adoption/Guardianship No. 10941*, in which the juvenile court had also declined to terminate parental rights in favor of permanent custody and guardianship with a relative. 335 Md. 99, 120 (1994). The Court in *10941* reversed, concluding that "[o]nly termination of parental rights and a subsequent permanent placement, such as adoption sought by the grandparents here, can provide [the child] with the permanency he needs and the Legislature intended." *Id.* at 119-20. Applying this rationale to the facts in *Adoption/Guardianship of C.E.*, the Court observed that the juvenile court "attempted to bypass" the child's need for permanency when the court set a permanent plan of custody and guardianship to a relative while declining to terminate the parental rights of C.E.'s mother and father. ___ Md. at ___, slip op. at 30. Because custody and guardianship with a relative "does not afford . . . the same permanency as adoption with a relative[,]" the Court reasoned that "custody and guardianship with [C.E.'s aunt and uncle] [wa]s not the preferred permanency solution." *Id.*, slip op. at 31. Ultimately, the court ruled that the juvenile court erred by not considering how its finding that the father "could never safely care for C.E." would affect

C.E.'s permanency. *Id.*, slip op. at 31-32.

Returning to the case on appeal, the Department must fulfill its obligations to work toward and report accurately on the reunification option under the concurrent plan before the juvenile court proceeds to consider the appropriate permanency placement. Even though reunification is the priority, as the Court of Appeals pointed out in *Adoption/Guardianship of C.E.*, the juvenile court may still decide custody and guardianship with Grandmother is in the children's best interests. *See id.*, slip op. at 31, n.16 ("There may be instances when adoption is not the most appropriate permanency goal and a long-term placement is more appropriate." (citing *In re Adoption/Guardianship of Victor A.*, 386 Md. 288 (2005)). But then, the court should articulate the "compelling reason to continue long-term placement over the statutory preference" for either (1) reunification with the parent or guardian or (2) adoption by a relative. *Id.*, slip op. at 30-31. In other words, if the court determines that reunification with parent or guardian is not in the children's best interests, it must also articulate why guardianship with a relative is more appropriate than the statutory preference of adoption by a relative. *See id.*

Accordingly, we remand to the juvenile court for further proceedings.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY VACATED. MONTGOMERY COUNTY TO PAY COSTS.