UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2192

September Term, 2015

IN RE: E.P.

Eyler, Deborah S.,
Berger,
Reed,

JJ.

Opinion by Berger, J.

Filed: April 14, 2016

This appeal arises from an order of the Circuit Court for Harford County, sitting as a juvenile court, closing the Child in Need of Assistance ("CINA")[1] case relating to E.P., awarding custody of E.P. to a non-relative, and terminating the juvenile court's jurisdiction.[2] Ms. P., mother of E.P. ("Mother"), appealed the juvenile court's order. Mr. P., E.P.'s father ("Father"), was also a party to the CINA proceeding below but did not appeal the juvenile court's order. On appeal, Mother presents a single question for our review, which we set forth verbatim:

> Did the Court err in closing the C.I.N.A. case with Custody and Guardianship to a non-relative without ever working with [Mother] toward Reunification, and without setting forth a specific visitation schedule so that the Mother and the child would be able to remain in touch?

Perceiving no error, we shall affirm the judgment of the juvenile court.

FACTS AND PROCEEDINGS

Many of the underlying facts relating to E.P.'s CINA case are unrelated to the limited issue before us in this appeal. We set forth the facts relevant to this appeal, as well as limited additional facts in order to provide the appropriate context for our consideration of the issues.

---

[1] A "CINA," or "child in need of assistance," is "a child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Md. Code (2013 Repl. Vol.), § 3-901(f) of the Courts and Judicial Proceedings Article ("CJP").

[2] Out of respect for the privacy interests of the parties, we shall not refer to them by name.

E.P. was born October 25, 2004. She resided with Mother and Father until May 2, 2012, when she was removed from the care of her parents and placed in emergency shelter care by the Harford County Department of Social Services ("the Department").[3] E.P.'s older sister, S.P., was removed from the home as well.[4] E.P. was removed from her parents' care due to the condition of the family's home, concerns about E.P.'s frequent absences from school, as well as concerns about Mother's mental health.[5] An adjudication and disposition hearing was held on May 30, 2012, and E.P. was found to be a CINA. E.P. was placed in Father's care under an order of protective supervision to the Department.[6]

E.P. remained in Father's care until a hearing on May 1, 2013, when she was placed in foster care. E.P. initially was placed in a temporary foster home, but shortly thereafter E.P. was placed with C.S., the foster parent with whom she remains today. During the three years while E.P.'s CINA case was pending, the Department provided various services to both Mother and Father. Mother was provided with a mental health evaluation, a substance

[3] Emergency shelter care is "the temporary placement of a child outside of the home before the determination or disposition of CINA status." *In re Ashley S.*, 431 Md. 678, 690 (2013).

[4] S.P., currently age 17, resides in the same foster placement as E.P. The foster mother was granted custody of S.P. and neither parent appealed.

[5] The home did not have electricity. Approximately twenty-seven cats were found in the home, in addition to a dog and a bird. Animal waste was found throughout the home and the home had a significant odor. There were also indications of hoarding.

[6] At that point, Father had moved out of the family home he had shared with Mother and was residing in the home of his adult step-daughter.

abuse evaluation, a referral for individual counseling, parenting classes, and visitation. Father was also provided with visitation, a mental health evaluation, and a substance abuse evaluations, as well as housing assistance and family counseling.

Multiple review and permanency planning hearings were held between 2012 and 2015. On September 17, 2014, a family magistrate recommended modifying E.P.'s permanency plan from a plan of reunification to a plan of custody and guardianship with a non-relative. Mother filed exceptions to the magistrate's order but subsequently withdrew them prior to an exceptions hearing before a judge. Father also filed exceptions. After an exceptions hearing on May 12, 2015, Father was granted supervised visitation. Also on May 12, the juvenile court entered an order establishing a permanency plan for E.P. of custody and guardianship to a non-relative. Mother did not appeal the change of permanency plan.[7]

On June 24, 2015, the magistrate recommended rescinding E.P.'s commitment to the Department, granting custody of E.P. to C.S., closing E.P.'s CINA case, and terminating jurisdiction. Mother filed exceptions to the magistrate's order and an exceptions hearing was held on November 13, 2015. At the exceptions hearing, Mother testified that she had

[7] There is also an order in the record dated March 18, 2015, indicating that the permanency plan for E.P. was custody and guardianship to a non-relative. Similarly, Mother filed no appeal of this order. It appears that this order resulted from a hearing before a family magistrate to which no exceptions were taken and that the permanency plan was simply continued based upon the magistrate's order from the September 17, 2014 hearing. Because Mother's exceptions were still pending, however, the initial order from September 17, 2014 had never been signed by a juvenile court judge. For purposes of this appeal, whether the permanency plan was modified in March of 2015 or June of 2015 is ultimately irrelevant.

not been provided with the same level of reunification services as had been provided to Father. Mother asserted that she "ha[d] never been given any opportunities whatsoever." In particular, Mother argued that she had not been provided with housing assistance or medical transportation.[8]

Mother further testified about a birthday gift she had attempted to give to E.P. Mother purchased a large trampoline as a birthday gift for E.P. and was upset when C.S. declined to set up the trampoline at her home. Mother had proposed that the trampoline be set up at Mother's brother's home, but C.S. told Mother that would not be possible because Mother's brother's home had not been inspected by the Department. During Father's testimony, Father acknowledged that C.S. could decide whether to keep the trampoline.[9]

Although Mother testified to various alleged deficiencies with the services she had been provided by the Department, Mother acknowledged that she had been provided with parenting classes, a psychological evaluation, and supervised visitation. Mother testified that, in her view, the amount of visitation provided was insufficient. Although Mother complained that she had not been provided with housing assistance, she acknowledged that the Department was likely unaware that her residence was being foreclosed upon and had no knowledge that Mother was in danger of losing her home. E.P. did not appear at the November 13 hearing, but the court was presented with a handwritten letter from E.P. in

[8] Mother required the use of a wheelchair.

[9] The record reflects that the trampoline was approximately fifteen feet in diameter.

which E.P. expressed her desire for C.S. to be granted custody of her. Mother asked the court for unsupervised visitation and for additional time to demonstrate to the court that she was able to make progress toward reunification with E.P.

In closing arguments, E.P.'s attorney argued that "much of [the] hearing [had been] much to do about nothing" given that the permanency plan had been modified several months earlier to custody and guardianship to a non-relative. Counsel for E.P. argued that, following the modification of permanency plan, the Department's obligation was to make reasonable efforts toward the effectuation of the plan of custody and guardianship to a non-relative, not reasonable efforts toward reunification.

The juvenile court overruled Mother's exceptions, awarded custody of E.P. to C.S., and terminated jurisdiction. The court issued its ruling as follows:

> In this case, I am going to sustain the magistrate's Order. I do believe that once the plan changed, the department made reasonable efforts with respect to the plan to do what is in the best interest of [E.P.] in this case.
>
> The testimony that I have heard here today by [Mother] is that the [D]epartment made no effort whatsoever to provide her with services that would allow her to be reunified with [E.P.], and that she should have gotten at least what [Father] got in this case.
>
> [E.P.] has been in foster care for over two years now, and during that period of time, the [D]epartment offered [Mother] parenting classes, psychological evaluation, transportation, visitation, and transportation for that visitation. They did not offer her housing because she was in a home, and [Mother] herself testified that she didn't know the house was in foreclosure. So it's unlikely that the [D]epartment would have

known that either, unless [Mother] or [Father] had told them, and [Father] testified he didn't tell them either. So there would be no reason for [the Department] to provide any type of housing assistance to [Mother] if they weren't aware that she needed it.

Although she now is living with her brother and wants [E.P.] to come live there, she hasn't done enough, and she acknowledges that she's been in and out of the hospital a number of times and that that limited her visitation, and she faults the [D]epartment for not making sure that she had the visitation, and given that she said that she made numerous attempts, sent approximately 20 e-mails to the [D]epartment, but the testimony also is that she acknowledges that she was told to coordinate visitation directly with the foster mother in this case.

So the [D]epartment having any number of cases realistically could not be expected to coordinate visitation in all of them. If everybody wanted the [D]epartment to do that, it's simply not practical or feasible for the [D]epartment in all the cases it has to be able to do that, and given that this is the one case that [Mother] has, the burden was on her to make sure she contacted the foster mother in this case.

Whether she received drug treatment, again, she didn't have a drug problem, so certainly providing that treatment to [Mother] is not something that would have been provided to her. And whether she should have gotten family therapy, in this case, [Father] got family therapy because the girls were back residing with him during that period of time, but at some point in time, even the therapist determined it was not appropriate to provide family therapy. It was a therapeutic determination that was made, and certainly not one the [D]epartment could have easily overturned or asked the Court to overturn in this case.

I believe that the [D]epartment has made reasonable efforts, provided [Mother] with all the services she was entitled to. It simply wasn't working. In fact, even when I read this letter from [E.P.] to her mother, it is a bit heartbreaking in this

> case, but it's clear [E.P.] wants to stay with the foster mother, and at the very top where she has written, "Don't look up, it will make it harder," you know, it's hard to say what that means, but it seems to indicate that she wants to read this, but she's not going to look up because if she makes eye contact with anyone, then it's going to make it harder for her to speak her words and express what she's feeling, but the writing itself is very clear: She wants a home where there is stability where she can get up in the same place, go to school, and do well in school. She wants to be able to eat. And even from someone as young as [E.P.], she points out if Mommy didn't have enough money to ride in a cab for a visit, it made her wonder whether she would be able to feed and take care of her. But most notably, one of the last things she says is that she loves her mother and will not disappear forever, and she promises, but she needs stability, which is what children need. And while love is certainly important, love doesn't provide -- is not enough to provide stability, and this case is about what's in the best interest of the child, and I do believe that the [D]epartment has met its burden here.
>
> Therefore, the custody will be awarded to the non[-] relative, and the Petition will be dismissed and the Court's jurisdiction terminated, and the Court will sign the Order to that effect.

Mother's attorney inquired as to whether the court would address the issue of visitation after custody was granted to the non-relative. The court responded that it was not "in a position to do that at this point now that the jurisdiction of the case is closed," explaining that "[i]f the [CINA] Petition is dismissed and the Court's jurisdiction is terminated, I don't have any authority to do that."

Mother noted a timely appeal.

STANDARD OF REVIEW

In child custody, CINA, and termination of parental rights cases, this Court utilizes three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003). The Court of Appeals described the three interrelated standards as follows:

> We point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131 (c)] applies. [Second,] if it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

Id. at 586. In our review, we give "due regard . . . to the opportunity of the lower court to judge the credibility of the witnesses." *Id.* at 584. We recognize that "it is within the sound discretion of the [trial court] to award custody according to the exigencies of each case, and . . . a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion. Such broad discretion is vested in the [trial court] because only [the trial judge] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; he is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor." *Id.* at 585-86.

DISCUSSION

Mother asserts that the juvenile court erred in closing E.P.'s CINA case because the Department failed to make reasonable efforts toward reunification. Mother asserts that the Department failed to provide psychological services following her psychological evaluation, failed to provide housing assistance to Mother, and failed to adequately assist with transportation for Mother's visitation. As we shall explain, we disagree with Mother's various contentions.

Before addressing Mother's specific allegations of error, we must consider precisely what action of the juvenile court is challenged on appeal. The only order which was appealed was the November 13, 2015 order closing E.P.'s CINA case, granting custody to C.S., and terminating the juvenile court's jurisdiction. Mother did not appeal the earlier order of the juvenile court modifying E.P.'s permanency plan from a plan of reunification to a plan of custody and guardianship to a non-relative. Accordingly, any challenge to the earlier change of permanency plan is not properly before us. Pursuant to Maryland Rule 8-202(a), a notice of appeal must be filed "within 30 days after the entry of the judgment or other from which the appeal" is taken. When an "appeal is not filed within thirty days after the entry of an appealable interlocutory order, this Court lacks jurisdiction to entertain the interlocutory appeal." *In re Guardianship of Zealand W.*, 220 Md. App. 66, 78 (2014). Pursuant to CJP § 12-303(3)(x), an order "[d]epriving a parent . . . of the care and custody of his child, or changing the terms of such an order" is an appealable interlocutory order.

See also In re Joy D., 216 Md. App. 58, 73 (2014) ("To be appealable [as an interlocutory order pursuant to CJP § 12-303(3)(x)], an order must adversely affect the parent's rights."); *In re Damon M.*, 362 Md. 429, 438 (2001) ("[A]n order amending a permanency plan calling for reunification to foster care or adoption is immediately appealable."). When a notice of appeal is not filed within thirty days of the entry of the order, we have no jurisdiction to entertain an interlocutory appeal. *Zealand W., supra*, 220 Md. App. at 79. Consequently, because the only appeal filed in the present case was in response to the November 13, 2015 hearing, only the issues raised with respect to the November 13, 2015 hearing are properly before us.

We next turn our attention to precisely what types of reasonable efforts were required on the part of the Department. Pursuant to Md. Code (1984, 2012 Repl. Vol.) § 5-525(e)(1) of the Family Law Article ("FL"), the Department is required to make "reasonable efforts . . . to preserve and reunify families." In doing so, "the child's safety and health shall be the primary concern." FL § 5-525(e)(1). The statute further provides, however, that reasonable efforts toward reunification are not required when such efforts would be inconsistent with the child's permanency plan:

> If continuation of reasonable efforts to reunify the child with the child's parents or guardian is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, including consideration of both

> in-State and out-of-state placements, and to complete the steps to finalize the permanent placement of the child.

FL § 5-525(e)(4).

As discussed *supra*, the Department provided Mother with a range of services throughout the pendency of E.P.'s CINA case, including evaluations, referrals for individual counseling, transportation services, and visitation. Although Mother claims that she should have been entitled to identical services as those provided to Father on a *quid pro quo* basis, she cites no authority to support this position. Requiring identical services to be provided to both parents, despite each parent's varying circumstances, would be inappropriate. As the juvenile court explained, Mother was not provided with housing assistance because the Department was unaware of any need for such assistance. Father was provided with family therapy while Mother was not, but the provision of family therapy was directly linked to the fact that E.P. was residing with Father at that time. Furthermore, E.P.'s therapist had determined that E.P. was not therapeutically ready for Mother to participate in family therapy. As the circuit court observed, this was a therapeutic decision based upon ensuring E.P.'s best interests. Mother complained that she was not afforded sufficient visitation, but the record reflects that Mother was expressly directed to arrange visitation through E.P.'s foster parent. Furthermore, the record indicates that Mother did not answer or return E.P.'s telephone calls on several occasions.

Inasmuch as the juvenile court had changed E.P.'s permanency plan from reunification to custody and guardianship to a non-relative, the reasonable efforts required

pursuant to FL § 5-525(e)(4) were reasonable efforts to finalize E.P.'s permanent placement with C.S., not reasonable efforts toward reunification. Mother's visitation was reduced from weekly to monthly after the change of permanency plan, but such a reduction in visitation was consistent with the plan of working towards C.S. being granted custody and guardianship. Indeed, Mother continued to receive visitation services from the Department following the modification of permanency plan. Mother acknowledged that she had visited with E.P. twice in October 2014, as well as at Thanksgiving and Christmas, and in February 2015. Mother conceded that other visits had been scheduled, but were cancelled due to Mother's illnesses and hospitalizations.

Pursuant to CJP § 3-819.2(b), a "court may grant custody and guardianship to a relative or a nonrelative under this subtitle." The statute further provides that "[a]n order granting custody and guardianship to an individual under this section terminates the local department's legal obligations and responsibilities to the child." CJP § 3-819.2(c). Prior to granting custody and guardianship to a relative or a non-relative, a court is required to consider the following:

> (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 Resources, on the suitability of the individual to be the guardian of the child.

CJP § 3-819.2(f)(1). In the present case, there is no indication that the court failed to comply with CJP § 3-819.2 when it granted custody and guardianship of E.P. to C.S. The record reflects that the Department submitted the report required by CJP § 3-819.2(f)(1)(iii) on March 18, 2015. The report provided that C.S. would receive guardianship assistance after receiving custody and guardianship of E.P. Furthermore, the juvenile court explained in detail why it had determined that it was in E.P.'s best interest for custody and guardianship to be awarded to C.S. Accordingly, the juvenile court did not abuse its discretion when it granted guardianship to C.S., closed E.P.'s CINA case, and terminated jurisdiction.

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