Circuit Court for Prince George's County
Case No. CINA-16-0146

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 448

September Term, 2021

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In re: H. J.

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Berger,
Shaw Geter,
Wilner, Alan M. (Senior Judge),
Specially Assigned,

JJ.

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Opinion by Wilner, J.

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Filed: October 12, 2021

*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 a Child in Need of Assistance (CINA) case involving an eight-year-old child (H.J.). The appeal is by the child's mother (Mother) from an Order of the Juvenile Court for Prince George's County approving a change in the Permanency Plan for the child from a sole plan of reunification of the child with Mother to a concurrent plan of reunification or adoption by a non-relative. The current intended non-relative is the woman who has acted as the child's foster mother for five years. Mother contends that the court abused its discretion in approving that change. We find no such abuse of discretion and shall affirm the judgment of the Juvenile Court.

## BACKGROUND

The involvement of H.J. and Mother with the Juvenile Court began on September 9, 2016, when a CINA petition, coupled with a request for continued shelter care, was filed. The petition alleged, and the court found, that Mother, H.J., who was then three years old, and a newborn sibling of H.J., being otherwise temporarily homeless, were living with a friend of Mother. On September 8, Mother and the friend, accompanied by Mother's two children and the friend's two children, ages one and four, drove to a grocery store to do some shopping. The friend went into the store leaving Mother and the four children in the car. At some point, Mother decided to do some shopping herself. She took her children into the store with her, leaving the friend's children in the car alone.

A bystander, observing the two unattended children, called the police, who arrived just as Mother and the friend returned. The officers questioned both women. Mother gave the police a false name and a false date of birth and told the police officer that it was fine to leave the children in the car alone because the car was running. Her true identity was discovered from items Mother had left in the car, including a food stamp card with Mother's name on it that Mother claimed belonged to her sister. While the police were checking her identity for warrants, Mother walked away with her baby in her arms, leaving H.J. standing alone. A canvass of the immediate area failed to locate her. The police discovered that Mother had open warrants, some in Maryland for failure to appear and one in Virginia for fraud.

At the shelter care hearing, Mother claimed that she had not abandoned H.J., as alleged in the petition. According to the court, Mother was very hostile and, despite efforts by the social workers to calm her down, left the courtroom several times cursing and yelling. She left the courthouse entirely before the sheriffs could intervene.

Apart from the outstanding warrants, the court found that Mother had several aliases. The identity and whereabouts of H.J.'s father were not clear; several men had been named as prospects, and a paternity action had been filed against one of them – a man Mother testified was not the father but had been sued so she could collect child support. On this evidence, the court approved continued shelter care for H.J. pending an

adjudicatory hearing, subject to liberal, but supervised, visitation with Mother and the child's father, if he could be located.

An adjudicatory hearing on the CINA petition was set for October 7, 2016 but had to be continued because Mother failed to appear. The rescheduled hearing set for November 4 also had to be continued because DSS was not prepared to proceed and an alleged father was not present. The full adjudicatory hearing, followed immediately by a disposition hearing, occurred on November 28, 2016. The identity of H.J.'s father still had not been determined. The police officer who had arrived on the scene back in September testified to the facts previously set forth with respect to what occurred on September 8. Additional evidence was presented that, though requested by DSS, Mother had failed to turn herself in so that DSS could assure the safety of the infant child, that she later had visited with and had telephone contact with H.J. but was reported to having gotten angry and began cursing during those visits, such that H.J. "became frightened and did not want to visit." The friend with whom the Mother and H.J. had been staying said that she was unable to care for the child.

On this evidence, the court found that H.J. had no home, other than the foster home, in which she could be safely cared for and was a Child in Need of Assistance. The court ordered that H.J. be placed in the care and custody of DSS, subject to liberal but supervised visitation with Mother, the child's father, if he could be located, and the

child's godmother.[1] The court ordered Mother and DSS to take certain actions that could help with a reunification, including a service agreement.

The first permanency plan review occurred on June 15, 2017.[2] Mother did not appear at the magistrate's hearing. The court found that H.J. had been placed in a therapeutic foster home with Ms. B, "where [the child's] medical, dental, vision, and developmental needs were addressed while working on barriers to reunification with Mother" and "where she is doing well." It concluded that the permanency plan should be reunification. The court ordered that visitation with Mother could become unsupervised if the parties agreed that would be safe. It directed DSS to make referrals for housing assistance, psychological evaluation, substance abuse assessment, parenting classes, and transportation assistance for Mother, and directed Mother to participate in those services.

The second review of that plan took place on December 14, 2017. Again, Mother was not present at the hearing. The court noted that DSS continued to recommend reunification but would be seeking termination of parental rights (TPR) and adoption "if

[1] There are several references to a godmother in these early proceedings, but we are unable to find in the briefs or appendix her identity or anything about her. At the first permanency plan hearing in May 2017, the court found that the godmother had been explored as a placement option but both Mother and DSS determined that she would not be a good placement option.

[2] With the exception of the final ones, the permanency plan hearings were conducted by a magistrate and reviewed later by a judge, who, in each instance, adopted the recommendations and proposed Orders of the magistrate. We shall use the dates on which the judge signed the various orders rather than the dates of the magistrates' hearings.

there is no progress toward reunification." In that regard, the court concluded that "[t]here has been minimal progress toward reunification by Mother as Mother has had some visits and had attended a psychological evaluation (the results of which had not yet been received) but "has not engaged in or completed any other services (such as parenting and substance abuse assessment and treatment), has missed as many visits as she has attended, does not have stable housing, and is reportedly acting erratically when in contact with DSS and the foster family."

Although H.J. had been in foster care for 15 of the past 22 months, the court felt it was not in her best interest "to change [the] plan to TPR/Adoption *today*, although that will be reassessed at the next hearing." (Emphasis added). The court ordered Mother to attend parenting classes, a substance abuse assessment, and any recommended treatment, including anger management.

The third permanency plan review occurred on June 6, 2018. This time, Mother was present at the hearing. DSS recommended changing the plan to TPR/Adoption "due to the lack of progress towards reunification." Mother and H.J.'s attorney recommended retaining reunification. Based in part on the DSS Report, the court found that reasonable efforts had been made by DSS. It found that there had been "some progress toward reunification by Mother, who had attended a psychological evaluation and parenting classes and had just started individual therapy, and anger management, but had not completed a substance abuse assessment and had missed as many visits with H.J. as she

had attended. As it had six months earlier, the court found that it was not in H.J.'s best interest "to change the plan to TPR/Adoption *today*." (Emphasis added). It added that "[t]here appear to be mental health issues and substance abuse issues that need to be addressed."

The fourth review occurred on January 3, 2019. DSS again recommended changing the plan to TPR/Adoption, and, for the first time, H.J.'s attorney did as well. Mother insisted on retaining reunification. As it had at its earlier reviews, the court made findings regarding what had occurred since the last review. It found that there had been "minimal additional progress toward reunification by Mother," noting that "she has not completed therapy or anger management and stopped attending any sessions in June 2018." She also had not engaged in or completed a substance abuse assessment, had missed a third of the visits scheduled, and had not had a bonding assessment or parenting capacity evaluation. The court noted that H.J. had been in care for over two years and 15 of the past 22 months, that Mother had not consistently visited or engaged in services and had "absented herself for periods of time." H.J., it concluded, "needs permanency and reunification is not possible in the foreseeable future." Accordingly, the court found that the appropriate permanency plan for the child was TPR/Adoption by April 2019.

Mother appealed that decision. On March 25, 2019, however, at the fifth review, the court reversed course. Notwithstanding that DSS and H.J.'s attorney continued to recommend TPR/adoption, the court found that "Mother has made meaningful progress

since the plan was changed" – that she had participated in a Parental Capacity Study, had obtained housing, was found not to be a substance abuser and not in need of treatment. Accordingly, it changed the plan back to reunification by September 30, 2019. In light of that, Mother dismissed her appeal.

At the next (sixth) review on June 18, 2019, DSS and H.J.'s attorney, citing a continuing lack of significant progress on the part of Mother, recommended that the plan be modified to "concurrent plans of Adoption and Custody and Guardianship, each with a Non-Relative, [H.J.'s] current foster parent." The court rejected that recommendation, continuing its direction that the plan be reunification, to be achieved by December 1, 2019. It ordered that unsupervised visits with Mother be arranged by DSS.

At its next (seventh) review, which occurred on March 15, 2020, the court modified the plan to be "primarily Reunification and secondarily Custody and Guardianship with a Non-Relative," with August 1, 2020 as a projected date of achievement. The court noted DSS's recommendation, not opposed by H.J.'s attorney, that the plan be concurrent plans of Reunification and Custody and Guardianship, each with a Non-Relative, looking at the foster mother as a resource. The court found that, although Mother had made progress, it had not been at a pace hoped for or anticipated by the court, but continued in the belief that the primary plan should still be Reunification and that custody and guardianship should be secondary. Given the length of time that

permanency had been in limbo, the court ordered that the next review be in June (three months) rather than the normal six-month review.

We are unable to find any record of another review in June 2020, as ordered by the court, although DSS did file a Report with the court on May 27, 2020 in anticipation of a June hearing. The next (eighth) review occurred on October 6, 2020. The delay was due to the impact of the COVID-19 pandemic. At the October hearing, which was before a judge, the court found that Mother had made "much progress" since the March review but "was not of such a nature that the Court considers Reunification as a sole permanency plan to be in [H.J.'s] best interest." The court stated that it was clear "that the time for permanency to be achieved for [H..J.] is long overdue and that [the foster mother] is capable of providing permanency in a physically and emotionally safe environment is also clear." It added that "[u]nder a Custody and Guardianship arrangement, provisions can be included to ensure that a meaningful relationship can continue between [H.J.] and Mother without disruption to the life that [H.J.] has known for more than half of her life." The court set March 21, 2021 as a projected date for achievement of the plan.

That approach lasted two months. In December 2020, it came to the court's attention that, although the foster mother was willing to continue as a placement resource and was willing to be an adoption resource if reunification with Mother did not work out, she did not wish to remain a Custody and Guardianship resource and felt it was important

for H.J. to be reunited with Mother. In light of that, the court, on December 11, 2020, modified the permanency plan to be reunification.

The final (tenth) Juvenile Court event in this unfortunate back-and-forth saga occurred on April 15, 2021. At that point, H.J.'s attorney had joined Mother in recommending reunification, and the court found a lack of reasonable efforts on the part of DSS to achieve that result by failing to conduct a family involvement meeting as required in the court's December 11, 2020 Order, but not otherwise. Nonetheless, the court returned to directing concurrent plans of Reunification and Adoption by a Non-Relative, specifically the foster mother. Mother appealed that Order, which is the effective Order being challenged in this appeal.

## DISCUSSION

Mother's complaint in this appeal is a limited one. She does not challenge any specific finding of fact that the Juvenile Court made in its final ruling of April 15, 2021. Nor does she identify any law that the court misinterpreted. She argues only that, in light of the court's acknowledgment of the progress she had made in dealing with the various problems that the court had found to be an impediment to her ability to care for her daughter and the logical and practical inconsistency between planning for both reunification and adoption, the court's merging those options into the permanency plan constitutes an abuse of discretion.

Mother is correct that one of the purposes of the CINA statute is to preserve and strengthen the child's family ties and to separate a child from his or her parents only when necessary for the child's welfare. Md. Code, Courts & Jud. Proc. Article, § 3-802(a)(3). That must be read however, harmoniously with the other enumerated purposes of the statute, including:

- to provide for the care, protection, safety, and mental and physical development of any child coming within the provisions of the statute (§ 3-802(a)(1);
- if necessary to remove a child from the child's home, to secure for the child custody, care, and discipline as nearly as possible equivalent to that which the child's parents should have given (§ 3-802(a)(6)); and
- to achieve a timely, permanent placement for the child consistent with the child's best interests (3-802(a)(7)).

In a CINA case, the permanency plan is the central device through which those objectives may be achieved. As stated in *In re Damon M.*, 362 Md. 429, 436 (2001) and repeated in *In re Karl H.*, 394 Md. 402, 416-17 (2006), "[t]he implementation of a 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. It provides the goal toward which the parties and the court are committed to work."

That follows on the precept that "[a] critical factor in determining what is in the best interest of the child is the desire for permanency in the child's life." *In re Adoption of Jayden G.*, 433 Md. 50, 82 (2013). That is so because "long periods of foster care are harmful to the children and prevent them from reaching their full potential." *Id.* at 83.

Commencing with the actual abandonment of H.J. by leaving her, at the age of three, standing alone in a public place and disappearing with her infant sibling, Mother demonstrated throughout the five years of this litigation only incomplete attempts to deal with her various problems in a way that could assure H.J. a safe and nurturing upbringing. In each review proceeding, the court ordered reunification as at least a primary goal and instructed her as to what she needed to do for that goal to be achieved, but at no time did she comply with all of those instructions. After five years, the court finally recognized that an available permanency for H.J. had to take precedence over an increasingly forlorn hope that Mother might actually achieve what the court reasonably required.

Mother's complaint regarding the inconsistency of ordering of adoption and reunification as alternative goals was considered and resolved in *In re Karl H., supra*, 394 Md. 492. The Court there recognized a facial inconsistency between the two but drew a distinction between concurrent and contingency permanency planning.

It certainly would have been better if the court had paid more attention to what the Court of Appeals said in *In re Karl H*:

> "It is important, however, to distinguish between contingency permanency planning and concurrent permanency plans. The former looks to reunification with parents or placement with family members while permitting DSS to begin making contingency plans for adoption or other long-term care arrangements in the event the desired reunification or family placement proves not feasible or in the children's best interest. Indeed, in some cases, that may be the most prudent thing to do, so that, if, when the permanency plan is next reviewed by the court, the court concludes that adoption or other long-term arrangement is appropriate, that goal can be achieved more expeditiously – some of the groundwork will already have been done. The statute clearly allows for such contingency planning."

394 Md. at 422.

Although the Juvenile Court used the word "concurrent," we do not read the court's comments and findings as indicating an intent to express equivalent inconsistent goals. From the beginning, the goal had been reunification or placement with a family member. Guardianship or adoption was always the lesser contingent alternative.

It was only as time passed and it became clear at each successive review proceeding that Mother was not ready to assume the obligations of parenthood and that there were no available family members that the court turned to exploring the alternative.

We find no abuse of discretion in its doing so. Given the importance of permanence in the child's life, especially in a case such as this, which had dragged on for five years, from the time H.J. was three years old, it was reasonable for the court to direct DSS to explore and document the availability of guardianship/adoption while still giving Mother one last opportunity to show that she could provide a safe environment for her daughter. Despite the use of the word "concurrent," we construe the permanency plan challenged in this appeal as a permissible contingency plan.

**JUDGMENT AFFIRMED; APPELLANT TO PAY THE COSTS.**