Circuit Court for Worcester County
Case No. C-23-JV-17-000028

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3255

September Term, 2018

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IN RE: J.W., M.W., A.B. AND M.B.

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Berger,
Reed,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Berger, J.

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Filed: April 10, 2020

The Circuit Court for Worcester County, sitting as the juvenile court, entered an order changing the permanency plan for A.B.,[1] the minor child of Ms. G., the appellant, from reunification to custody and guardianship with a nonrelative. Ms. G. noted an appeal, presenting the following question for our review:

> Did the court err in changing A.B.'s permanency plan from reunification to custody and guardianship with a nonrelative?

For the reasons explained herein, we shall affirm the judgment of the circuit court.

## BACKGROUND

Ms. G. has five minor children: A.B. (born June 2003), W.B., (born October 2004), M.B. (born August 2005), M.W. (born November 2012), and J.W. (born September 2013). Ms. G. has been involved with the social services departments of four Maryland counties (Baltimore City, Allegany County, Wicomico County, and Garrett County) dating back to 2005. The social services department in Mineral County, West Virginia, also investigated reports of neglect between 2008 and 2009, but that department had difficulty maintaining contact with the family.

In November 2016, Ms. G. contacted the Worcester County Department of Social Services (the "Department") to request in-home family services to assist her with her relocation to Worcester County. Ms. G. and the children lived with Mr. W., who is A.B.,

[1] On December 6, 2019, this Court granted Worcester County Department of Social Services' motion to dismiss the appeals of J.W., M.W., and M.B. Ms. G.'s appeals of the guardianship proceeding regarding J.W. and M.W. are pending in separate appeals: *In re: J.W.*, No. 1163, Sept. Term, 2019 and *In re: M.W.*, No. 1205, Sept. Term, 2019. The was no appeal to this Court with respect to the guardianship of M.B.

M.W. and J.W.'s father. The Department assigned an in-home caseworker and assisted with purchasing beds and clothes for the children. The family's home was at risk of being condemned, and Mr. W. worked with the landlord to repair the home to meet minimum housing code requirements.

While the in-home caseworker was working with the family, the Department received six reports concerning the children's safety. Local police responded to the family's home on multiple occasions. Mr. W. had also been cited for driving while intoxicated, driving under the influence of alcohol while transporting a minor, and negligent driving, among other violations, and served with a criminal summons for second-degree assault against his landlord.

On January 11, 2017, Ms. G. advised the in-home worker that A.B. had attempted to commit suicide by hanging herself with a bathrobe belt. The Department held Family Involvement Meetings (FIMs) on January 18, 2017 and January 27, 2017 to discuss efforts to help the family and keep the children safe.

On February 7, 2017, the Department received reports from multiple parties indicating concerns about the children's safety. The Department assigned social worker Kimberly Linton to investigate the reports. Ms. Linton, accompanied by a Pocomoke City Police Department sergeant, visited the home and interviewed the family members separately. Each child reported that he or she had been punched, pushed, hit in the head, and smacked by Mr. W. The children indicated that Mr. W. had "slam[ed]" the "babies" (M.W. and J.W.) on the floor and couch and "smack[ed]" them "on their butts so hard

they [fell] on the floor and they [cried] so hard they don't breathe." J.W. explained that the bruise on her face was caused by Mr. W., stating "[D]addy did hit. Him mad."

A.B., M.B. and W.B. informed Ms. Linton that they did not feel safe in the home with Mr. W. The children explained to Ms. Linton that Ms. G. did not intervene when Mr. W. acted violently because Mr. W. also assaulted Ms. G. and she was afraid of him. The children reported that Mr. W. consumed a 30-pack of beer per day.

Ms. G. did not respond to Ms. Linton's questions regarding the children's fear of Mr. W. She stated that she had separated from Mr. W. several times, but they had always reconciled. Ms. G. also attempted to take responsibility for Mr. W.'s recent driving under the influence charges by stating that it was her fault because she should have been the one driving that day.

Ms. Linton observed Mr. W. to be under the influence of alcohol when she interviewed him. Mr. W. acknowledged that he had an alcohol problem. He stated that he drinks all day, every day, and consumes 30 beers every 2-3 days. He denied beating the children, and responded to questions about the bruise on J.W.'s face by asking Ms. G. to tell Ms. Linton about J.W.'s "condition". Ms. G. reported that J.W. had autism.

Ms. Linton, Ms. G., and Mr. W. agreed upon a safety plan to address concerns for the children's safety. They agreed that Mr. W. would have limited contact with the children that would be supervised by an adult other than Ms. G. They also agreed that M.W. and J.W. would sleep on the first floor because a broken spindle on the upstairs railing made the stairs unsafe, and Ms. G. had reported that J.W. had fallen through the

railing several weeks earlier. Ms. G. then drove Mr. W. to a friend's home in Fruitland while the children stayed with a neighbor.

The following day, Ms. Linton returned to the home with a Worcester County Sheriff's Office detective to speak to Ms. G. in the absence of Mr. W. No one was at home. A neighbor approached Ms. Linton and the detective and informed them that Mr. W. had returned the previous evening two hours after Ms. Linton had left the home.

Upon learning that Ms. G. and Mr. W. had violated the safety plan, Ms. Linton and the detective visited the children's schools and interviewed them. M.W. was not present at school. A.B. and W.B. reported that Mr. W. had returned to the home the previous evening and, at one point, Ms. G. had gone to a neighbor's house and left Mr. W. home alone with the children. The Department determined that Ms. G. was unwilling to comply with the safety plan and keep the children safe. The children were removed from her care and placed in emergency shelter.

Ms. Linton observed that A.B. and W.B. were not upset when they were taken from school to the Department. M.W. and J.W. initially stated that Mr. W. had been at the house, then they stated that he had not been there, asking not to "tell the cops because that's mean." M.W. reported that she had slept in J.W.'s room on the second floor of the home on the previous night. She also stated that "her prayers had been answered" because she "had never been part of a loving family before."

Ms. Linton observed that the children appeared unclean and unkempt. M.B. and M.W. wore the same clothes that had been wearing on the previous day. J.W.'s face

showed visible dirt. A.B.'s and M.B.'s hair appeared not to have been washed for some time and they had head lice. W.B.'s pants were too big and he had secured them with a trash bag tie instead of a belt.

The Department brought the five children to the hospital for medical examinations and provided them with clean clothes, undergarments and hygiene products. Medical records indicated that J.W. and M.W. had not received needed immunizations or wellness examinations. W.B.'s medication for attention deficit disorder had run out and Ms. B. had not refilled it. M.W.'s dental examination revealed that she needed two fillings and a crown. J.W.'s laboratory reports revealed that she had elevated lead levels and a vitamin D deficiency. Though J.W. was found to be developmentally behind by six to seven months, there was no evidence that she had been diagnosed with autism.

On February 13, 2017, the court held a shelter care hearing and determined that it was contrary to the children's welfare for them to reside with Ms. G. and Mr. W. The court placed A.B. in the temporary custody of the Department. At a March 13, 2017 hearing, the facts of abuse and neglect were sustained. On April 10, 2017, the court adjudicated A.B. to be a Child in Need of Assistance ("CINA") and committed her to the temporary custody of the Department. Ms. G. was ordered to attend parenting classes and engage in mental health treatment.

At the permanency plan hearing on November 13, 2017, the Department reported that Ms. G. had consistently attended weekly supervised visits with A.B. and her siblings at the Department and participated in parenting classes. Despite the parenting classes,

however, Ms. G. failed to show progress in her parenting skills. The Department reported that Ms. G. appeared not to take personal responsibility for her role in neglecting and abusing her children and showed continued instability in her personal life and plans for housing. She referred to her new partner, Mr. H., as the children's "new daddy" and repeatedly promised the children that she and Mr. H. were buying a new house where the children would have pets, toys, and bedrooms of their own. Department staff discussed with Ms. G. avoiding conversations with the children that gave them false hopes or set them up for disappointment.

A.B. experienced emotional difficulties following her visits with Ms. G. She told Department staff that she was tired of Ms. G.'s false promises and unfulfilled plans. Initially, A.B. received bi-weekly mental health therapy at her school through the Worcester County Health Department. In September of 2017, A.B. began therapy with Sabrina Jastram at Children's Choice. By December 2017, A.B. had requested that her visits with Ms. G. be reduced to a bi-weekly, rather than a weekly, basis.

The Department reported that Ms. G. had failed to take the initiative to complete mental health and domestic violence evaluations, as directed by the Department. As a result, the Department arranged for Ms. G. to have a mental health/trauma evaluation with Dr. Zweig on October 10, 2017 and agreed to pay for ten therapy sessions. The Department also assigned Terry Edwards, a parent support worker, to assist Ms. G. with improving her parenting skills and her relationships with her children.

At the conclusion of the hearing, the court ordered that A.B. remain in the custody of the Department for out-of-home placement and further ordered a permanency plan of reunification.

A second permanency plan review hearing was held on July 19, 2018. The Department reported that Ms. G. had consistently attended visitation with the children. The Department expressed concern, however, that Ms. G. had been inconsistent in her therapy appointments with Dr. Zweig. She had attended six appointments, cancelled two appointments, and failed to attend two appointments. Dr. Zweig had reported to the Department that Ms. G. had been engaged in the sessions she attended.

The Department reported that A.B. had made "great progress" in her mental health therapy developing coping skills, and her therapy schedule had been reduced from bi-weekly to monthly. A.B. was doing well in school and enrolled in all honors classes. She enjoyed family activities with her resource family, including camping, swimming, attending concerts and amusement parks, and family celebrations. She had also started taking horseback riding lessons.

The court noted that Ms. G.'s housing was unstable, her mental health therapy was inconsistent, and she had recently changed jobs. Accordingly, the court maintained the permanency plan of out of home placement with a goal of reunification.

At the permanency plan review hearing on January 17, 2019, Ms. Jastram, an expert in trauma therapy, testified that A.B. suffered from trauma related to physical abuse and symptoms of post-traumatic stress. A.B. informed Ms. Jastram that visits with

her family caused her to recall too many traumatic memories and interfered with her ability to move on with her life. A.B. felt that she never had the chance to enjoy being a sibling because she was always their caregiver. In August, 2018, A.B. stopped attending visits with Ms. G. A.B. told Ms. Jastram that she did not want to return to Ms. G.'s care. A.B. felt that Ms. G. had not followed through on her promises to regain custody of A.B. and her siblings, and instead, she had remarried and moved on with her life without them. A.B. had also notified the court that she no longer wished to have any contact with Ms. G.

Ms. Jastram stated that A.B. was doing very well emotionally and showing no clinical signs of depression, anxiety or trauma. According to Ms. Jastram, A.B. was doing "phenomenal" in her placement, bonded with her foster family, and excelling "in all areas of her life." She testified that "A.B. went from a child who's constantly having trauma flashbacks and trauma triggers to being able to function very well and get good grades and take honors courses and she's just happy to be able to live."

Ms. Jastram believed that A.B. still loved Ms. G. and that she may be open to a relationship with Ms. G. in the future. Ms. Jastram believed that family therapy was not in A.B.'s best interests because A.B. had begun to manage the guilt she felt about being in foster care, which was allowing her to lead a productive life. She explained that, at that time, A.B. needed to focus on her own emotional well-being. Ms. Jastram opined that a permanency plan of custody and guardianship to a nonrelative was in A.B.'s best interests.

Ms. Edwards testified that, since September 2017, she had observed visits between Ms. G. and the children and provided parent coaching to Ms. G. before and after those visits. According to Ms. Edwards, A.B. was often placed in the role of parenting her younger siblings during visitation. Ms. Edwards reported that during a visit to a park in April, 2018, the two youngest children were "squabbling" and A.B. had to intervene to resolve the conflict because Ms. G. was just "ignor[ing]" it. At another supervised visit, Ms. G. offered food with red dye in it to one of her children who was allergic to red dye, and A.B. stepped in to remind Ms. G. that the child could not eat the food. Ms. Edwards observed that Ms. G. viewed A.B. as a peer, not a child, which she attributed to the dynamic of a relationship marked by shared abuse in which Ms. G. had relied on A.B. for support.

A.B.'s relationship with Ms. G. became further strained in July 2018, when Ms. G. became engaged to marry Mr. H. A.B. resented that Ms. G. and Mr. H. (who also attended visits) focused discussions on their recent engagement and showed little interest in A.B.'s life.

Ms. Edwards expressed concerns regarding Ms. G.'s failure to obtain needed mental health treatment. Despite Ms. G. having a history of childhood trauma and history of abuse with Mr. W., she did not understand that mental health counseling was critical to her own wellbeing and her children's wellbeing. Ms. G. did not fulfill her promises to make therapy appointments and failed to attend therapy on a consistent basis. Ms. Edwards advised Ms. G. that she must engage in therapy consistently, and that by

attending therapy only once a month or once every three months, she would not benefit from therapy.

Ms. Edwards acknowledged that Ms. G. had made some progress by recognizing that she shared responsibility with Mr. W. for failing to protect the children from abuse and neglect. Ms. Edwards remained concerned, however, that Ms. G. had not adequately addressed her own mental health issues or demonstrated that she understood what she needed to do in the future to protect the children from further abuse and neglect.

Ms. Edwards also had concerns about Ms. G.'s relationship with Mr. H. Ms. G. had acknowledged to Ms. Edwards that Mr. H. was controlling. He also suffered from post-traumatic stress syndrome from his military service and had been friends with Mr. W. A.B. had expressed to Ms. Edwards that she was worried about Mr. H.'s children but she would not elaborate further on the subject.[2]

Paula Andreas, the Department case worker for A.B., testified that A.B. has remained in the same therapeutic foster home for twenty-three months. Ms. Andreas stated that A.B. was doing "extremely well" in her therapeutic home. A.B. informed Ms. Andreas that she wanted to continue living with her resource family, but that she did not want to be adopted.

[2] Mr. H. testified to a complicated history with his five biological children, none of whom live with him. In 2003, he gave up his parental rights to one daughter, who was 15 years old in January 2019. He had custody of another daughter for seven years because her mother had substance abuse problems, but that daughter, who was thirteen in January 2019, was living with her mother in Kansas. As of January 2019, he had not been permitted to have contact with his then four-year-old daughter for over a year.

Marissa Bradley, A.B.'s C.A.S.A. (court-appointed special advocate), testified that A.B. was stable and doing very well. She stated that A.B. was "the happiest that [Ms. Bradley] has ever seen her."

Mr. H testified that he and Ms. G. moved into a rental home in August of 2018 with financial assistance from the Department. The Department paid the security deposit of $900.00, and Mr. H. paid the first month's rent of $900.00. Mr. H. and Ms. G. married in September of 2018. Mr. H. stated that his military pension, which was his sole source of income, was sufficient to meet his monthly expenses and pay the monthly rent for the home. Mr. H. stated that he has encouraged Ms. G. to go to counseling and he attended two of her visits with Dr. Zweig.

Ms. G. testified that she and Mr. H. have a one-year lease for their house. Ms. G. had worked briefly at Sam's Club and The Humane Society. Ms. G. stated that she has been hired at Big Lots to work 20 hours per week, but she had not started working there yet. According to Ms. G., her doctor does not want her to work because she has epilepsy and fainting spells.

Ms. G. testified that she has found therapy helpful, but that she had not engaged in therapy with Dr. Zweig in three months. She explained that she has been focused on receiving treatment for her seizures and migraines. One week prior to the January 2019 hearing, she had attended an intake appointment at Chesapeake Health and scheduled her first mental health therapy appointment for the following week.

Ms. G. stated that she has received valuable parent coaching from Ms. Edwards. Prior to receiving coaching, Ms. G. had been afraid to correct her children because she did not want to hurt their feelings. She stated that she wanted to be their friend more than their parent. Because of Ms. Edwards' coaching, Ms. G. is no longer afraid to correct her children and give them needed guidance.

Ms. G. believed that she was mentally "capable" and "ready" to engage in family therapy with her children. She recognized that her relationship with A.B. "needs work." Though Ms. G. understood that A.B. had refused to engage in family therapy, Ms. G. believed that family counseling would be helpful as the first step in fixing their relationship. She explained that she wanted her children to know that she did not give up on them, but fought to get them back, and that she loves them.

At the conclusion of the hearing, the juvenile court changed A.B.'s permanency plan from reunification to custody and guardianship with a nonrelative. Ms. G. noted a timely appeal.

## STANDARD OF REVIEW

We review child custody cases under three "different but interrelated" standards of review. *In re Adoption/Guardianship of Cadence B.*, 417 Md. 146, 155 (2010). First, we review factual findings under the clearly erroneous standard. *Id*. (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). Second, we review legal questions de novo, requiring further proceedings if it appears that the trial court erred in its determinations as a matter of law, except in cases of harmless error. *Id.* Finally, "when reviewing a juvenile court's

decision to modify the permanency plan for the children, this Court 'must determine whether the court abused its discretion.'" *In re A.N.*, 226 Md. App. 283, 306 (2015) (quoting *In re Shirley B.*, 419 Md. 1, 18 (2011)).

**DISCUSSION**

Ms. G. contends that the juvenile court erred in changing A.B.'s permanency plan from reunification to custody and guardianship with a non-relative "where [she] has made significant strides to remedy the Department's concerns regarding her parenting." Ms. G. argues that because she ended the abusive relationship with Mr. W. that lead to the Department's involvement with the family, she has remediated the circumstances that led to the initial abuse and neglect finding. She argues that she has also improved her parenting skills through parenting classes, established stable housing and entered a stable and supportive relationship, and attended therapy with Dr. Zweig. She contends, therefore, that retaining the plan of reunification is in A.B.'s best interests.

A.B. contends that it is in her best interests for her to remain with a non-relative in the therapeutic home where she has resided for almost three years. A.B. disagrees that her mother has made "significant strides" to address the Department's concerns regarding her parenting, and contends that Ms. G. she has failed to establish the financial and emotional independence required for her to avoid repeating the traumatic and dependent patterns that led to A.B.'s neglect.

The Department argues that the circuit court committed no error in changing A.B.'s permanency plan from reunification to custody and guardianship with a

nonrelative because Ms. G. failed to adequately address her mental health needs and failed to "take the necessary steps to break her neglectful pattern and to ensure that she will protect A.B.'s future safety."

A parent's right to raise his or her children without undue interference by the State is a fundamental constitutional right that cannot be taken away "unless clearly justified." *In re A.N.*, 226 Md. App. at 306 (internal quotation marks and citations omitted). That right, however, is not without limitation, and must be balanced against the State's interest in protecting the health, safety, and welfare of the child. *Id.* (citation omitted). Importantly, the Court of Appeals has recognized that "the best interests of the child may take precedence over the parent's liberty interest in the course of a custody, visitation, or adoption dispute." *In re Mark M.*, 365 Md. 687, 705 (2001) (internal quotation marks and citation omitted).

If the juvenile court determines that a child is CINA, it has the discretion to grant custody of the child to a parent, relative or other individual, or a local department. Md. Code (2018 Supp.) § 3-819(b)(1)(iii) of the Courts and Judicial Proceedings Article ("CJP"). When a child is committed the custody of a local department of social services, the department is required to develop and implement a permanency plan that is in the child's best interests. Md. Code (2019 Repl. Vol.) §5-525(f)(1) of the Family Law Article ("FL"). The circuit court is permitted to "[c]hange the permanency plan if a change in the permanency plan would be in the child's best interests." CJP § 3-823(h)(2). The best interests of the child are the primary concern in the development of a

permanency plan. *See In re Andre J.*, 223 Md. App. 305, 320 (2015); *In re Shirley B.*, 191 Md. App. 678, 707 (2010).

> CJP § 3-823(h)(2) provides that, at the permanency plan hearing, the court must:
>
> > (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; and
> >
> > (vi) Change the permanency plan if a change in the permanency plan would be in the child's best interest.

In addition, "[e]very reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement." CJP § 3-823(h)(3). In developing a permanency plan, the circuit court is required to use the following factors set forth in FL §5-525(f)(1) as a guide in determining a child's best interests:

> (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.

Pursuant to CJP § 3-823(h)(2), the circuit court determined that it was appropriate and in A.B.'s best interests to continue an out of home placement. The court found that Ms. B.'s mental health needs continued to be unmet and that she needed to be consistent in engaging in weekly trauma-focused therapy. The court determined that the Department had made reasonable efforts to finalize a plan of reunification by scheduling regular visits, providing transportation and housing assistance to Ms. G., and medical care and mental health counseling to A.B.

In determining the extent of progress made in alleviating or mitigating the causes of commitment, the court found that Ms. G. had made some progress, and though Mr. W. was no longer involved, her mental health issues remained. The court's projected date that A.B. could be placed under a legal guardianship was the next review hearing.

In determining whether a change in permanency plan was in A.B.'s best interest, the circuit court considered the factors set forth in FL §5-525(f)(1). The court was unable

to make a finding as to whether A.B. would be safe and healthy in Ms. G.'s home because no evidence was presented as to whether Ms. G. had accessed any services to enable A.B. to make a transition to her home. The court found that A.B. did not have a strong attachment or emotional ties to Ms. G., as she had given very clear signals that she did not wish to be reunited with Ms. G.

The court noted that A.B. had a strong attachment to her foster parents, whom she has lived with since she entered care, and she wanted to continue living with them. The court found that moving A.B. from her current placement would cause her to suffer an exponential increase in stress and distress. Finally, the court determined that the potential harm to A.B. by remaining in state custody for an excessive period of time was outweighed by the fact that she was "in such a good place that emotionally and developmentally [she was] flourishing, which [she] was not doing when [she] was with [Ms. G.]."

Finally, with respect to whether Ms. G. had resolved the problem that endangered A.B., the court explained that "Ms. [G.] would argue that she has and she would be right in a way, Mr. W. is out of the house, but the [] continued mental health issues are what allowed that situation to be ongoing for a while."

We recognize that the circuit court "is in the unique position to marshal the applicable facts, assess the situation and determine the correct means of fulfilling a child's best interests." *In re Adoption/Guardianship Nos. J9610436 and J9711031*, 368 Md. 661, 696 (2002) (internal quotation marks and citation omitted). The court's finding

that Ms. G. had not adequately resolved the problems that had endangered A.B. was supported by the record. Though the abuse inflicted by Mr. W. was no longer present, A.B. had also suffered neglect in Ms. G.'s care. There was evidence that A.B. had attempted to hang herself. She also suffered from poor hygiene; she had head lice and hair that appeared as if it had not been washed in a long time. Because Ms. G. had not consistently received mental health treatment, no real progress had been made in her own mental health or her ability to support A.B.'s physical and emotional needs. No evidence put forth by Ms. G. suggested that she would avail herself of the services necessary to protect A.B. from future trauma and neglect. *See In re Dustin T.*, 93 Md. App. 726, 731 (1992) (explaining that a parent's "past conduct is relevant to a consideration of his or her future conduct").

In determining that reunification was not in A.G.'s best interests, the court also considered that A.B. was thriving in her current placement. She was excelling in school, engaged in social activities, and showed no signs of anxiety or trauma symptoms. A.B. clearly expressed that she did not want to visit with Ms. G. and refused to participate in family therapy because she did not want to re-live her traumatic memories. The court noted that A.B. is "a child of considered judgment" who needs "to have some measure of control at this point and what she is seeking is to be a kid." After 23 months, it was unlikely that reunification with Ms. G. would be forthcoming in the near future and A.B. wanted to move on with her life.

We conclude that the circuit court did not abuse its discretion in deciding to change A.B.'s permanency plan from reunification to custody and guardianship with a non-relative.

**JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**