

The CINA Decision Making Process: A Statutory and Case Law Reference Guide

I. Prior to Court

A. Definitions

Abuse - (1) the physical or mental injury of a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member, under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of being harmed; or (2) sexual abuse of a child, whether physical injuries are sustained or not. Family Law Article section 5-701 (b) Courts 3-801 (b).

Child - An individual under 18. Courts 3-801 (e). Article 1 section 24.

Neglect - the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate: (1) that the child's health or welfare is harmed or placed at substantial risk of harm; or (2) mental injury to the child or a substantial risk of mental injury. Family Law 5-701(s).

Sexual Abuse - (1) "Sexual abuse" means any act that involves sexual molestation or exploitation of a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member.(2) "Sexual abuse" includes: (i) incest, rape, or sexual offense in any degree; (ii) sodomy; and(iii) unnatural or perverted sexual practices. Family Law Section 5-701(x); Courts Section 3-801 (b) (1).

B. The Reporting of Child Abuse or Neglect

Mandated Reporters - Each health practitioner, police officer, or educator or human service worker, acting in a professional capacity is required to report any suspicion of abuse to the Department of Social Services or the police. Suspicion of neglect must be reported to the DSS. Family Law section 5-704(a) (1). Staff members of a hospital, public health agency, child care institution, juvenile detention center, school, or other similar institutions are required to report abuse to the person in charge of

the institution. Family Law 5-704 (a) (2). These reports are required regardless of confidentiality or privilege.

Other Reporters - Anyone other than those defined in Family Law 7-704(a) AND whose communications with a child is not protected by a privilege are required to report. Family Law Section 5-705. A child's communications with counsel are privileged. Family Law Section 7-705.

Investigation - Within twenty four hours after receiving a report of suspected physical or sexual abuse and within five days after receiving a report of suspected neglect or mental injury the local department or the appropriate law enforcement agency shall (1) see the child; (2) attempt to have an on site interview with the child's caretaker; (3) decide on the safety of the child; (4) decide on the safety of other children in the care of the abuser. Family Law Section 5-706.

Confidentiality - DHR regulations protect confidentiality of records. DHR regulations also provide standards for determining whether abuse, neglect, or sexual abuse is indicated, ruled out, or substantiated by the local department. Family Law Section 5-707(a).

Immunity of Reporters - Any person who makes a report or participates in the investigation of a report has immunity as described in section 5-362. Family Law Section 5-708.

C. The Investigation of a Report of Child Abuse or Neglect by the Department of Social Services

Investigation - Within 24 hours after receiving a report of suspected physical or sexual abuse and within 5 days after receiving a report of suspected neglect or mental injury the DSS or the appropriate law enforcement agency shall (1) see the child; (2) attempt to have an on site interview with the child's caretaker; (3) decide on the safety of the child; (4) decide on the safety of other children in the care of the abuser. Family Law Section 5-706.

Right of Entry - The representative of the local department who is conducting an investigation may enter a household if entry has been previously denied AND there is probable cause to believe that a child is in serious immediate danger. Family Law Section 5-709(a).

Temporary Removal of Child - The representative may remove the child temporarily, without prior approval of the Court, if the representative believes that the child is in serious immediate danger. Family Law Section 5-709(c).

Verification of Abuse or Neglect - Based on its findings and treatment plan, the local department shall render appropriate services in the best interest of the child, including, when indicated, petitioning the Juvenile Court for appropriate relief, and the added protection that either commitment or custody would provide. Family Law Section 5-710(a).

Taking Child into Custody - A child may be taken into custody by a law enforcement officer or person authorized by the Court if he has reasonable grounds to believe that the child is in immediate danger from his surroundings and that his removal is necessary for his protection. Courts Article Section 3-814(a).

D. Petitioning the Court

Taking Child Into Custody - If an officer takes a child into custody she or he shall immediately notify the child's parents, guardian, or custodian of the action. After making reasonable effort to give notice the officer shall with reasonable speed; (1) release child to parents, guardian, or custodian; OR (2) deliver the child to Court or a place of shelter care designated by the Court. Courts Article Section 3-814(b).

Shelter Care Prior to Hearing - A child taken into custody may be placed in emergency shelter prior to a hearing if continuation of the child in the home is contrary to his welfare, AND removal of the child from the home is reasonable under the circumstances due to an alleged emergency situation and in order to provide for the safety of the child, OR reasonable but unsuccessful efforts have been made to prevent or eliminate the need for removal from the home, AND reasonable efforts are being made to return the child to the home. Courts Article Section 3-815.

II. COURT HEARINGS THROUGH DISPOSITION

A. Shelter Care Hearings

Definitions

1. Shelter Care - The temporary placement of a child outside the child's home at any time before the disposition. When the child is first taken into custody, shelter care is authorized by the local department of Social Services. This authorization must be reviewed and approved by the court the next court day. Courts Article 3-801 (y). The Court's shelter care order may not last more than thirty days. Shelter care may be extended for an additional period for not more than 30 days if the Court finds after a hearing that continued shelter care is necessary to provide for the safety of the child. Courts Article 3-815 (c) (4). The court may not order shelter care unless the court finds that removal of the child from the child's home is contrary to the safety and welfare of the child. Courts Article 3-815 (d).

2. Standard of Proof - Findings for shelter care hearings shall be by a preponderance of the evidence. In re Collin R. , 63 Md. App. 684, 493 A.2d 1083 (Md. App. 1985).

3. Adjudicatory Hearing - An adjudicatory hearing shall be conducted within 30 days of the shelter care order. If a petition is filed and there is no shelter care order, an adjudicatory hearing must be held within sixty days of the filing of the petition. Rule 11-114. The hearing shall be initiated within 30 days and completed within a reasonable degree of continuity; that is once the hearing is begun it must continue, insofar as possible, on a day to day basis until completed. In re Vanessa C. , 104 Md. App. 452, 656 A. 2d 795.

4. Reasonable Efforts The Court must make a finding of reasonable efforts after every shelter care, adjudicatory, disposition, and review hearing. Courts Article 3-816.1 (b); 42 U.S.C. section 671(A)(15), The Adoption Assistance and Child Welfare Act of 1980.

Shelter Care Cases

1. A CINA petition may be filed if shelter care is denied. A second CINA petition may be filed if dismissal of the first petition was not on the merits.

(I) In re Rachel S. , 60 Md. App. 147, 481 A.2d 520 (Md. App. 1984)

1. Results of polygraph examinations are not admissible in CINA proceedings.
2. Dismissal of shelter care petition doesn't stop the filing of CINA petition.
3. Dismissal of first CINA petition did not preclude filing of a second petition where first dismissal was not on the merits.

(II) In re John P. , 311 Md. 700, 537 A.2d 263 (1988).

1. Maryland Rule 11-116, which states that an order of the Court may be modified or vacated if the Court finds that action to be in the best interest of the child ... , authorizes the trial Court to reconsider its order dismissing CINA petition. The Court is not required to consider a dismissal merely because a party requests it.
2. The trial judge should deny a motion to reconsider if the moving party has not demonstrated a need for the reconsideration in light of the best interest of the child.
3. The party seeking reconsideration of dismissal of CINA petition must make a showing that satisfies the Court that its earlier dismissal may have been in error.

2. Police officer may remove abused child without court order

Wildberger v. State , 74 Md. App. 107, 536 A.2d 718 (1988)

Upon observing signs of abuse, police officers had reasonable grounds to believe the child was in immediate danger. It was proper to remove the allegedly abused child from the parents' house without a Court order.

3. State must institute proceedings immediately after child removal

Weller V. DSS of Baltimore , 901 F.2d 387 (4th Cir. 1990)

Although it is constitutionally permissible to temporarily deprive the parent of custody of a child in an emergency, the state bears the burden to initiate prompt judicial proceedings to ratify its emergent action.

4. The court must review a shelter care authorization the next court day after removal. Except for extraordinary cause, Shelter Care may not exceed 30 days. Court must allow testimony if requested by a party and if the testimony is about the cause for the child's removal

In re: Damien F. and Terrell F., No. 320, September Term, 2008 and **In re: Christian D. and Jenna J.**, No. 322, September Term, 2008 (Consolidated appeals), 182 Md. App 546 (2008)

Unless extended on good cause shown, *a shelter care hearing shall be held not later than the next day on which the circuit court is in session. A court may not order shelter care for more than 30 days* except that shelter care may be extended for up to an additional thirty days if the court finds, after a hearing held as part of an adjudication, that continued shelter care is needed to provide for the safety of the child. (Emphasis added). Appellants assert that the juvenile court erred in instructing counsel to proceed by way of proffers, rather than by permitting witnesses to testify at shelter care hearing. They assert that the court had no way of judging the credibility of the witnesses from whom the allegations were received. The appeal should not be blocked because it is moot [b]ecause parenting is a fundamental right, an order of shelter care deprives a parent of that fundamental right, even if only temporarily, and this case presents an issue that is of public concern. The Juvenile Court improperly issued orders for shelter care in Appeal Nos. 320 and 322 based solely on the proffers submitted by counsel because it denied appellants' requests to produce witnesses to dispute charges of abuse on the basis that it could decide the veracity of the reporters upon whom the allegations were based irrespective of whether proffered testimony of parents contradicted charges of abuse. In No. 322, the court properly denied the requests to produce witnesses whose proffered testimony went only to the character of appellant and services available to her, but did not dispute charges of abuse.

5. Court may allow another party to pursue a petition, even when DSS, the original petitioner, seeks to dismiss the petition.

In Re: Najasha B., 409 Md 20, 2009. The trial court erred when it allowed the DSS to dismiss a petition alleging parental neglect over the objection of the child. The child has a right to pursue the neglect allegations, even when the petitioner chooses not to pursue those allegations.

B. Adjudication Hearings

Court Process

a. Definition An adjudicatory hearing is a hearing to determine whether the allegations in the petition are true. Section 3-801(c) of the Courts Article.

b. Scheduling An adjudication hearing shall be held within sixty days after the juvenile petition is served on the respondent. Upon a timely motion, for extraordinary cause shown, the Court may extend the time. Rule 11-114(b)1. If the respondent is in shelter care, the adjudication hearing shall be within thirty days of the continued shelter care. Rule 11-114(b)2.

c. Standard of Proof The Court shall determine whether the allegations in the petition can be proven by a preponderance of the evidence. Section 3-817 (c) and Rule 11-114 (e)3. *In re Collin R.*, 63 Md. App. 684, 493 A.2d 1083 (Md. App. 1985). Rules of evidence apply even though the hearing is conducted in a more informal manner. *In re Rachel T.* Rule 5-101.

d. Reasonable Efforts The Court must make a finding of reasonable efforts after every shelter care, adjudicatory, disposition, and review hearing. Courts Article 3-816.1 (b); 42 U.S.C. section 671(A)(15), The Adoption Assistance and Child Welfare Act of 1980.

e. Findings At the conclusion of the hearing, a judge shall announce and dictate to the Court stenographer or prepare and file an adjudication order. The announced decision may be recorded in another fashion in the absence of a court reporter Rule 11-114(f). Masters shall file a written report

containing their findings of fact, conclusions of law, recommendations and proposed orders within ten days following the conclusion of the disposition hearing. Rule 11-111.

Adjudication Cases

a. Evaluations of Parties: May be ordered at discretion of trial court. Testimony of evaluator is admissible at adjudication. Written Evaluation is admissible at disposition.

In re Wanda B. , 69 Md. App. 105, 516 A. 2d 615 (Md. App. 1986).

1. No requirement that the Court conduct hearing on propriety of ordering a psychiatric evaluation of the parties, including parents, to a CINA proceeding and therefore parents are not entitled to counsel before such is ordered.
2. Testimony of psychiatrist who performed evaluation is admissible at adjudication.
3. Written report of evaluating psychiatrist is admissible at disposition.

b. Sanction for failure to initiate adjudication within 30 days

In re Keith W. , 310 Md. 99, 527 A.2d 35 (Md. 1987).

1. Before deciding if dismissal is the proper sanction for violation of Rule 11-114, the Court must examine the totality of the circumstances.
2. Except for extraordinary and egregious cases, dismissal is not an appropriate sanction for violation of the thirty (30) day scheduling rule for adjudication.

c. Parent's Waiver of Representation by an Attorney

In Re Alijah Q. 195 Md App 491 (2010)

Mother is entitled to representation by attorney. Right is statutory not constitutional. Nonetheless court must inquire whether waiver is knowing and voluntary before accepting attorney's withdrawal and allowing mother to proceed pro se.

d. Evidentiary Issues at the Adjudicatory Hearing

(I) **In re Collin R.** , 63 Md. App. 684, 493 A.2d 1083 (Md. App. 1985).

1. Results of lab test introduced through properly authenticated hospital records admissible without the performer of the test being available for testimony.
2. Right of confrontation not available to parents of an alleged CINA child.

3. Standard of evidence in CINA proceeding is by a preponderance of the evidence.
4. Medical testimony of child's condition and physical evidence seized from the home and the complete absence of any answer by parents to inferences from that evidence supported CINA finding.
5. Person evaluating parties pursuant to section 3-816 of the Courts Article is not required to prepare written report. The evaluator may testify in Court.
6. Refusal to permit an evaluator is a matter within the sound discretion of the Court. It will only be disturbed on appeal for abuse of discretion.

(II) In re Rachel T. , 77 Md. App. 20, 549 A.2d 27 (1988).

1. A CINA proceeding is to protect children not to punish parents.
2. Formal rules of evidence apply at CINA proceedings, even though hearings are conducted in an informal manner.
3. Child's statements to the social worker, who was a member of pediatric gynecology treatment team, about "big secret" she shared with father were admissible pursuant to two hearsay exceptions: (1) statements made to a physician consulted for medical treatment; and (2) business records. The statements were recorded in hospital medical records.
4. "Tender years" exception to the hearsay rule is not recognized in CINA cases.
5. Clinical psychologist's testimony about child's statements made to psychologist were admissible as data which form the basis of the psychologist's opinion.

(III) In re Michael G., 107 Md. App. 257, 667 A. 2d 956 (1995)

1. The Master makes written findings of fact, conclusions of law and recommendations with respect to adjudication and disposition.
2. A child's out of court statement offered against a party is NOT admissible in CINA cases under the party-opponent exception to the hearsay rule.
3. Under the Courts Article, section 9-103, known as the "tender years exception" to the hearsay rule, an out of court statement made by a child victim under 12 years old is admissible only if it meets statutory criteria. The statement must be made to certain professionals (licensed physician, social worker, or teacher) and the Court must find that the statement meets guarantees of trustworthiness.

(IV) In Re: Thomas H. , 381 Md 174 (2004)

Court may not rule on question of putative father's paternity until after the adjudicatory hearing.

(V) In Re: Blessen H. , 163 Md App 1 and 392 Md 684 (2006)

A court may waive a contested adjudicatory hearing with the consent of the parent and parent's counsel. There is no requirement that the court determine that the parent has made a knowing and intelligent waiver.

(VI) **In Re: Maria P.**, 393 Md 661 (2006)

The mere allegation by the petitioner that the parent's presence would unduly influence the child's testimony is not grounds to exclude a parent from an adjudicatory hearing. The parent may be excluded only if there is evidence sufficient to justify the exclusion.

e. Adjudicatory Hearings to be initiated, not finished, within 30 days.

In re Vanessa C., 104 Md. App. 452, 656 A. 2d 795 (1995)

1. "Held" does not mean that the adjudication hearing be COMPLETED, but rather that the hearing be initiated within 30 days. The hearing must be completed with a reasonable degree of continuity. Once begun, a hearing once begun must continue on a day to day basis until completed, insofar as possible.

f. Previously non custodial parent may not be granted custody after Petitioner dismisses case

In Re: Sophie S., 167 Md App 91 (2006)

The court may not change custody from a custodial parent to a non custodial parent after the DSS dismisses a petition, unless the court has first sustained allegations in the petition against the parent who is losing custody.

g. Hospitalization of child under circumstances similar to those leading to the death of child's sibling previously may suffice to find neglect

(I) **Woods v. DDS**, 11 Md. App. 10 (1971), cert. denied, 404 U.S. 965.

1. Evidence that a hospitalized child had difficulty breathing when alone with her mother, was sufficient evidence of neglect when five siblings had died on prior separate occasions after similar episodes.

2. The constitutional right to confront witnesses is inapplicable in a CINA hearing. The parents are not charged with a crime and are not subject to punishment.

(II) **In Re Andrew A.**, 149 Md App 412 (2002)

New born infant may be found CINA based on past neglect of siblings other evidence of neglect. See also *In Re: Nathaniel A. et al*, 160 Md App 581 (2005)

h. Boyfriend of child's mother (not child's father) is not a party

In re Erica S. , 71 Md. App. 148, 524 A.2d 108 (Md. App. 1987).

1. Mother's significant other, who was not the biological father of the child, was not a proper party in a CINA case. That the petition is based upon the child's report that she had been sexually abused this man does not make him a party.
2. The child's mother's listing of a man as the child's father in school records did not constitute a declaration pursuant to Family Law 5-310(a)(4) that the man was the child's father.

i. Birth Certificate may reflect a father and no mother

In re: Roberto d.B., 399 Md 267 (2007)

Because Maryland's Equal Rights Amendment forbids the granting of more rights to one gender, the paternity statutes in Maryland must be construed to apply equally to both males and females. A woman who carried twins to term for a father who fertilized the egg of an unknown donor may have her name removed from the twins' birth certificates when both father and she wish for the name to be removed.

C. Disposition Hearings

Court Process

Definition

Disposition hearing means a hearing to determine:

- (1) whether a child is in need of assistance; and
- (2) if so, the nature of the court's intervention to protect the child's health, safety, and well being. Section 3-801(m).

Scheduling. The disposition hearing shall be held on the same day as the adjudication hearing unless (1) the court or a party moves that the disposition hearing be delayed; and (2) the court finds that there is good cause to delay the disposition hearing to a subsequent day. Courts Article 3-819 (a) (2). The disposition shall be no later than thirty days after the conclusion of the adjudication hearing. Rule 11-115(a).

Reasonable Efforts The Court must make a finding of reasonable efforts after every shelter care, adjudicatory, disposition, and review hearing. Courts Article 3-816.1 (b); 42 U.S.C. section 671(A)(15), The Adoption Assistance and Child Welfare Act of 1980.

Intervention The Court may permit an interested person to intervene if that person is requesting custody and guardianship at disposition. Rule 11-122(b).

Disposition Orders Court shall determine if the child is a child in need of assistance. If the Court determines the child is not a child in need of assistance, the Court may dismiss the case or hold the case in abeyance. If the Court finds the child is a child in need of assistance, the Court may:

- a.** place a child under supervision in his own home or in the custody or under the guardianship of a relative or other fit person, with appropriate conditions;
- b.** commit the child to the custody or under the guardianship of a local DSS, DHMH, or a public or licensed private agency; or
- c.** order any party to participate in rehabilitative services that are in the best interest of the child and the family. Courts section 3-819 (b), (b-1) and (c). Special provisions apply for the commitment of a child to DHMH for inpatient care. See Courts section 3-819 (h) and (I).

Findings

At the conclusion of the hearing, a judge shall announce in open Court a statement of the reasons for placement. Rule 11-115. Masters shall file a written report containing the master's findings of fact, conclusions of law, recommendations and proposed orders within ten days following the conclusion of the disposition hearing. Rule 11-111.

Exceptions

Any party may file exceptions to the master's report. Exceptions shall be in writing, filed within five days after the master's report is served, and shall specify those items to which the party excepts and whether the hearing is *de novo* or on the record. Courts Article 3-807 (c); Rule 11-111(c). An excepting party may elect a hearing *de novo* or on the record. A hearing on the record may be supplemented by such additional evidence as the judge considers relevant, to which the parties raise no objection. Courts Article 3-807 (c); Rule 11-111(c).

Disposition Cases

a. Ordinary and proper care is the standard for child care in CINA cases

In re Jertrude O. , 56 Md. App. 83, 466 A.2d 885 (Md. App. 1983).

1. Standards of ordinary and proper care and treatment of children in the U.S. the proper standard to be applied in CINA proceedings.
2. Removal of child due to speculative possibility of abuse not warranted.
3. Standard for disposition much higher than standard for adjudication. Court may not err on the side of caution in removing a child.

b. Drug and alcohol use is one factor in a CINA finding but not the sole factor

(I) In re William B. , 73 Md. App. 68, 533 A.2d 16 (Md. App. 1987).

1. Evidence of parents' alcoholism coupled with lack of ordinary and proper care and attention for sibling supported determination to remove the child from the care and custody of his parents.
2. Court took judicial notice of fact that eight year old child was incapable of providing for his own ordinary and proper care and attention.
3. Mere alcoholism of parents not grounds for removal of a child.
4. Evidence as to care provided to the child's sibling is relevant to determination of whether child himself is neglected and should be removed despite the fact that child's sibling had handicaps not possessed by this child.

(II) In re Dustin T. , 93 Md. App. 726, 614 A.2d 999 (1991).

1. Mother's prenatal drug use relevant to her ability to provide care to the child.
2. It is not necessary for the Court to find child suffered actual injury before determining that he was neglected.
3. Objection to testimony solely on the ground of relevancy waived right to argue on appeal that the testimony was hearsay.
4. Mother's admission to her physician constituted admission of party opponent and were not hearsay.

c. Permissible Placements and Services Ordered at Disposition

(I) In re Owen F. , 70 Md. App. 678, 523 A.2d 627 (Md. App. 1987).

1. Juvenile Court may commit a child to a particular agency under the Juvenile statute.

(II) In re Roger S, 338 Md. App. 385, 658 A. 2d 696 (1995).

1. The Juvenile Causes Act does not authorize Juvenile Court to order a school system to provide educational services.

d. Unless both parents are unable or unwilling to give the child proper care and attention, child is not CINA

In re Russel G., 108 Md. App. 366, 672 A.2d 109 (1996).

1. A child in the care of a parent is CINA only if both parents are unable or unwilling to give the child proper care and attention.

e. Visitation

(I) In re Barry E., 107 Md. App. 206, 667 A.2d 931 (1995)

1. Parental visitation is not an absolute right and it must yield when inconsistent with the best interest of the children. The Court should consider the child's age and wishes. A child need not be physically forced to visit a parent, but visitation should be given a high priority.

(II) In re: Deontay J., 406 Md 582, 2008; 408 Md 152, 2009.

The Circuit Court shall hold a custody hearing at which the Circuit Court shall (1) expressly state the findings it is required to make under '9-101(b) of the Family Law Article, and (2) enter a custody order that conforms to the applicable law and is based upon a current and complete factual predicate. Section 9-101(b) of the Family Law Article states that the court shall deny custody and/or visitation to a parent who has abused or neglected a child unless the court finds there is no likelihood of further abuse or neglect. Supervised visits may be permitted if the safety and well being of the child is assured. The Circuit Court has a duty to modify a custody order when persuaded that a modification is necessary to protect the health, safety and well-being of a CINA. This duty is not affected by the pendency of an appeal, or by the fact that the next periodic review hearing is not scheduled to be held for several months. 408 Md 152 at page 12 of the slip opinion.

f. Exceptions

(I) In re Danielle B., 78 Md. App. 41, 552 A.2d 570 (1989).

1. Juvenile Court judges have an obligation to review, order, and enforce delivery of services and treatment of CINA children. This obligation is a result of broad discretionary power and flows from inherent *parens patriae* jurisdiction.
2. Right to de novo hearing waived when exceptions to master's recommendations are filed before master's report is served on party or filed with Court.
3. Incumbent on Juvenile Court to review master's report from CINA case on same bases as that of any other master authorized by the Court, except that there is a special burden on a juvenile judge because of the special nature of his role.

(II) In re: Marcus J., No. 107, September Term 2007, 405 Md 221 (2008)

A master found Marcus J. to be a delinquent child. Marcus J. filed exceptions but his exceptions were dismissed by a Circuit Court Judge for lack of specificity. The Court of Appeals reversed and held that, under Section 3-807(c) of the Courts and Judicial Proceedings Article, and Maryland Rule 11-111, Marcus J. was entitled to a de novo hearing, as opposed to a hearing on the record, as to all matters decided by the master, because his exceptions met the specificity requirement.

g. Fifth Amendment Rights of Parent

In re Ariel G., 153 Md App 698 (2003) and 383 Md 240 (2004)

Only when the parent is offered immunity from prosecution, may the Court hold a parent in contempt for failing to disclose whereabouts of child. If court wants answers under penalty of contempt, State must offer immunity.

h. Closing case after granting custody and guardianship is not a termination of parental rights.

In Re: Caya B., 153 Md App 63 (2002)

Granting of custody and guardianship to a relative, and termination of the court's jurisdiction, does not constitute a termination of a parent's rights.

i. Child Support as part of Disposition

In Re: Katherine C., 390 Md 554 (2006)

A CINA court may order child support. The court correctly calculated the guidelines, but the change in child support was not allowed because the parent and counsel had no notice that child support would be an issue at the CINA hearing.

j. Indian Child Welfare Act

In Re Nicole B. and Max B. 175 Md. App. 450 (2007); reversed 410 Md 33 (2009) The Court of Special Appeals held that the Indian Child Welfare Act requires the DSS to make reunification efforts greater than the reasonable efforts required under Maryland=s statute. *Reversed*. Regarding the Indian Child Welfare Act, the Court of Appeals held that the trial court met the requirements of that act. Even though the trial court did not use the words “active efforts,” the trial court made active efforts as required by the Indian Child Welfare Act.

III. PERMANENCY PLANNING

A. Permanency Planning Hearings

1. Scheduling Within 11 months after the Respondent comes into care in a CINA case, the court must hold a hearing to review the implementation of a permanency plan for each child committed under Courts Article 3-823(b).

2. Choosing a Permanency Plan.

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:

- A. Reunification with a parent or guardian;
- B. Placement with relatives for adoption or custody and guardianship;
- C. Adoption by a nonrelative;
- D. Placement for custody and guardianship by a nonrelative; or,
- E. Placement in another planned living arrangement.

Courts Article 3-823 (e) (1) (i).

3. Restrictions on Choice of Permanency Plan

The Court may not order a child to be continued in placement under one of these permanency plans unless the court finds that the agency to which the child is committed has documented a compelling reason for determining that it would not be in the best interest of the child to:

- (1) return home;
- (2) be referred for termination of parental rights; or
- (3) be placed for adoption or guardianship with a specified and appropriate relative or legal guardian willing to care for the child. Section 3-823(f) of the Courts Article; Section 5-525 (e) (1) and (2).

4. Cases Where the Court Waives Reasonable Efforts

The Court may waive reasonable efforts requirements in cases where the child was found to be a child in need of assistance after factual findings of torture, sexual abuse, chronic abuse or neglect, or life threatening neglect. Reasonable efforts may also be waived if a parent or guardian:

- (1) has been convicted of certain crimes of violence;
- (2) has aided or abetted in the above;
- (3) has involuntarily lost parental rights of a sibling of the child.

When the Court waives the requirement that reasonable efforts be made to reunify the child with the child's parent or guardian under Section 3-812 of the Court Article, a permanency hearing shall be scheduled within 30 days.

At the permanency hearing after the waiver, the Court shall order a permanency plan. The local department of social services shall make reasonable efforts to place the child in a timely manner in accordance

with the permanency plan. The local department shall also complete the necessary steps to finalize the permanent placement of the child. Section 3-812 (e) of the Courts Article

5. Continuation of placement.

If the court orders a child to stay in placement, the court shall:

1. Determine the continuing necessity for and appropriateness of the commitment;
2. Determine the extent of compliance with the permanency plan;
3. Determine the extent of progress which has been made toward ending or mitigating the causes necessitating commitment; and
4. Project a reasonable date by which a child in placement may be returned home or placed for adoption or legal guardianship.

Courts Article 3-823 (h).

6. Children over 16

If a child has attained the age 16, the court must determine the services needed to assist the child to make the transition to independent living. Section 823 (e) (1) (ii).

7. Findings

- a. Return to Parent or Guardian - For a child whom the court orders returned to his or her parent or guardian:
The court need not hold further review hearings unless the child remains committed to the local department, in which case the court should hold 6-month reviews until commitment is rescinded. Courts 3-823 (h).
- b. Place With Relatives for Guardianship - For a child whom the court orders placed with relatives for guardianship, unless the court terminates its jurisdiction, the court shall:
 - (1) hold review hearings no less frequently than every 6 months until guardianship is granted.
 - (2) make findings in accordance with Courts 3-823 (h).
- c. Placement for adoption. For a child whom the court determines shall be placed for adoption:
 - (1) The court shall order that the petition for termination of parental rights shall be filed within 30 days; and
 - (2) The court shall schedule the termination of parental rights hearing. Courts 3-823 (g).

- d. Emancipation - For a child whom the court orders emancipated: Assuming the court has rescinded the commitment and terminated its jurisdiction, no further hearings are required.
- e. Placement in another planned living arrangement.
 - 1. For a child whom the court determines shall be placed in another planned living arrangement with a specific care giver who agrees to care for the child on a permanent basis, a review hearing shall be held no less frequently than every 12 months. The best practice is to schedule a review hearing every six months. Courts 3-823 (h)(1)(ii).
 - 2. For a child, not placed with a specific caretaker permanently, who is placed in another planned living arrangement
 - (a) Court shall hold reviews no less frequently than every 6 months. Courts 3-823 (h)(1)(i).
 - (b) The court should make findings in accordance with Courts 3-823.

8. Time limit

Every reasonable effort shall be made to effectuate a permanent placement for the child within 24 months from the date of initial placement. Section 3-823 (h)(3).

9. Requirement to timely file a termination of parental rights petition

The local department of social services shall file a petition for termination of parental rights if the child has been in an out of home placement for 15 of the most recent 22 months unless:

- (I) the child is being cared by a relative;
- (II) the local department has documented in the case plan, which shall be available for court review, a compelling reason why termination of parental rights would not be in the child's best interest; or
- (III) the local department has not provided services to the family consistent with the local department's case plan that the local department considers necessary for the safe return of the child to the child's home. Family Law 5-525.1 (b).

B. Statutes and Legislative History

a. Philosophy of Federal and State Statutes

1. "The overriding theme of both the federal and State legislation is that a child should have permanency in his or her life. The valid premise is that it is in a child's best interest to be placed in a permanent home and to spend as little time as possible in foster care." In re Adoption No. 10941 in the Circuit Court for Montgomery County, 335 Md. 99, 642 A.2d 201,204 (1994).
2. The private interest is the parent's fundamental right to raise his or her children, and there are few, if any, rights more basic than that one. The governmental interest in securing permanent homes for children placed into its custody because of an inability or unwillingness of their parents to care for them properly is also strong and vital, however... Once it appears that reunification with [a child's] parent is not possible or in their best interest, the government has not only a special interest, but an urgent duty, to obtain a nurturing and permanent placement for them, so they do not continue to drift alone and unattached. In re Adoption/Guardianship No. 93321055, Md. Ct. of Appeals, No. 25 (January 16, 1997).
3. The General Assembly finds that the policies and procedures of this subtitle that concern adoption are socially necessary and desirable. The purposes of this subtitle are to provide children with stable homes that protect their safety and health; to protect children from unnecessary separation from their parents; to permit adoption only by individuals who are fit for the responsibility; to protect natural parents from making a hurried or ill-considered decision to give up a child; and to protect adoptive parents by providing them information about the child and the child's background and from a future disturbance of their relationship with the child by a natural parent. Family Law Article, Section 5-303.

b. Adoption Assistance and Child Welfare Act of 1980

1. Origin.
During the 1970's, nationwide concern grew regarding the large number of children who remained out of the homes of their biological parents throughout their childhood, frequently moved from one foster care situation to another, thereby reaching majority without belonging to a permanent family. This phenomenon became known as "foster care drift" and resulted in the enactment by Congress of Public Law 96-272,

the 'Adoption Assistance and Child Welfare Act of 1980,' codified at 42 U.S.C. " 670-679 (1988). One of the important purposes of this law was to eliminate foster care drift by requiring states to adopt statutes to facilitate permanent placement for children as a condition to receiving federal funding for their foster care and adoption assistance programs. In re Adoption No. 10941 in the Circuit Court for Montgomery County ("Ivan M,"), 335 Md. 99, 642 A.2d 201, 204 (1994).

2. General Requirements of the Act.

Case Plan. A state is required to provide a written case plan for each child for whom the state claims federal foster care maintenance payments. 42 U.S.C. ' 671(a)(16). The case plan must include a description of (a) the home or institution into which the child is placed;, (b) a discussion of the appropriateness of the placement; and (c) a description of the services provided to the parents, child and foster parents to facilitate return of the child to his or her own home or to establish another permanent placement for the child. 42 U.S.C. 675(1). See also COMAR 07.02.11.13 (Case Planning for Permanency).

Case Review System. The state must implement a case review system that provides for administrative review of the case plan at least every six months and judicial review no later than 12 months after original placement and not less frequently than every 12 months thereafter during the continuation of foster care. 42 U.S.C. 675(5)(B) and (C) (1996 Suppl.). See also, Courts Article 3-823 (1996 Suppl.); COMAR 07.02.11.18 (Periodic Review).

Purpose .The purpose of the case review system is to determine whether the child should be returned to his or her biological parents, continued in foster care for a specified period, placed for adoption, or because of the child's special needs or circumstances, continued in foster care on a long term basis. 42 U.S.C. 675(5)(C). See also, Courts 3-823

c. The Adoption and Safe Families Act of 1997

1. In determining reasonable efforts to be made with respect to a child, the child's health and safety shall be the paramount concern.
2. There are occasions when a state is not required to make reasonable efforts to reunite a child with his or parent.¹ It is unnecessary to make efforts to avoid removal, or to make attempts to reunite if the court finds by clear and convincing evidence that one or more of the following circumstances exist.
 - a. A parent has subjected the Respondent child to torture, chronic abuse, sexual abuse, or chronic and life-threatening neglect.
 - b. (i) A parent has been convicted of a crime of violence in Maryland against the Respondent child, or that child's sibling, or that child's other parent, or any person residing in the household of the convicted parent.
 - (ii) A parent is convicted of a crime in another state which would be covered by (b.) (i) above had the crime been committed in Maryland.
 - (iii) A parent has been convicted of aiding or abetting, conspiring, or soliciting to commit a crime described in either (b) (i) or (b) (ii).
 - c. A parent who has involuntarily lost parental rights of a sibling of the Respondent child.
3. Children must be placed in a permanent placement in a timely manner and at any rate within 22 months of the child's entry into foster care.
4. Foster parents and other custodians of a child shall have the right to be heard at permanency planning hearings and review hearing.
5. States are to assure that children who have special needs and who are adopted shall have the same health insurance coverage as they would have if they remained in foster care.

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In Maryland, the circumstances where reasonable efforts may be waived are found at Section 5-313 (d) (1) (v) of the Family Law Article, Section 5-525.1 of the Family Law Article, and Section 3-812.1 of the Courts Article.

6. Children who receive an adoption subsidy may not be deprived of that subsidy if the adoption is dissolved.

d. Maryland's Statutory Scheme

1. Origin

- a. Maryland receives federal funds pursuant to the Adoption Assistance and Child Welfare Act of 1980. Accordingly, the Maryland General Assembly has enacted legislation to comply with the federal requirements. In re Adoption No. 10941, 201, 335 Md. 99, 642 A.2d at 204.
- b. In 1985, the Governor of Maryland appointed an Adoption Task Force "to study the barriers to effective adoption services, especially for children committed to the state as part of the foster care system." The Task Force found that Maryland children were spending, on the average, more than five years in foster care because of delays in the various stages of the adoption process. The Task Force recommended several proposed laws to "shorten the time a child waits for a permanent home." In response to these recommendations, the 1987 Maryland General Assembly enacted several amendments to the guardianship laws to speed up the adoption process.
- c. Ten years later, in 1995, the Governor of Maryland appointed a 15 member Adoption Commission for the purpose of removing "the barriers to adoption and providing] aggressive solutions to streamline systems and untangle the legal process for Maryland children in foster care." Executive Order 01.01.1995.22. In addition to numerous administrative proposals, the Commission recommended that one court have jurisdiction over both Child in Need of Assistance (CINA) and Termination of Parental Rights (TPR) proceedings and that the court review CINA cases more frequently. See Adoption: Making it Work - A Report on Accelerating Permanency for Maryland's Children. The Maryland General Assembly adopted these suggestions in its 1996 legislative session, amending Md. Courts 3-804(a), adding Courts 3-826.1 and repealing Md. Code Family Law 1-201(d). The sections of the Courts Article were renumbered in 2001 and now are sections 3-803 and 3-823.

- d. In 2001 legislation, effective in 2002, the juvenile causes subtitle was reorganized to separate CINA proceedings from other proceedings in the subtitle. The purposes of the CINA provisions remained the same, but there were some substantive changes.

C. Legislative Priorities

a. Safety First

The safety of the child takes priority over all other considerations.

b. Preventing Removal is a Priority Second Only to Child Safety

1. **Removal to be Avoided.** A local department is required to assist in preventing the necessity of removing the child from the child's natural parent or guardian. See, e.g., *In re Beverly B.*, 72 Md. App., 433, 530 A.2d 766, 769 (1987) (declaring that removal of a child from a parent is a drastic remedy which should be avoided) citing *In re Jertrude O.*, 56 Md. App. 83, 466 A.2d 885 (1983).
2. **If Removal Necessary, Attempt to Reunite.** If removal does become necessary, the department should then attempt to reunite the child with the child's natural parent or guardian. See COMAR 07.02.11.14, .15, .22 (Reunification Services, Service Agreements, Return of Child to Parents). Where, however, "attempts at reunification would obviously be futile, the Department need not go through the motions in offering services doomed to failure." *In re Adoption/Guardianship No. 10941*, 335 Md. 99, 642 A.2d 201 (1994); see also, Family Law 5-313(d)(3) (waiver of DSS obligation to provide reunification services). Now those provisions are at Family Law 5-323 and Courts 3-812.
3. **If Reunification Fails, Find Another Permanent Home.** Where efforts at reunification fail, however, the legislature has provided a statutory scheme to enable the child to find a permanent home with another family.
4. **It is unnecessary to make efforts to avoid removal, or to make attempts to reunite under certain conditions.** The Court may waive reasonable efforts requirements in cases where the child was found to be a child in need of assistance after factual findings of torture, sexual abuse, chronic abuse or neglect, or life threatening neglect. Reasonable efforts may also be waived if a parent or guardian:

- (1) has been convicted of certain crimes of violence;
 - (2) has aided or abetted in the above;
 - (3) has involuntarily lost parental rights of a sibling of the child.
- Courts Article 3-812. Family Law Article 5-523.

When the Court waives the requirement that reasonable efforts be made to reunify the child with the child's parent or guardian under Section 3-812 of the Court Article, a permanency hearing shall be scheduled within 30 days.

c. The Third Priority: If a Child is Removed From His/Her Home Speedily Find a Permanent Family for That Child

1. Plan to be Developed by Local Department Within 60 Days of Placement. Within 60 days after placement, the local department, together with the child's parent, is required to develop a case plan for each child in foster care. The case plan must
 - A. include a permanency plan;
 - B. state with whom the child was living before placement and their relationship to the child; and
 - C. either describe efforts that have been made to prevent placement, or describe why such efforts were not possible. COMAR 07.02.11.13(1)-(3).
 - D. the child's safety and health shall be the primary concern.
 - E. family reunification services shall be provided to the child's family to allow safe and appropriate reunification in a timely manner. These services shall be time limited.
 - F. the agency to which the child is committed shall concurrently develop another permanency plan (not reunification) which is in the best interests of the child.
 - G. Reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts.

Section 5-525 (b), (c), and (d) of the Family Law Article
2. Plan to be in best interest of child. The permanency plan is to be in the best interest of the child. Family Law 5-525 (c). In determining a permanency plan that will serve the child's best

interest, the local department is required to consider the following factors:

- A. the child's ability to be safe and healthy in the home of the child's parent;
 - B. the child's attachment and emotional ties to the child's natural parents and siblings;
 - C. the child's emotional attachment to the child's current care giver and the care giver's family;
 - D. the length of time the child has resided with the current care giver;
 - E. the potential emotional, developmental, and educational harm to the child if moved from the child's current placement; and
 - F. the potential harm to the child by remaining in State custody for an excessive period of time.
- Family Law 5-525;COMAR 07.02.11.13(A)(3-1).

3. Hierarchy of Permanency Plans. In developing the permanency plan, the department is required to consider a statutory hierarchy of placement options in descending order of priority.
- A. Return to Parents. The first plan to be considered is returning the child to the natural parents or guardians. Family Law 5-525 (b) & (d). Courts 3-823 (e)(1)(i) 1
 - B. Relative Placement. If reunification with the biological parents is not possible, department must consider placing the child with relatives to whom adoption, guardianship or

care and custody, in descending order of priority, are planned to be granted. Family Law 5-525(e)(2)(ii).²

C. Adoption. If relative placement is not possible, then the department must consider adoption in the following descending order of priority:

Current Foster Parent. By a current foster parent with whom the child has resided continually for at least the 12 months prior to developing the permanency plan or for a sufficient length of time to have established positive relationships and family ties. Family Law 5-525 (e) (2) (iii) (1);

(B) Another Approved Adoptive Family. Family Law 5-525 (e) (2) (iii) (2). Courts 3-823 (e) (1) (i) 3

D. Custody and Guardianship by a Person not a relative

This option is permitted under Courts Article sections 3-819.2 and 3-823 (e)(1)(i)4.

4. Other Planned Living Arrangements - Hierarchy

These plans are often listed with the permanency plans, but they are not permanency plans. Instead they are a recognition of the fact that when the state is unable to achieve a permanency plan for a child, it still has an obligation to plan for that child's transition into adulthood. These plans are disfavored. Any of the above permanency plans should be adopted and implemented before choosing another planned living arrangements. If another planned living arrangement is chosen, and it later becomes possible to adopt a permanency plan, the permanency plan should replace the

See In re Adoption/Guardianship Nos. CAA92-10852 and CAA92-10853, 103 Md. App. 1, 651 A.2d 891 (1994) (citing Family Law 5-525(i) holding that once DSS determined that reunification of children with father was not possible, it was required to consider placement of children with his relatives as "next best option"). 3-823 (e)(1)(i)2 See also Family Law 5-534 - "Kinship Care Program" which requires that "In selecting a placement that is in the best interests of a child in need of out-of-home placement, the local department shall, as a first priority, attempt to place the child with a kinship parent." Family Law 5-534 (c)(1). The local department shall exhaust all reasonable resources to locate a kinship parent for initial placement of the child. Family Law 5-534(c)(2). If no kinship parent is located at the time of the initial placement, the child shall be placed in a foster care setting. Family Law 5-534(c)(3). If a kinship parent is located subsequently to the placement of a child in a foster care setting, the local department may, if it is in the best interest of the child, place the child with the kinship parent. Family Law 5-534(c)(4).

other planned living arrangement immediately. Courts 3-823(e)(1)(i)5.

The Court may not order another planned living arrangement unless it finds that the agency to which the child is committed has documented a compelling reason for determining that it would not be in the best interest of the child to:

- (A) return home;
 - (B) be referred for termination of parental rights; or
 - (C) be placed for adoption or guardianship with a specified and appropriate relative or legal guardian willing to care for the child.
- Section 3-823 (f) of the Courts Article.

5. Emancipation. This plan is appropriate only if the Respondent has reached the age of 18 or if the Respondent has met the criteria for emancipating a minor including a demonstrated ability to support himself or herself.
6. Independent Living. This plan is appropriate for Respondents who have reached age 16. This plan is to prepare the Respondent for emancipation between the ages 18 and 21. Section 3-823 of the Courts Article.
7. Permanent Foster Care. A court-approved permanent foster home with a specific care giver. Family Law ' 5-525(e)(2)(iv). While this plan is permitted by statute, new interpretations of federal regulations require periodic review hearings in these cases.

IV. CASE SUMMARIES PERMANENCY PLANNING

A. More than a single referral is needed if the court is to find that the local DSS has made reasonable efforts toward reunification.

In re James G., No. 625, September Term, 2007, 178 Md App 543, 2008. Maryland's statutory scheme for child protection derives from federal law. When a child is removed from the home for health or safety reasons, both federal and state law require local departments of social services, with exceptions not applicable here, to make "reasonable efforts" to accomplish parental reunification. Under the circumstances of this case, the circuit court erred in finding reasonable efforts in connection with a permanency plan that had a stated goal of parental reunification. Father's unemployment and lack of

housing were his sole impediments to reunification. Yet, DSS made only one referral to father, for vocational assistance, upon which DSS did not follow up. The referral was unsuccessful. The circuit court also erred or abused its discretion in terminating the permanency plan of parental reunification based on its erroneous finding of reasonable efforts, and because, among other things, it did not address child's best interests in changing the permanency plan. Instead, it focused almost entirely on length of time the child had been out of the home. Although length of time is an important consideration, it does not compel a change in the permanency plan when, as here, the child was in care of a relative and DSS failed to make reasonable efforts towards reunification.

B. Visitation

IN RE: MARK M., 365 Md. 687, (October 5, 2001)

Improper Delegation of Judicial Authority Regarding Visitation Rights Between a Mother and Her Child; Juvenile Proceedings, Request for An Independent Medical Examination Pursuant to Maryland Code, Section 3-818 of the Courts and Judicial Proceedings Article (1974, 1998 Repl. Vol., 2000 Supp.); {now Courts 3-816.}

Held: the juvenile court's order with respect to visitation rights was legally erroneous as it permitted an improper delegation of judicial authority to an administrative agency by ordering that petitioner have no visitation with her son, a child in need of assistance, unless and until recommended by the child's therapist and the Department of Health and Human Services. Held: juvenile court failed to properly balance the petitioner's interests in obtaining an independent medical examination of her son for purposes of obtaining an expert opinion regarding the child's ability to tolerate visitation with the child's best interests.³

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A trial court, acting under the State's *parens patriae* authority, 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 the case before us, the trial court took great care in considering the evidence of the abuse of young Mark M., the status of Mark M.'s emotional recovery (as testified to by both Mark M.'s guardian and therapist), the failure of petitioner to comply with prior court orders and her apparent unwillingness to satisfy those orders still in effect. After weighing these factors, the lower court found that visitation by the petitioner would be against the child's best interests, explaining that Mark M. was in an "extremely vulnerable position" with a substantial likelihood of regression from his recovery to date should he have contact with his mother. We do not dispute the lower court's findings, *per se*, nor do we dispute the court's determination to deny the motion to enforce visitation. The court's further order, however that [v]isitation will not occur until his therapist recommends it, is both facially over-broad and legally incorrect as it constitutes an improper delegation of authority to the therapist to determine whether additional visitation could occur before the court's regular review of the case (six months hence) or upon earlier motion. For this reason, we enter judgment

C. May not adopt another planned living arrangement as a plan unless the preferred permanency plans have been ruled out

In Re Yves S., 373 Md 551 (2003) Clearly erroneous for the court to adopt a permanency plan of long term foster care when mentally ill parent had controlled illness for two years, meaning reunification was a feasible plan.

D. Plan may be changed to adoption if more reunification efforts would be futile.

In Re: Ashley E. et al., 158 Md App 144 (2004)

The Juvenile Court acted within its discretion when it ruled as follows:

1. Denied motion to sequester witnesses
2. Denied motion to exclude non-parties from the courtroom
3. Changed plan to adoption absent evidence of DSS reasonable efforts. The DSS had made long and numerous efforts to keep children with their mother but gave up when they determined a child was sexually abused while in the mother's care.

E. Change of Permanency Plan from Reunification to "Open Adoption" is permissible where there is a continued pattern of parental neglect.

In Re: Adoption/Guardianship of Cadence B., 417 Md 176, (2010)

Following years of parental neglect by Petitioner, the juvenile court determined that it would not be in the best interests of Petitioner's three year old daughter to remain in foster care in the hopes that she might someday reunite with her father. Because of Petitioner's history of neglect, he lost custody to all five of his other children and his parental rights as to three of those children were involuntarily terminated. Moreover, it seemed that Petitioner had not cured his neglectful behavior. Petitioner had moved into a home in Pennsylvania that was four hours away from his daughter and could not be monitored by the Department of Social Services, even though she and her five siblings all resided in Maryland. Also, despite the best efforts of the Department to facilitate visitation, Petitioner traveled to see his daughter only 18 out of 561 days. As a result, the juvenile court was faced with keeping the daughter in "foster care limbo" until Petitioner could prove that future neglect would not occur, or changing her permanency plan so that she could be openly adopted by the foster parents to whom she had bonded. The juvenile court did not err in changing the child's permanency plan from reunification to "open adoption." The court considered all of the requisite factors, and it was clear from the

to vacate the court's ruling.

evidence that Petitioner continued to willfully absent himself from any meaningful contact with his daughter.

F. When no party objects, trial court may accept written reports in lieu of live testimony. Once a report is in evidence, the court may use the information in the report in whatever way the court deems appropriate. Based on the information in reports in evidence, the court had sufficient evidence to order a change in the permanency plan from reunification to adoption.

In Re: Faith H., 409 Md 625 (2009). Father of Faith H. appealed the trial court's ruling that the permanency plan should be changed from reunification to adoption. The Court of Appeals granted *certiorari* prior to the Court of Special Appeals hearing the case. Faith H.'s father argued that the local DSS did not present enough evidence to support a change of plan. He argued that the DSS needed live witnesses in addition to submitted reports before the DSS could meet its burden of proof. The opinion noted that Faith H.'s father could not argue that the reports were inadmissible because he consented to the admission of the reports during the trial. The opinion stated further that once the reports were admitted, those reports were evidence like any other evidence. The trial court was free to use them in any appropriate fashion. The opinion stated that there has never been a requirement that live testimony supplement written evidence. The Court saw nothing in this case which would warrant the announcement of a judicially created standard requiring that live testimony supplement written evidence. The Court affirmed the trial court's decision.

G. Court May Find Reasonable Efforts Even if the Services Requested by the Department are Unavailable Due to Funding Problems

In Re Shirley B. et al. 191 Md App 678 (2010)

Finding that the Department of Social Services made reasonable effort is not erroneous when Department referred parent to appropriate services even if some of the services were unavailable due to budgetary constraints.

H. Judge may not adopt a master's recommendation prior to expiration of the five day period during which a party might take exception.

In Re Kaela C. et al , 162 Md App 315 and 394 Md 432 (2005)

Five days must pass following a master's decision before a judge can pass an order based on that decision. A party may take an exception during

that five day period. The court may not waive the five days notice because of extraordinary circumstances.

I. Ruling after permanency planning hearing is interlocutory if plan is not changed.

In Re: Billy W. et al , 386 Md 675 and 387 Md 405 (2004)

There were two appeals from the same case, one on behalf of the mother and the other on behalf of the father. The rules of evidence need not be strictly applied at permanency planning hearings. Hearsay may be admitted provided the court determines that the evidence is reliable and probative. An order maintaining an existing permanency plan is an interlocutory order and is not ripe for appeal until further hearings are held. See also, on the rules of evidence issue, *In Re: Ashley E. et al*, 387 Md 260 (2005) and *In Re: John F. et al*, 169 Md App 171 (2005).

J. Ruling may be appealed when the permanency plan is changed to adoption

In Re Karl H. et al. 163 Md App 536 and 394 Md 402 (2005)

Appeal dismissed by the Court of Special Appeals as premature when parents sought review of concurrent plan of reunification and adoption. Reversed by Court of Appeals. A plan of adoption requires the filing of a termination of parental rights petition. This has enough of an impact on a parent's rights to allow for an immediate appeal.

K. Ruling after permanency planning hearing may be appealed when the plan has been changed

In re Damon M., 362 Md. 429, 765 A.2d 624 (Jan. 12, 2001), reversing **In re Damon M.**, 131 Md. App. 449, 749 A.2d 231 (2000)

In these four consolidated cases, parents appealed from changes in their children's permanency plans from reunification to either adoption or long-term or permanent foster care. The Court of Special Appeals held that the orders could not be appealed because the change in the permanency plans did not by itself affect the parents' rights to custody or visitation or deprive them of their parental rights. The Court of Appeals reversed, holding that the orders were appealable because they changed the terms of the pre-existing orders giving custody to the local department. Specifically, A[s]ervices to be provided by the local social service department and commitments that must be made by

the parents and children are determined by the permanency plan. 362 Md. at 436, 765 A.2d at 627-28.

L. Ruling after permanency planning hearing may be appealed if there is a change of custody from one parent to the other.

In Re: Joseph N., 407 Md. 278, No. 25, September Term, 2008, filed February 19, 2009.

A mother of a child in need of assistance (CINA) was entitled to interlocutory appellate review of a juvenile court periodic review hearing order reaffirming a permanency plan of reunification, while shifting the child's physical custody from foster care to his father under the protective supervision of the county department of health and human services. The order was an appealable interlocutory order under Maryland Code, Section 12-303(3)(x) of the Courts and Judicial Proceedings Article because the shift in physical custody was a consequential and potentially outcome-determinative change: it increased the likelihood that the child would remain with his father permanently by 1) expanding the universe of persons eligible for reunification to include the father; 2) recognizing the father as available, willing, and able to care for the child; and 3) facilitating bonding and attachment between the father and child, resulting in a relative disadvantage to the child's mother in her reunification efforts.

M. During the pendency of an appeal, trial court retains jurisdiction to modify a custody order if, because of a material change of circumstances, modification is necessary to preserve the health, safety and well-being of the child.

In re: Deontay J., 406 Md 582, 2008, December 10, 2008; 408 Md 152, 2009. The Circuit Court shall hold a custody hearing at which the Circuit Court shall (1) expressly state the findings it is required to make under 9-101(b) of the Family Law Article, and (2) enter a custody order that conforms to the applicable law and is based upon a current and complete factual predicate. Section 9-101(b) of the Family Law Article states that the court shall deny custody and/or visitation to a parent who has abused or neglected a child unless the court finds there is no likelihood of further abuse or neglect. Supervised visits may be permitted if the safety and well being of the child is assured. The Circuit Court has a duty to modify a custody order when persuaded that a modification is necessary to protect the health, safety and well-being of a CINA. This duty is not affected by the pendency of an appeal, or by the fact that the next periodic review hearing is not scheduled to be held for several months. 408 Md 152 at page 12 of the slip opinion.

V. Case Summaries - Unreported Cases

A. Intervention

In re Tabitha B., No. 2869, Sept. Term, 1999 (October 6, 2000) *unreported*: the child's grandmother and aunt were properly denied intervention; neither had a right to intervene.

B. Acts of improper supervision combined with failure to take mental illness medication is sufficient for a neglect finding.

In re Brandon and Julie D., No. 203, Sept. Term, 2000 (November 22, 2000) *unreported*: the children's adjudication as CINA and placement in foster care was proper. The mother left the children unattended on more than one occasion and did not stay on her antidepressant medication, creating a risk that the children would be harmed if left in her care.

C. Parent whose rights have been terminated may not have case reopened except as provided by statute.

In re Heather B., No. 2202, Sept. Term, 1999 (December 8, 2000) *unreported*: (1) birth parent whose parental rights had previously been terminated is a legal stranger to the child, he had no right to reinstatement of his parental rights, to adopt the child, or to visitation; (2) the trial judge was not required to recuse himself or to close the courtroom during the hearing on those motions because no basis for either request had been presented.

D. Violation of child's right to consult with counsel became moot when consultation took place the next day.

In re Daniel W., No. 841, Sept. Term, 2000 (January 16, 2001) *unreported*: When DSS failed to make the child available to speak with his attorney before the shelter-care hearing or to attend the hearing, but a second hearing on shelter care was held the next day and the child consulted with his attorney and attended the second hearing, the second hearing made the errors in the first moot.

E. Civil contempt is not the proper remedy when parent takes child from the custody of another who had been given temporary custody at a shelter care hearing.

Teresa B. v. State of Maryland, Nos. 463 and 948, Sept. Term, 2000 (January 19, 2001) *unreported*: a parent's absconding with an alleged CINA during the pendency of a hearing on her exceptions to a master's shelter-care order is conduct occurring outside the direct perception of the presiding judge and does not interfere with the dignified conduct of the court's business. Hence, it was constructive criminal contempt entitling her to a trial by a jury. Shortly after the court issued its decision, the mother again kidnaped the child.

F. Mother is not neglectful solely because she saw nothing wrong with father's abusive behavior.

In re Peter D., No. 842, Sept. Term, 2000 (February 12, 2001) *unreported*: the mother's refusal to believe that the father had done anything untoward, despite his admission to having "slapped" the child and the statements of several witnesses to the incident and to a lump on the child's head, was no evidence that the mother was unable or unwilling to protect the child, and the trial court therefore erred in adjudicating him a CINA.

G. Test for determining neglect

In re Richard B. and Katherine B., No. 466, Sept. Term, 2000 (March 15, 2001) *unreported*: illustrates the two-pronged test for adjudicating a child CINA (1) the parents had failed to provide "ordinary and proper care and attention" because one child was grossly obese as a result of poor nutrition and lack of exercise, the parents failed to take her to her needed speech therapy, they did not provide appropriate food, clothing, and a bed, and they had repeatedly failed to provide housing; (2) the parents' failure to take advantage of the services offered to them and their ten-year history of failure with the children's older siblings (as to whom their parental rights had been terminated) showed that they are "unable or unwilling to give proper care and attention."

H. Postponements

In re Karna R. and Abhisek R., No.1997, Sept. Term, 2000 (June 28, 2001) *unreported*: in ruling on the mother's request for a postponement on the ground of illness, the trial court erred in not investigating the circumstances of the mother's absence and considering the importance of her presence, the harm that would result from a postponement, and her previous conduct in the case.

I. Immigration - Pending Deportation of Mother and Children's wish to be adopted by current caretakers is sufficient to change plan from reunification to adoption

In re Marcello K., Lenny M., and Keshya K., Nos. 6882, 6883, and 6884, September Term, 1998 (July 27, 2001) *unreported*: the trial court properly changed the children's permanency plans from reunification to adoption on the basis of their length of time in foster care, the noncitizen mother's incarceration and probable deportation, and the children's citizenship and desire to be adopted by their foster parents.

J. Child's continued desire to return home and parents continued inability to care for child may be grounds for Another Planned Living Arrangement

In re Damon M., No. 1006, Sept. Term, 1999 (July 26, 2001) (on remand) *unreported*: the trial court properly changed the child's permanency plan from reunification to long-term foster care, when the child was over 10 and wanted to return home but the mother had not rectified the circumstances that brought the child into foster care.