

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0321

September Term, 2015

IN RE: ADOPTION/GUARDIANSHIP
OF MARIA W.

Woodward,
Friedman,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: January 7, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from an order by the Circuit Court for Somerset County, sitting as a juvenile court, which suspended visitation by Ericka W. (“Mother”) and Dewane W., Sr. (“Father”) with Maria W. (DOB: 10/06), their natural daughter, who had been adjudicated a child in need of assistance (“CINA”).¹ The juvenile court’s May 18, 2015 written order followed a May 4, 2015 hearing.

Father noted a timely appeal of the juvenile court’s order, asking, “Did the court err by denying the father all contact with his daughter?” Mother noted a timely appeal, but she did not file a brief. As such, we dismiss her appeal, pursuant to Maryland Rule 8-602(a)(7).²

Finding no error or abuse of discretion, we shall affirm the juvenile court’s order.

¹Pursuant to Md. Code (2013 Repl. Vol.), §3-801(f) of the Courts & Judicial Proceedings Article (“CJP”), a “Child in need of assistance” means “a child who requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.”

² Rule 8-602(a)(7) states:

- (a) On motion or on its own initiative, the Court may dismiss an appeal for any of the following reasons:

(7) a brief or record extract was not filed by the appellant within the time prescribed by Rule 8-502.

FACTS AND LEGAL PROCEEDINGS

In May 2013, the juvenile court adjudicated Maria CINA, and, in November 2014, the court changed Maria’s permanency plan from a primary plan of relative placement, with a secondary plan of adoption, to a sole plan of adoption by a non-relative. Father appealed the CINA adjudication, and Mother and Father both appealed the change in permanency plan to this Court. We affirmed both decisions in unreported opinions.³ *In re: Maria W. and Dewane W.*, No. 803, September Term, 2013 (filed April 15, 2014),⁴ and *In re: Maria W. and Dewane W.*, No. 2196, September Term, 2014 (filed July 2, 2015).

Because our previous opinions detail the factual and procedural background of Maria’s CINA adjudication and change in permanency plan, we will set forth only the facts and proceedings relevant to the juvenile court’s May 2015 suspension of Mother and Father’s visitation with Maria, along with a limited history to provide context to the juvenile court’s ruling.

Between 1998 and 2011, both Delaware and Maryland officials conducted several child protective services investigations relating to Maria and her siblings. The investigations centered on allegations of sexual abuse, lack of parenting skills, drug use, unexplained injuries to the children, family dysfunction, truancy, inadequate food and

³ Mother and Father are also the biological parents of a son, Dewane W., Jr. In addition, Mother has two older children, by two different men. Although Maria and Dewane were both parties to the two previous appeals, the present appeal concerns only Maria.

⁴ This case was consolidated with a case involving a third child of Mother’s. *In re: Allayah L.*, No. 945, September Term, 2013 (filed April 15, 2014).

clothing, homelessness, and the parents’ mental health issues. Mother, who had an extensive criminal history in Delaware, believed she was “wanted” in that state, so the family moved continually—eight times between January and October 2011—so as to “fly[] under the radar.”

In 2012, Mother self-referred to the Somerset County Department of Social Services (“DSS”), reporting that 13-year-old Allayah was having sex with older males and females and was generally “out of control;” Allayah had been charged with theft after she stole from a Dollar General Store. Eleven-year-old Dewane had also encountered the police on several occasions as a result of his criminal behavior, including stealing items from Walmart, setting fires, and spray painting county buildings.⁵

Following an investigation, the DSS filed CINA petitions regarding the four children on August 28, 2012, based on neglect and Mother’s refusal to work with the DSS.⁶ Medical examination upon the children’s entrance into foster care revealed that the three girls were obese and that all four children suffered from significant medical and dental issues. In addition, they were dirty and hungry, had tattered clothes, and appeared starved for affection.

The children were adjudicated CINA in May 2013, committed to the care and custody of the DSS. In November 2014, their permanency plan was changed to adoption

⁵ During a neuropsychological examination, Maria told her doctor that her parents had taught her and her siblings how to steal by putting items into their pockets.

⁶ Although Mother and Father are married, it appears from the record that Father did not always live with Mother and the children.

by a non-relative, as the parents had made little to no progress toward reunification with the children.

As relevant to the present appeal, the DSS filed an emergency petition in the juvenile court on February 27, 2015, requesting that all visitation between Maria and Mother and Father be suspended on the ground that Maria’s therapist found the visits to be “negatively impacting Maria’s emotional and mental health” due to the parents’ “inappropriate interactions.” Both parents opposed the petition.

The court granted the emergency petition the following day, ordering that visitation be suspended until the court made a disposition. The court set a hearing for March 24, 2015, but the matter was ultimately continued until May 4, 2015.

At the hearing, Beverly Morris, Maria’s DSS foster care social worker, testified that Maria’s court-ordered visitation included weekly supervised visits with both parents. From August 15, 2014 (when Ms. Morris took over Maria’s case from another social worker) through the court-ordered suspension of visitation on February 28, 2015, the parents had missed 14 of the 21 scheduled visits, citing illness—Mother claimed that stress caused her to bleed through her pores—or car trouble as excuses.

Maria told Ms. Morris it made her sad when her parents did not appear for visits, but despite Ms. Morris’s urging that she share her feelings with her parents, Maria refused. In Ms. Morris’s opinion, visitation should be suspended because Maria was extremely disappointed when scheduled visits did not occur and when promises made by her parents were not fulfilled. Ms. Morris said she had advised the parents against making promises

they were not likely to keep and about the effect on Maria of missed visits, but their behavior remained unchanged.

Samantha Kenny, a licensed graduate social worker (“LGSW”) designated as an expert in the field of clinical social work, testified that she began treating Maria in May 2013. The child presented with adjustment issues created by her removal from her parents’ home and placement into foster care. She exhibited symptoms of hyperactivity, developmental delay, inattentiveness, poor physical boundaries, sexually inappropriate behavior, and general bad behavior, including lying, disrespect of others, and defiant and disruptive actions.

Maria began weekly individual therapy to address her behavioral issues, trauma treatment to address her history of abuse, sexual abuse, and neglect, and group therapy to address lagging social skills. By the time of the hearing, Ms. Kenny said Maria had made “significant improvement.”

In 2014, Maria shared with Ms. Kenny her anxiety regarding visitation with her parents after having seen their abuse of her siblings, which included beatings at the hand of her mother and displays of a gun by her father. Maria also reported suffering from low self-esteem relating to her weight, and she stopped eating healthy amounts of food for a period of time.

Also in 2014, Ms. Kenny observed that Maria’s behavior regressed significantly after her parents either missed a visit with her, which occurred more often than actual visits,

or made a false promise that she would be going home.⁷ Maria confided that missed visits with her parents, particularly her mother, made her feel unloved. She felt “sad, mad, and confused” when her parents did not do something they were supposed to do and made promises Maria knew would not be fulfilled.⁸ Ms. Kenny became aware of a pattern of negative behavior following Maria’s visits with her parents, to include hyperactivity, disruptive behavior, and disrespect toward her peers. These behaviors required a cessation of therapy to focus on re-stabilization before returning to a normal course of treatment.

On February 9, 2015, Maria reported her mother had told her, during a phone visit, that “a paper was signed and she’d be going home [to Delaware] in two weeks.” Following that call, Maria became hyperactive and disruptive in school, which were no longer typical behaviors for her. Although Maria said she did not believe that what her mother had said was the truth, the prospect of leaving foster care made her hopeful.

On that particular occasion, Ms. Kenny said, Maria was “set back significantly” enough that Ms. Kenny recommended a termination of phone and face-to-face contact between Maria and her parents. She did not believe Maria had the ability to make progress in her treatment if she remained in contact with her parents because the child was conflicted about returning home, anxious about her future placement, and afraid to talk to her parents

⁷ Prior to 2014, Maria had not discussed with Ms. Kenny visits with her parents because she was afraid her mother would find out about her conversations and beat her when she returned home.

⁸ Maria told Ms. Kenny that Mother had promised Maria she would return home soon, and if she did, that Mother would no longer beat Maria, that Mother would get pregnant and permit Maria to name the baby, and that Mother would take Maria to New York for a visit to the American Girl Store.

about her feelings. Were the court to disagree and order that visitation continue, Ms. Kenny would recommend “very close supervision” by a professional who would intervene if the interaction became inappropriate.

Donna Leffew, accepted as an expert licensed clinical professional counselor (“LCPC”) specializing in trauma therapy, began treating Maria in December 2013 when Maria disclosed sexual abuse at the hand of her brother, Dewane. During therapy, Maria had revealed numerous other traumas and abuses she had been subject to while living with her parents and siblings.⁹

Ms. Leffew stated that Maria’s foster mother had reported “drastic” negative changes in Maria’s behavior following a phone call with her mother earlier in 2015, and she testified similarly to Ms. Kenny in stating that Maria’s behaviors regressed following visits at which her parents did not appear and the making of promises that they did not keep. These actions, Ms. Leffew said, left Maria under stress and “in turmoil and unable to really fully process the work on her trauma.” Because of her inability to address Maria’s underlying trauma after visits with Mother and Father, Ms. Leffew was forced to suspend trauma therapy and revert to working on coping mechanisms with Maria.

Ms. Leffew concluded that ongoing communication with Maria’s parents would be detrimental and “contraindicated to her healing.” In the absence of communication with her parents, Ms. Leffew opined that Maria would be able to talk more freely in therapy and

⁹ Ms. Leffew was reluctant to share those traumas with the court in the presence of the parents because Maria had told Ms. Leffew she was afraid she would be beaten by her parents for disclosing things that had happened in their home.

would eventually be able to form a nurturing relationship with healthy adults in a “forever family.”

Testifying during the hearing, Father denied having made any specific promises to Maria; he stated that if she asked him for something, he told her only that he would do his best to get it for her. He denied that either he or Mother promised Maria, during the February 9, 2015 phone call, that she would be coming home soon. He claimed that he told Maria they would have to wait until a court hearing, to see what the judge would say.

With regard to missed visits (denying that he and Mother had missed 14 of the 21 scheduled meetings), Father explained that his blood pressure, Mother’s treatment by a “cancer specialist,” and their car troubles sometimes precluded visits. He denied having been told of the negative impact of the missed visits on Maria.

Father disagreed that visitation should be suspended, even if Maria’s therapist said it was not in his daughter’s best interest. He promised that he would attend all future visits and work with Maria’s therapist and social worker to improve communications.

Mother agreed with Father that the missed visits with Maria were warranted by her bleeding disorder and Father’s high blood pressure or car troubles. She claimed that she always called the DSS before noon on the days of scheduled visits if she had to cancel. She denied having promised Maria anything that she had not delivered.

In closing, attorneys for the DSS and Maria argued that visitation should be suspended, as the visits had become detrimental to Maria’s mental health, and it was not in her best interest to continue visitation. Father’s attorney instead advocated “limited but safe” visitation, conditioned upon the presence of a therapist who could intervene in a

therapeutic way if necessary. Mother’s attorney agreed that Mother should be allowed the opportunity to continue visitation.

In issuing its ruling, the juvenile court recounted the testimony of Ms. Kenny, who, having developed a good rapport with Maria, believed strongly that it was not in the child’s best interest to continue visitation with the parents because it created turmoil for her and undermined her progress in therapy. The court pointed out that Ms. Kenny’s opinion had been corroborated by observations made by the DSS social worker, Maria’s foster mother, and her teachers. Likewise, the court found that Ms. Leffew, who had not heard Ms. Kenny’s testimony, agreed that continued contact between Maria and her parents was detrimental to the child, as the turmoil created by the contact frustrated the forward progress of her trauma treatment.

The court also found that the parents’ absence from 14 of 21 scheduled visits was “in and of itself perhaps [] sufficient to justify a suspension in the visits,” as it did not require expert testimony to conclude the parents’ failure to appear at so many visits would be “detrimental and damaging” to a child of Maria’s age. Notwithstanding their excuses of illness and car trouble, the court found it incredible that the parents could not have done better than to attend only 1/3 of the scheduled visits.

The court concluded that a suspension of all visitation was in the best interest of the child but left the matter open for re-evaluation if the therapists agreed that some type of therapeutic monitored visitation would become in Maria’s best interest.

The court’s written order, filed May 18, 2015, suspended face-to-face and telephone visitation but permitted contact between the parents and Maria via photographs and letters

screened for appropriateness by the DSS. It also required the DSS to consult with Maria’s therapist every 30 days, with the “specific task to make recommendation regarding the contact with the parents, and provide the Court with a report to assist the court in making the best interest analysis with regard to [the child] and contact with the parents.” The court further agreed to consider any party’s request to revisit the issue.

DISCUSSION

In custody and visitation determinations, the “overarching consideration” is always the best interest of the child. *Baldwin v. Bayard*, 215 Md. App. 82, 108 (2013). In a dispute over visitation, the best interest of the child will take precedence over the parents’ fundamental right to raise their child. *Boswell v. Boswell*, 352 Md. 204, 219 (1998). Although a parent who is not granted custody will, as a general rule, be granted liberal visitation, the right is not absolute, and “when the child’s health or welfare is at stake[,] visitation may be restricted or even denied.” *Id.* at 220-21.

It is up to the court to decide the appropriate amount of visitation, with input from the DSS about conditions that agency believes should be imposed. *In re Justin D.*, 357 Md. 431, 450 (2000). It is the court, acting pursuant to the State’s *parens patriae* authority, that is “in the unique position to marshal the applicable facts, assess the situation, and determine the correct means of fulfilling the child’s best interests.” *Baldwin*, 215 Md. App. at 108 (quoting *In re: Mark M.*, 365 Md. 687, 706 (2001)).

If the child has been declared CINA because of abuse or neglect, the juvenile court is constrained by the requirements of Md. Code (2012 Repl. Vol., 2015 Supp.), § 9–101 of

the Family Law Article (“FL”),¹⁰ which explicitly prohibits the court from granting visitation to a party who has abused or neglected a child unless the court specifically finds that there is no likelihood of further abuse or neglect. “The burden is on the parent previously having been found to have abused or neglected his or her child to adduce evidence and persuade the court to make the requisite finding under § 9–101(b).” *In re: Yve S.* 373 Md. 551, 587 (2003).

The juvenile court is not required to base its decision regarding visitation solely on FL§ 9–101. The Court of Appeals has explained:

Even without regard to § 9–101 [of the Family Law Article], if the court concludes that there is a likelihood of a party subjecting a child to abuse or neglect, whether that conclusion is drawn from evidence of past abuse directed against the child whose custody or visitation is at issue or against another child, it has been authorized to deny custody to and limit visitation with that party.

¹⁰ FL § 9–101 provides:

(a) In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.

(b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

In re Adoption No. 12612 in Circuit Court for Montgomery County, 353 Md. 209, 238 (1999).

“Decisions concerning visitation generally are within the sound discretion of the [juvenile] court,” and we will not disturb those decisions unless that court has clearly abused its discretion. *In re Billy W.*, 387 Md. 405, 447 (2005). We perceive no abuse of the juvenile court’s discretion in the matter before us.

The juvenile court originally granted Mother and Father supervised weekly visitation with Maria, who had been adjudicated CINA based on neglect. Even supervised visitation, however, requires an assurance that such visitation would not jeopardize the child’s safety and well-being. *Id.* at 448; *see also* FL §9-101(b). Following the testimony at the hearing on the DSS’s emergency petition to suspend visitation, the court was unable to make that assurance. Its decision to suspend all visitation, then, was proper.

Testimony by Ms. Kenny, Maria’s general therapist, Ms. Leffew, her trauma therapist, and Ms. Morris, her DSS foster care social worker, revealed that Mother and Father had missed almost 70% of their scheduled visits with Maria, and despite their excuses of medical issues and car troubles, the juvenile court found it incredible that they could not have done better than 30% of the time. In the court’s view, their abysmal visitation record alone may have been sufficient to justify a suspension of visitation, because there was no question the parents’ failure to appear at so many visits was detrimental and damaging to a child of Maria’s age, especially in light of her attachment issues. In addition, Mother and Father made promises to Maria that they did not keep, which created false hope in the child.

The witnesses testified that those behaviors by the parents negatively impacted Maria—causing her to regress to unacceptable behaviors following visits—and severely affected ongoing treatment required by Mother’s and Father’s neglect. Maria’s progress in treatment had also stalled because she was afraid to disclose additional prior abuse and neglect at the hands of her parents, fearing beatings from them if they were to find out she had revealed family secrets to her therapists.

In light of the testimony, the juvenile court determined that continued visitation in person or over the phone would be detrimental to Maria and not in her best interest. The court did not, however, deny Mother and Father all contact with Maria. The parents retained their right to communicate with their daughter via letters and photos. Moreover, the court left open the possibility of a change to the visitation order, if Maria’s therapists and social worker recommended to the court that Mother and Father had progressed to the point that visits would be in the best interest of the child. To assess that progress, the court ordered reports every 30 days. The court also specifically agreed to consider any party’s request to revisit the issue of visitation. We cannot say that the actions by the court were unreasonable under the circumstances.

For the foregoing reasons, we conclude that the juvenile court’s factual findings were not clearly erroneous and that its ultimate ruling was founded upon sound legal principles. Accordingly, the determination that it was in Maria’s best interest to suspend visitation with Mother and Father until such time as the court was satisfied that visitation would be in her best interest was well within the discretion of the juvenile court.

**APPEAL BY ERICKA W. DISMISSED PURSUANT TO
MARYLAND RULE 8-602(a)(7); JUDGMENT OF THE
CIRCUIT COURT FOR SOMERSET COUNTY
AFFIRMED; COSTS TO BE PAID BY APPELLANTS.**