

Circuit Court for Baltimore City  
Case No. T21062003

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 377

September Term, 2022

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IN RE J. S.

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Kehoe,  
Nazarian,  
Reed,

JJ.

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Opinion by Kehoe, J.

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Filed: December 15, 2022

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

This is an appeal from a judgment of the Circuit Court for Baltimore City, sitting as the juvenile court, that granted the petition of the Baltimore City Department of Social Services (the “Department”) to terminate the parental rights of S. S. (“Father”) and J. B. (“Mother”) in their child J. S. (the “Child”). Mother and Father raise the following issues, some of which we have slightly re-worded:

Mother:

1. Did the juvenile court err when it changed the permanency plan from reunification to termination of parental rights after Mother had completed the tasks necessary for reunification?
2. Did the juvenile court abuse its discretion when terminating the parental rights of Mother to her minor child, in light of the inconsistent evidence as to Mother’s compliance with the service agreement/reunification plan?

Father:

1. Did the juvenile court clearly err in finding that the Department made reasonable efforts towards reunification with Father?
2. Did the juvenile court abuse its discretion in finding clear and convincing evidence that there were exceptional circumstances to terminate Father’s parental rights?

We will affirm the judgment of the juvenile court.

#### BACKGROUND

The Child first came to the Department’s attention on May 14, 2014, when he was four months old. Mother, Father, the Child, and one of the Child’s half-siblings were together in a Baltimore City courthouse when the Child fell from Mother’s lap onto the floor. A courthouse security officer responded, decided that the Child should be taken to

a hospital for evaluation, and accompanied the family to the hospital. The security officer thought that Mother might have been under the influence of controlled dangerous substances, and he shared his concerns with hospital staff. It is unclear from the record whether the security officer or someone from the hospital called the Department, but it responded, and the Child was placed in emergency shelter care that same day.

On the following day, and after a contested hearing, the juvenile court authorized continued shelter care placement for the Child. Later, the juvenile court held contested adjudication and disposition hearings, found the Child to be a child in need of assistance (CINA), and committed the Child to the custody of the Department with a supervised visitation schedule granted to Mother and Father.

What followed was a series of CINA hearings to address issues of parenting skills, substance abuse, mental health, employment, and housing. The parties made sporadic progress in these areas, and the Child was returned to them in July 2016 under an order of protective supervision. He remained under his parent's care until February 2017, when Mother and Father were charged with car theft. The Child never returned to the care of either of his parents again following his 2017 removal.

The Department continued to advocate for the Child's continued commitment to the Department, with the goal of eventual family reunification, at subsequent permanency plan review hearings in 2017, 2018, and early 2019. However, the Department concluded that Mother and Father had not made sufficient progress in establishing a safe and stable home for the Child and petitioned the juvenile court for a change to the Child's

permanency plan. In February 2020, the juvenile court entered an order changing the goal of the permanency plan to custody and guardianship or adoption by a non-relative.

In March 2021, the Department filed a petition for guardianship pursuant to Md. Code. Fam. Law § 5-301 et seq. In late 2021 and early 2022, the juvenile court held a multi-day hearing on the Department’s petition.<sup>1</sup> On April 20, 2022, the juvenile court issued written findings of fact and an order terminating Mother and Father’s parental rights in the Child. We will discuss the court’s findings of fact and conclusions of law later in our opinion.

Mother and Father each filed timely notices of appeal. In this case, they filed separate briefs. The Child, through his best interest counsel, has joined in the Department’s brief.

#### THE STANDARD OF REVIEW

When an appellate court reviews a juvenile court’s termination of parental rights, we apply three different but interrelated standards:

[W]hen the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8–131(c)] applies. [Second,] [i]f 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.

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<sup>1</sup> The court held hearings on November 3, 2021; December 3, 2021; December 16, 2021; January 31, 2022; February 18, 2022; and March 23–24, 2022.

*In re Adoption of Ta’Niya C.*, 417 Md. 90, 100 (2017) (citing *In re Adoption/Guardianship of Victor A.*, 386 Md. 288, 297 (2005)).

#### ANALYSIS

##### *Mother’s first contention*

Mother first argues that the juvenile court erred when it changed the goal of the Child’s permanency plan from parental reunification to termination of parental rights. Mother’s contentions are unpersuasive because the issue of the appropriateness of the permanency plan is not properly before this Court. Moreover, even if it were, there is no basis for us to second-guess the CINA court’s decision.

When a child is found to be a CINA, the Department is required to develop a permanency plan that is consistent with the best interests of the child. Md. Code, Courts & Jud. Proc. § 3-823(e)(1)(i); *In re D.M.*, 250 Md. App. 541, 560 (2021). “The permanency plan is an integral part of the statutory scheme designed to expedite the movement of Maryland’s children from foster care to a permanent living, and hopefully, family arrangement.” *In re Damon M.*, 362 Md. 429, 436 (2001). Critically, “[i]t provides the goal toward which the parties and the court are committed to work. It sets the tone for the parties and the court[.]” *Id.* The juvenile court is tasked with the regular review of the permanency plan and must do so at least every six months. *See* Courts & Jud. Proc. § 3-823(h)(1)(i). Section 3-23 of the Courts and Judicial Proceedings Article also provides that, at permanency plan review hearings, the court shall:

- (i) Determine the child’s permanency plan, which, to the extent consistent with the best interests of the child, may be, in descending order of priority:
  1. Reunification with the parent or guardian;
  2. Placement with a relative for:
    - A. Adoption; or
    - B. Custody and guardianship under § 3-819.2 of this subtitle;
  3. Adoption by a nonrelative;
  4. Custody and guardianship by a nonrelative under § 3-819.2 of this subtitle; or
  5. For a child at least 16 years old, another planned permanent living arrangement that:
    - A. Addresses the individualized needs of the child, including the child’s educational plan, emotional stability, physical placement, and socialization needs; and
    - B. Includes goals that promote the continuity of relations with individuals who will fill a lasting and significant role in the child’s life; and
- (ii) For a child at least 14 years old, determine the services needed to assist the child to make the transition from placement to successful adulthood.

Additionally, the court must “[c]hange the permanency plan if a change in the permanency plan would be in the child’s best interest.” Courts & Jud. Proc. § 3-823(h)(2)(vi).

A final judgment is one which resolves all outstanding issues in a case. *See, e.g., State v. WBAL-TV*, 187 Md. App. 135, 143 (2009). “To qualify as a final judgment, the judgment must be so final as to determine and conclude rights involved, or deny the appellant means of further prosecuting or defending his rights and interests in the subject matter of the proceeding.” (cleaned up) (quoting *Quillens v. Moore*, 399 Md. 97, 115. (2007)). In general, a party may only appeal from a final judgment. Courts & Jud. Proc. § 12-301.

A change in a permanency plan is not a final judgment. However, as this Court noted in *In re D.M.*, appeals from certain types of interlocutory orders are specifically allowed by statute. 250 Md. App. 541, 555 (2021). One such exception allows for the appeal of an interlocutory order “depriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order.” Courts & Jud. Proc. § 12-303(3)(x); *see also* Kevin F. Arthur, FINALITY OF JUDGMENTS AND OTHER APPELLATE TRIGGER ISSUES, 99–100 (2018). For this reason, “an order changing a permanency plan is immediately appealable under § 12-303(3)(x) if the order operates to deprive a parent of the care and custody of their children or changes the terms of a parent’s care and custody of their children.” *In re D.M.*, 250 Md. at 555–56 (cleaned up) (quoting *In re Samone H.*, 385 Md. 282 (2005)). The Supreme Court of Maryland has applied this principle to orders amending permanency plans from family unification to adoption. *In re Damon M.*, 362 Md. 429, 438 (2001) (“We hold that an order amending a permanency plan calling for reunification to foster care or adoption is immediately appealable.”)

In the present case, the juvenile court entered an order on February 13, 2020, changing the Child’s permanency plan from one of reunification to one of custody and guardianship or adoption to a non-relative. This is the order that Mother seeks to challenge in the current case. For the reasons that we have explained, this order was an appealable interlocutory order. The appropriate time to challenge the order was after it was entered and Mother had the right to do so by filing a notice of appeal within thirty days. Md. Rule 7-104(a). However, no appeal was filed.

The principle of claim preclusion, also known as *res judicata*, now bars Mother from raising the issue of the change to the permanency plan in the present case. *See Board of Education . v. Norville*, 390 Md. 93, 107 (2005) (“The doctrine of claim preclusion, or *res judicata*, bars the relitigation of a claim if there is a final judgment in a previous litigation where the parties, the subject matter and causes of action are identical or substantially identical as to issues actually litigated and *as to those which could have or should have been raised in the previous litigation.*” (cleaned up and emphasis added). Mother’s current assertion that the juvenile court in the CINA proceeding erred when it changed the goal of the permanency plan is a claim that “should have been raised in the previous litigation.” Because Mother had the right to challenge the juvenile court’s decision to change the Child’s permanency plan in the CINA proceeding and did not do so, she cannot challenge the validity of the CINA court’s order changing the permanency plan in the present case.

Setting the technicalities of claim preclusion aside, the orders of the juvenile court that are pertinent to the permanency plans for the Child are in the record in this appeal. We have reviewed them and we believe that the juvenile court’s decision to change the goal of the Child’s permanency plan from reunification to adoption was appropriate, despite Mother’s claims to the contrary. The record shows that neither Mother nor Father had been able to completely address the issues that caused the juvenile court to declare the Child to be a CINA in the first place. The CINA court was not required to indefinitely continue the Child’s foster care placement against the possibility that Mother or Father



would overcome these obstacles at some point in the future. *See In re Adoption of Jayden G.*, 433 Md. 50, 83 (2013) (noting that “[a] critical factor in determining what is in the best interest of a child is the desire for permanency in the child’s life [and] long periods of foster care are harmful to the children and prevent them from reaching their full potential.” *Id.* at 83 (cleaned up)).

The goal of the CINA statutory scheme is to place children in permanent and safe housing, preferably with the parents; if not the parents, then with other members of the child’s extended family; and when neither alternative is in the best interest of the child, then in adoptive homes. *See Courts and Judicial Proceedings* § 3-823(e). The record in this case amply supports the juvenile court’s conclusion that it was in the Child’s best interest to order guardianship with the right to consent to adoption.

*Mother’s second contention*

Mother next asserts that the juvenile court abused its discretion in terminating her parental rights because the court received inconsistent evidence regarding her compliance with the Department’s service agreement and permanency plan. We do not agree.

One of the problems with Mother’s contention that the trial court was presented with inconsistent evidence of her compliance with the reunification plan is that Mother does not adequately cite to the record. In her brief, Mother describes the testimony of a Ms. Husain, who served as part of the permanency plan team within the Department. However, Mother provides no citation to direct us to Ms. Husain’s testimony. When Mother goes on to describe the testimony of Ms. Chester, who she identifies as the

Child’s permanency worker, only one record citation is given, and that citation spans 35 pages of the record. It is not the role of an appellate court to dig through the record to find evidence in support of a litigant’s generalized factual assertions. Md. Rule 8-504(a)(4); *HNS Development, LLC v. People’s Counsel for Baltimore County*, 425 Md. 436, 459 (2012). However, looking past the issue of preservation, we are not persuaded by Mother’s argument.

Maryland Rule 8-131(c) states:

When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

Rule 8-131(c) reflects the reality that parties usually present inconsistent evidence at trial, and the trial court is best situated to appropriately determine the probative value of specific evidence. For this reason, “an appellate court gives due regard to the trial court’s role as fact-finder and will not set aside factual findings unless they are clearly erroneous.” *Clickner v. Magothy River Association Inc.*, 464, 424 Md. 253 (2012); *see also In re Adoption of Ta’Niya C.*, 417 Md. 90, 100 (2010) (“[W]hen the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8–131(c)] applies.”). Thus, inconsistent evidence is not a basis for reversal. Appellate courts will set aside a trial court’s factual findings only if there is no evidence that either directly or by reasonable inference supports the trial court’s findings. The issues that the court must

address in a TPR case are set out in Fam. Law § 5-323(d). These statutory factors “seek to assist the juvenile court in determining ‘whether the parent is, or within a reasonable time will be, able to care for the child in a way that does not endanger the child’s welfare.’” *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 52 (2019) (quoting *In re Adoption/Guardianship Rashawn H.*, 402 Md. 477, 500–01 (2007)).

We have reviewed the record and the juvenile court’s findings, and we conclude that there was a legally sufficient basis for each of the findings made as to the relevant factors. We therefore find no grounds for reversal on this issue.

*Father’s first contention*

Father asserts that the juvenile court erred in finding that the Department made reasonable efforts towards reunification with Father. We do not agree.

The Supreme Court of Maryland<sup>2</sup> has held that, when a juvenile court is determining whether to terminate a parental relationship,

[t]he court is required to consider the timeliness, nature, and extent of the services offered by [the Department] or other support agencies . . . Implicit in that requirement is that a reasonable level of those services . . . must be offered—educational services, vocational training, assistance in finding suitable housing and employment, teaching basic parental and daily living skills, therapy to deal with illnesses, disorders, addictions, and other disabilities suffered by the parent or the child, counseling designed to restore or strengthen bonding between parent and child, as relevant.

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<sup>2</sup> On December 14, 2022, the name of the Court of Appeals of Maryland was changed to the Supreme Court of Maryland.

*Rashawn H.*, 402 Md. at 500 (emphasis added).

However, “[t]here are some limits . . . to what the State is required to do” and “its duty to protect the health and safety of the children is not lessened and cannot be cast aside if the parent, despite that assistance, remains unable or unwilling to provide appropriate care.” *Id.*

In the present case, the record demonstrates that the Department made appropriate efforts to provide Father with a reasonable level of services to enable him to reunite with the Child.

As we have related, the juvenile court found that the Child was a CINA in November 2014. In its order committing the Child to the Department, the court found that it was not appropriate to return the Child to Father’s care because of father’s substance abuse issues and lack of stable housing. From what we can discern from the record, it does not appear that Father was receiving any services from the Department in the months following the order. However, the record also indicates that Father was incarcerated during some point in 2015. Once Father was released from incarceration, he partook of services offered by the Department. We know this because the juvenile court’s April 2016 permanency plan review order reflects that Father had enrolled in a parenting course and drug treatment program. In July 2016, and as a result of the progress that both Mother and Father were making in improving their parenting skills and addressing the other conditions that lead to the Child’s being declared a CINA in 2014, the juvenile court returned the Child to his parent’s care.

However, the Child was removed from his parent's household when both Mother and Father were arrested for charges relating to theft in Allegany County. Father was convicted, and following Father's incarceration, his interest in working with the Department and/or receiving services waned. The juvenile court found in a July 10, 2018 order that Father had not been in touch with his assigned Department caseworker. In an October 25, 2018 review hearing, Father's counsel stated during the hearing, at which Father was absent, that Father did not need any additional services. Further, in a February 24, 2019 order, the juvenile court again found that Father was not in touch with his caseworker.

The Department cannot be faulted for not providing services to a parent who has taken the position in court that he does not need them. We find no basis for reversal on this issue.

*Father's second contention*

Father next asserts that the juvenile court erred when it found that there were exceptional circumstances to terminate Father's parental rights. Assuming for purposes of analysis that Father is correct, any suppositional error by the juvenile court was harmless.

As we have explained, a juvenile court in a termination of parental rights action must find by clear and convincing evidence that relevant statutory factors in Family Law Article § 5-323(d) demonstrate either unfitness to parent *or* exceptional circumstances. Assuming, without deciding, that the juvenile court's conclusion as to exceptional circumstances was in error, there was clear and convincing evidence before the juvenile

court supporting its conclusion that Father is unfit to parent the Child. Father does not argue otherwise.

#### CONCLUSION

As the Supreme Court of Maryland noted in *Conover v. Conover*, “[c]hild custody and visitation decisions are among the most serious and complex decisions a court must make, with grave implications for all parties.” 450 Md. 51, 54 (2016). Termination of parental rights cases are equally, if not more, difficult. The record shows that the juvenile court, over extended hearings, carefully and fairly analyzed the evidence presented to it and came to the conclusion that the termination of appellants’ parental rights was demonstrated by clear and convincing evidence. Based upon the contentions in the party’s briefs, as well as our own review of that evidence, we can find neither factual error, incorrect legal reasoning, nor abuse of discretion on the part of the juvenile court. We affirm the court’s judgment.

**THE JUDGMENT OF THE CIRCUIT  
COURT FOR BALTIMORE CITY IS  
AFFIRMED.**

**APPELLANTS TO PAY COSTS.**