Circuit Court for Baltimore City
Case # 812163003

CHILD ACCESS

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 854

September Term, 2017

IN RE: A.G.

Meredith,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: April 13, 2018

*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.

Appellant, the mother of A.G. who was adjudicated a child in need of assistance ("CINA") in the Circuit Court for Baltimore City,[1] challenges the decision to award sole legal and physical custody of A.G. to his biological father, G.P. ("Father") in the underlying CINA proceeding. A.G. first came into the care of the Baltimore City Department of Social Services ("the Department") in 2012 when he was 20 months old after Mother was arrested for child abuse after allegedly striking A.G.'s older stepsibling with a stroller. A.G. was then placed with his maternal grandmother ("Grandmother"). At the time of A.G.'s placement, Father was incarcerated in New Jersey.

When Mother was released from prison, she abducted A.G., and fled to Virginia, where she was again arrested. She was found incompetent to stand trial and was committed to Clifton T. Perkins. Upon Mother's release, she began weekly supervised visitation with A.G. and attended anger management classes.

Shortly thereafter, Father was released from prison and expressed interest in reunification with A.G. After several successful visits with A.G., the court granted Father weekly unsupervised visitation with A.G, which were later expanded to weekend unsupervised visitation sessions. In response, Mother filed several exceptions, which she later abandoned. Mother also filed a protective order against Father, accusing him of

[1] Pursuant to Md. Code (2013 Repl. Vol., 2017 Supp.), §3-801(f) of the Courts & Judicial Proceedings Article ("CJP"), a "child in need of assistance" means "a child who requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs."

threatening to harm her and A.G.—claims that were later found to be baseless. At a subsequent review hearing, the court suspended unsupervised visitation for both parties. After a period of successful visits, the court reinstated Father's unsupervised overnight weekend visitation, and granted Mother unsupervised visitation on alternating Saturdays.

In May of 2017, the parties appeared for a permanency review hearing, where a magistrate recommended that Father be granted legal and physical custody of A.G., and Mother's visitation be expanded to one overnight unsupervised visitation session every other Saturday. The magistrate cited the parties' inability to cooperate and Mother's persistent mental health issues as to why joint custody was not an appropriate option and declined to continue A.G.'s commitment to foster care after nearly five years. This recommendation was later adopted by the juvenile court in a written order.

Mother noted a timely appeal, and presented a single question for our review:

> "Did the court err by awarding sole legal and physical custody to the father but only limited visitation to the mother, where it failed to consider the child's best interests?"

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

FACTS AND LEGAL PROCEEDINGS

A. Initial Contact with the Department

A.G. came to the attention of the Department in May 2012, after Mother hit A.G.'s older half-brother, G.J. IV, with a stroller causing injury sufficient to necessitate a hospital visit. Mother was arrested and subsequently convicted of second degree assault. The Department removed A.G. and G.J. IV from Mother's care; A.G. was placed with Grandmother, as Father was then in prison, and G.J. IV was placed with his biological

father.[2]

In June of 2012, when Mother was released from jail, she picked up A.G. from Grandmother's home without permission and took him to her own father's home in Virginia, which led to her arrest for child abduction and A.G.'s renewed placement with Grandmother. The Department filed a CINA petition with a request for shelter care relating to A.G. On June 11, 2012, determining that continued residence in Mother's home was contrary to A.G.'s welfare, the juvenile court granted the Department's request for shelter care, continuing A.G.'s placement with Grandmother.

Following an adjudication hearing on July 30, 2012, the juvenile court determined that A.G. was a CINA and committed him to the custody of the Department, with relative placement with Grandmother. Both Mother and Father were incarcerated at the time of the subsequent permanency planning hearing on January 28, 2013; Mother in Baltimore City on a weapons charge pending an April 30, 2013 trial, and Father in federal prison in New Jersey. Prior to the hearing, Mother was transported to the hearing and elected to proceed *pro se* despite being advised of her right to counsel. Father was neither present nor represented. After the hearing, the juvenile court continued A.G.'s commitment to the Department and his placement with Grandmother. The court continued the permanency plan of reunification, finding that the Department had made reasonable efforts toward reunification—including entering into a service agreement, home visits, referrals for anger

[2] G.J. IV is not a party to this appeal. Mother's eldest child, G.J. III, who is also not involved in this appeal—had previously been removed from her care and currently resides in a residential psychiatric treatment facility.

management and parenting classes, provision of financial assistance, and clothing, and monitoring parents' incarceration/criminal case status.

By the next review hearing on July 29, 2013, Mother had been committed to Clifton T. Perkins Hospital, a forensic psychiatric hospital, after being found not competent to stand trial on the child abduction charge. Mother was transported to the hearing and appeared *pro se*, but Father failed to appear as he was still incarcerated. At Father's request, the court ordered a paternity test for A.G., which later established that A.G. was his child. The court, finding that A.G. had adjusted well to placement with Grandmother, continued his commitment to the Department and continued the permanency plan of reunification. Mother was released from Perkins in December 2013 but had pending criminal trials scheduled for February 10, 2014 and March 3, 2014.[3] At the time of her release, she did not have adequate housing for A.G.

Following a January 27, 2014 review hearing, the juvenile court found that A.G. continued to be well adjusted to his placement. He had started in a Head Start program and was up to date on his physical and dental examinations. Mother, working toward reunification, was attending weekly visitation with A.G. and attending anger management classes, while Father remained incarcerated in New Jersey. Finding that the Department had made reasonable efforts to accomplish the permanency plan, the court continued A.G.'s commitment to the Department and the permanency plan remained reunification.

[3] According to Mother's attorney, by June 26, 2014, those matters had been resolved.

B. Mother's Attempts to Modify Visitation

During a June 26, 2014 review hearing, the Department confirmed that Mother had completed parenting and anger management classes and was in compliance with her probation. Mother, who had been visiting with A.G. weekly with Department supervision, sought unsupervised visitation and reunification. The Department had found Mother's home satisfactory for visits with A.G., but as Mother had not yet engaged in mental health therapy, the Department hesitated to recommend unsupervised visitation or reunification. Counsel for A.G. concurred that movement toward unsupervised visitation and reunification should proceed "slowly and carefully[,]" based on Mother's "pretty extensive history, crimes of violence." The family magistrate recommended unsupervised visits of "very short duration" so Mother could prove herself to the Department. Mother was ordered to continue with all phases of her mental health treatment, including therapy and medication, and to comply with the conditions of her probation. The juvenile court noted the magistrate's findings and recommendations and continued A.G.'s relative placement and the permanency plan of reunification. The court awarded Mother three hours of unsupervised visitation with A.G. weekly.

At an August 13, 2014 review hearing, Mother sought overnight visitations with A.G. The Department recommended that daytime visits be extended, with gradual progression toward overnight visits. The juvenile court granted Mother unsupervised visitation with A.G. one day a week from 9:00 a.m. until 4:00 p.m., so long as she continued to comply with her probation conditions and all mental health treatment. Roughly a month later following a review hearing, the juvenile court ordered a clinical evaluation of Mother

by the Court Medical Services Division and continued Mother's unsupervised visitation schedule with A.G.[4]

This unsupervised visitation schedule remained intact until, during a visit with Mother on October 9, 2014, A.G. sustained injuries to his ankle and knee. In response to a Department motion to suspend Mother's unsupervised visitation sessions, the juvenile court ordered that all visits be supervised. The Department then commenced an investigation of A.G.'s injuries. By letter dated December 2, 2014, the Department notified Mother that, following its investigation, it had ruled out physical abuse of A.G. Mother therefore requested that her visits go back to being unsupervised, which the Department opposed. During a hearing on the motion to modify visitation, the Department proffered to the court that Mother had made some progression in addressing her mental health issues, but had displayed poor insight during some of her therapy sessions, which could pose a safety risk to A.G. Moreover, the Department had not confirmed Mother's claim of employment, having received an application, but no indication that she was actually working. In response, Mother produced at least one paystub detailing employment as a contractual personal care provider and claimed to have at least one other assignment pending.

[4] The Court Medical Services Division's evaluation of Mother, dated November 3, 2014, detailed "several concerning issues that may negatively impact her ability to successfully parent her children," including her demonstration of "very little insight into her behaviors, her decisions, and her past legal troubles." To the evaluator, Mother appeared paranoid and presented with "distorted thinking and clear interpersonal difficulties," as well as a pattern of blaming others, including her mother (with whom she has a "strained" relationship), for things that had happened to her. Court Medical Services determined that Mother met the criteria for paranoid personality disorder.

The juvenile court, finding that Mother had adequate housing, had taken parenting and anger management classes, had available employment, and had complied with mental healthcare, could find no basis to deny unsupervised 9:00 a.m. to 4:00 p.m. visits with A.G., despite "some concerns" about the challenges of handling a four-year-old boy and about the mental health issues of Mother's two older children, which allegedly resulted from her harsh manner of disciplining them. The court therefore increased the number of weekly unsupervised day visits with A.G., which would provide the court "a record on which to determine whether overnight visits are something that can appropriately and safely go forward." The court advised Mother to "turn down the conflict with [her] mother. . . and other members of [her] family."[5]

The court's written order was filed on March 12, 2015. Therein, the court found it would be contrary to A.G.'s welfare to return him to Mother's custody without the benefit of continued case management, mental health care, stabilization of her recently commenced employment, and a longer record of successful unsupervised daytime visitation. The court therefore continued A.G.'s commitment to the Department and placement with Grandmother.[6]

[5] The record reflects that on several occasions, Mother was prohibited from entering Grandmother's home or even calling Grandmother. Mother also previously filed a protective order against Grandmother.

[6] Mother noted an appeal of the juvenile court's order. Mother, however, filed a line of dismissal on June 2, 2015, and this Court dismissed that appeal by mandate issued on June 3, 2015.

C. Father's Release from Incarceration and Visitation with A.G.

At a July 29, 2015 review hearing, the parties stipulated that A.G. continued to be a CINA and agreed that it was in the child's best interest to adopt the following findings of fact: 1) A.G., then five-years old, remained in placement with Grandmother, where he was doing well; 2) He was in a Head Start program and was up to date on his physical and dental examinations; 3) Father had been released from prison, was on probation, and had expressed an interest in reunification with A.G.; 4) Mother had been participating in day visits with A.G. weekly, for a total of 11 visits since May 7, 2015; and 5) Mother had signed a service agreement with the Department and had completed parenting classes. The court continued A.G.'s commitment to the Department for relative placement with Grandmother and continued Mother's unsupervised day visits with A.G. The permanency plan remained reunification.

Then, noting continued improvement in Mother's behavior, the court increased Mother's unsupervised visitation hours on Saturdays, granting her seven hours with A.G. The court also granted Mother permission to attend Thanksgiving at Grandmother's house, after she had previously been prohibited from entering Grandmother's home. Pursuant to Father's renewed interest in reunification, the court granted Father unsupervised visitation in the community after school with A.G. on Fridays.

Following a review hearing on December 2, 2015, the court continued A.G.'s placement with Grandmother, but again prohibited Mother from calling Grandmother or going to Grandmother's home. At the next review hearing on June 1, 2016, the court granted Father's request to expand unsupervised visitation to full weekends. Mother filed

an exception to the grant of expanded visitation to Father and requested that her exception be heard by a different magistrate than the one who had presided over previous hearings because of what she claimed were the magistrate's "unjust decision[s]." The court set the next hearing for July 15, 2016.

On July 15, 2016, Mother moved to postpone the exceptions hearing, which the court denied. Disgruntled by the court's refusal to postpone, Mother told the court, "I would not like to proceed." Therefore, the court deemed Mother's exception to have been withdrawn. After the exceptions hearing, Mother yelled at and threatened Father in the hallway outside the courtroom, in A.G.'s presence. When the deputies explained that she must lower her voice, she pushed a deputy and was escorted from the building. A.G. was reportedly "horrified" by Mother's outburst.

On July 19, 2016, Mother requested an *en banc* review of her case, again complaining of unjust decisions on the part of the family magistrate and the juvenile court, based on her perceived lack of opportunity to speak about her exception during the July 15, 2016 hearing.

D. Mother's Emergency Protective Motion

Several days later, with the petition for *en banc* review pending, Mother filed a motion for protective order and petition for immediate review after Father allegedly placed A.G. "in harm's way[.]" According to Mother, during a trip to Ocean City, A.G. was knocked down by an ocean wave on more than one occasion and "could have drowned[.]" She also filed an application for statement of charges alleging that Father hit A.G. with an open hand and had abused A.G. more than once. She filed another application for statement

of charges on July 24, 2016 alleging that Father had called and threatened to harm her.

Also, on July 21, 2016, the Department filed a request that the court suspend Mother's unsupervised visits and issue an order controlling conduct after Mother had become agitated and combative at a Family Involvement Meeting at the Department during the last week of June 2016. Mother had slammed a chair into a desk and verbally assaulted Department workers threatening physical harm. She was escorted from the building by security. The Department also referenced Mother's combative behavior in court on July 15, 2016. To the Department, Mother's behavior had "become an issue of concern." The Department also labeled Mother's recent claims about Father's abuse "frivolous." The juvenile court scheduled an emergency review hearing for July 29, 2016.

At the emergency review hearing, the court determined that Father was the respondent in a temporary protective order proceeding filed by Mother. The court also found that Mother had failed to provide information to the court as to the status of her mental health treatment since December 2015, despite several orders to do so. Consequently, the court suspended the unsupervised visitation previously granted to both parents, pending a further hearing in the case. Both parents were granted supervised visitation but were ordered not to contact A.G. outside of visitation or to threaten or harass Department employees. If either parent violated the order, the court authorized the Department to place A.G. in foster care "for his safety and emotional well-being."

On November 14, 2016, Father filed a motion to resume overnight visitation with A.G., since Mother's claims of domestic violence against him had been dismissed and requested a hearing on the matter. The juvenile court denied that motion by order dated

December 14, 2016.

On January 30, 2017, a three-judge panel convened for an *en banc* review of the juvenile court's denial of Mother's July 15, 2016 request for postponement and the withdrawal of her exception. Mother also filed a petition for unsupervised visitation, and the panel noted that while the visitation issue was "technically not before the Court[,]" it agreed that invocation of its discretion was proper since Mother was "prepared to proceed."

The panel established that both Mother and Father had been having supervised visitation with A.G. since July 2016. Father's visitation had become supervised after Mother accused him of domestic violence, but, as Mother's petitions for protective order had been heard and dismissed in the district court, Father sought a resumption of unsupervised visits. Mother purported to have an apartment rental lined up in the event she was granted unsupervised visitation, but admitted that she had spent the night prior to the hearing in a shelter.

In opposing Mother's petition for unsupervised visitation, the Department cited its request for the suspension of unsupervised visitation in July 2016 after the incidents in court and at the Department's Family Involvement Meeting, during which Mother had become "agitated and combative" and had to be escorted from the buildings by security personnel. Despite Mother's claim of compliance with her mental health therapies, the Department posited that either Mother was not actually taking her prescribed medication or that the medication regimen she was undergoing was insufficient.

In the approximately six months since those incidents, the Department acknowledged that Mother's supervised visits with A.G. had "gone pretty well," but

expressed apprehension as to whether once "outside of the walls of the Department" Mother would be able to regulate her behavior enough to keep A.G. safe. The Department also expressed concern regarding Mother's contentious relationship with Grandmother and its effect on A.G.

A.G.'s counsel joined in the Department's opposition to unsupervised visitation. The child's attorney pointed out that the mental health records Mother had submitted to the court documented her own self-reporting of how she is feeling at a given time, rather than substantive treatment or counseling. Counsel for A.G. cited Mother's recent behavior as contrary to the forward progress represented in the records. Counsel conceded, however, that in the approximately 20 weeks of supervised visitation, the Department had not reported that Mother's behavior had raised a safety concern for A.G.

Counsel for Father explained that since his unsupervised visitation had been expanded to full weekends on June 1, 2016, visits had been going "extremely well," until suspended by Mother's filing of motions for protective order, which were ultimately denied. Father therefore requested the reinstatement of his unsupervised weekend visits.

Mother responded that she was participating in mental health therapy and medication management appointments monthly. She also claimed to have only one prescription medication—for Risperdal—which "helps with anxiety." She also told the court that the only reason she had been disruptive in court in July was that she had been told she was about to lose her son.

The three-judge panel ordered that Father's bi-weekly unsupervised overnight weekend visitations with A.G. resume. Finding Mother "deserving of an expanded

visitation," the panel continued the permanency plan of reunification and granted her unsupervised visitation on alternating Saturdays from 9:00 a.m. until 5:00 p.m. Mother was also granted the right to volunteer in A.G.'s school one day every other week. Mother and Father were further ordered to have no "hostile contact" with, or speak disparaging remarks about, each other, especially in front of A.G. The panel pointed out to Mother that she was in need of stable housing before the juvenile court would expand visitation. Finally, on Mother's outstanding exceptions, the panel found no error with regard to the juvenile court's rulings. The court's written order thus affirmed the juvenile court's July 29, 2016 order, as modified regarding visitation and continued the permanency plan of reunification.

E. The May 31, 2017 Hearing

On May 31, 2017, the parties appeared for a permanency planning review hearing. At that hearing, Mother, once again proceeding *pro se*—despite repeated offers of referral to a public defender—presented the testimony of Dr. Ryan Stagg, a psychiatrist at Healthcare for the Homeless. Dr. Stagg testified that Mother's current diagnosis was unspecified bipolar disorder and unspecified anxiety disorder and that the Risperdal Mother was prescribed to stabilize her mood and to decrease agitation and rapid speech. Dr. Stagg reported that Mother had been "very attentive" to her appointments with him, and, in his opinion, her agitation had indeed decreased at recent visits. Dr. Stagg said he had no current concerns about Mother's mental health and believed her to be doing well, although he clarified that "[i]t seems like you've been doing fine, by your reports."

On cross-examination, Dr. Stagg testified that he sees Mother approximately every

six weeks for medication management, for approximately 18 to 25 minutes each visit. The majority of their discussions centered on Mother's self-reporting of her condition, with his records based on her reports and his own observations. Dr. Stagg acknowledged that he was unable to say how Mother would do raising her child, as he had not observed her with A.G., and that type of diagnosis was beyond his specialization.

Father then testified before the court. Father indicated that he loves his son and testified that his biweekly unsupervised weekend visits with A.G. were going "great." He reported that all the criminal charges brought against him by Mother had been dismissed, and all the motions for protective orders filed by Mother were denied. Father then stated that he would be seeking sole custody of A.G. Father acknowledged his past incarceration but noted that he is "in compliance all the way" with his parole and probation requirements. Additionally, Father detailed that he was employed and engaged to be married, living in a three-bedroom home with his fiancée. In addition, he and his fiancée had worked out a transportation schedule for the next school year, when A.G. would start first grade, and had made plans for summer trips. Father said that he remained willing to facilitate visits between A.G. and Mother, but requested that the Department supervise the visits.

Father then called Ms. Towanda Harrell-Anderson, A.G.'s out-of-home-placement social worker, to testify. She advised the court that the Department's recommendation was to place A.G. with Father. Ms. Harrell-Anderson had visited and approved Father's home for A.G.'s residence, and the Department had no health and safety concerns with regard to Father's ability to care for A.G., nor did it have concerns about A.G. himself, who was doing very well in school.

Mother testified that since the juvenile court's most recent order, she had undertaken successful visits with A.G. and volunteered at his school. She expressed her desire to spend more time with her son and believed that he wanted to spend more time with her. Although she sought reunification with A.G., if reunification was not an option, she wanted weekend visitation. She asked the magistrate to take into consideration that she had "come a long way with this case and [was] actually on track." In regard to her employment history, Mother said she had been working at Coastal Hospitality, a staffing agency, "off and on for two years," which showed stability, but she acknowledged having taken six months off at one point, believing she had "more than enough money" to support herself. She further detailed that she had a one-bedroom home, which the Department approved for visits, that contained a new bed for A.G.

On cross-examination, Mother explained that she had been living in her current home for two and a half months, after having alternated between a shelter and a friend's house for a three-month period. Before that, she said, she had lived in an apartment for a year and a half, but had to move when she could no longer afford the rent.

In closing, the Department reiterated its recommendation that A.G. be placed with Father, who was, in its view, the most equipped to care for A.G. and provide him with a safe home. Although Mother appeared to be doing well, the Department continued, any evidence of that positive progress was self-reported to her psychiatrist who saw her for only short periods of time, and Mother had presented no other corroboration of progress toward weekend visitation or reunification. A.G.'s attorney agreed with the Department's recommendation and pointed out that even if Mother's self-reporting of her mental health

status were entirely accurate, A.G. "deserve[d] a chance to have permanence in his life going forward[,]" which was unlikely in Mother's care. Counsel pointed out that Father had stable employment and housing, had undertaken successful overnight weekend visits without incident, did not have mental health issues, had been compliant with his parole and probation, and had done everything asked of him by the Department. On the other hand, Mother had frustrated the progress of the case with her unfounded allegations of assault against Father.

The magistrate then made the following recommendation:

> Okay, so I think that to some extent this has become a custody case. And it's always difficult to watch when parents are struggling to get along to raise their child because he has a mom, he has a dad, it would be very nice if the two of you could put the past behind you and move on to parent your child together. . . . To raise him to be an adult in a meaningful way.
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> * * *
>
> Okay. So I encourage you to consider that that would be the ideal parenting situation. Ideal for your son, as well as for you. . . . Because it would help him to see that his parents could get along, and I'm not sure you're there yet. But I do believe that the time has come for me to make a decision as to where [A.G.] will live and where he will grow up. And my decision is that that will be with his father and that I'm going to grant sole legal and physical to [Father]. I am going to grant visitation to [Mother] every other weekend so long as she maintains her mental health treatment. The visits shall begin at 9 a.m. on Saturday until 6 p.m. on Sunday.
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> . . . Transfer of custody shall occur either at a public location, such as a police station, or at the home of [Grandmother]. The parties shall have no hostile or negative remarks between each other, or to, or around [A.G.]. And I will terminate the Court's jurisdiction. . . .

In response to Mother's continued questions about whether her weekend visitation

entailed one or two overnights (the magistrate clarified that she meant one overnight every other weekend), the magistrate added that she had made the decision that was "in the best interest of [A.G.] . . . based on the current state of affairs as well as the past history of the case, which I'm very familiar with" and reminded Mother that she had been granted increased visitation. Finally, the magistrate explained to Mother that she "did not find this to be an appropriate case for joint custody" because the parents had not shown the ability to get along.

The juvenile court accepted the magistrate's findings and recommendations, and, in its written order, rescinded A.G.'s commitment to the Department, terminated the court's jurisdiction, and granted sole legal and physical custody of A.G. to Father, with bi-weekly weekend visitation with Mother, so long as she maintains her mental health treatment.

Mother, on her own behalf, timely appealed the juvenile court's order to this Court. Subsequent to filing her notice of appeal, Mother obtained counsel, who prepared her appellate brief. Additional facts will be supplied in the discussion as necessary.

DISCUSSION

Before this Court, Mother contends that the juvenile court erred in awarding sole legal and physical custody to Father because the court failed to consider any factor other than whether Mother and Father could get along well enough to share custody of A.G. In her view, although the matter began as a CINA case, "it evolved into a custody dispute between two fit parents[,]" requiring the court to "consider factors relevant to the best interest of A.G. in the context of a custody dispute." She avers the court failed to consider the factors relevant to a custody determination as expressed in *Taylor v. Taylor*, 306 Md.

290 (1986). Further, Mother contends that the court's decision to limit her visitation to every other weekend was "arbitrary" in the absence of evidence that increased contact with Mother was contrary to A.G.'s best interest.

Counsel for the Department argues that the court correctly determined, given the circumstances in this case, that A.G.'s commitment in foster care was inappropriate, and Father stood "ready, willing and able to provide A.G. with a safe and permanent home." Moreover, the Department avers that the court was intimately familiar with the case, having conducted review hearings at least bi-yearly for a period of five years, and properly considered the statutorily prescribed factors contained in Maryland Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings ("CJP"), § 3-823(h)(2)(i)-(vi). Finally, the Department contends that Mother's characterization of the matter as a "custody dispute between two fit parents" was in error because this case remained a CINA case until its closure in 2017, thus requiring different considerations than a normal custody hearing in a pure family law context.

Counsel for A.G. largely echoes these arguments, adding that although the court's reasoning may not have been as robust as the parties may have sought, its decision was nevertheless supported by overwhelming evidence demonstrating that joint custody was not appropriate, and that Father was the only parent equipped to adequately care for A.G. Additionally, A.G.'s counsel stresses that "allow[ing] [A.G.] to languish in the foster care system" for an unforeseen amount of time is not in his best interests.

Father's counsel adds that the purpose of the initial CINA findings had run its course, as Father clearly demonstrated that A.G. could be safely returned to his custody,

justifying closure of the CINA case. Moreover, Father argues that the court reviewed the entire history of the case and did not solely base its decision on the parties' inability to cooperate, noting the parties' involvement in the case, employment status, housing resources, mental health, possibility of cooperation, and A.G.'s relationship with each parent. Father maintains that although the court did not individually articulate each piece of evidence that it was weighing, the record was well developed over the period of five years, and the court on several instances indicated that it was familiar with the history of the matter.

Maryland appellate courts review CINA proceedings pursuant to three different, yet inter-related standards. Factual findings by the juvenile court are reviewed for clear error, but legal conclusions are subject to *de novo* review. *In re Adoption of Jayden G.*, 433 Md. 50, 96, (2013). Then the "final conclusion of the juvenile court, when based on proper factual findings and correct legal principles, will stand unless the decision is a clear abuse of discretion." *In re Ashley S.*, 431 Md. 678, 704 (2013) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)).

As the Court of Appeals has noted with respect to the juvenile court's discretion:

> . . . There is an abuse of discretion "where no reasonable person would take the view adopted by the [trial] court," or when the court acts "without reference to any guiding rules or principles." An abuse of discretion may also be found where the ruling under consideration is "clearly against the logic and effect of facts and inferences before the court," or when the ruling is "volatile of fact and logic."
>
> Questions within the discretion of the trial court are "much better decided by the trial judges than by appellate courts, and the decisions of such judges should only be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred." In sum, to be reversed "the

> decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable."

In re Yve S., 373 Md. at 583-84 (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312-13 (1997).

In this case, Mother does not argue that the court's factual findings were erroneous. Rather, she asserts that the court failed to make sufficient factual findings to support its ultimate conclusion that granting Father custody would be in A.G.'s best interests because it failed to apply the factors relevant to custody determinations. Therefore, we review this contention as a legal question under a *de novo* standard. *Jayden G.*, 433 Md. at 96. Additionally, related to this inquiry, we review the court's decision regarding her allotted visitation with A.G. for an abuse of discretion. *In re Mark M.*, 365 Md. 687, 704 (2001).

Before discussing the court's ultimate decision in this matter, it is important to note the procedural structure of this case. At the time of the May 31, 2017 hearing, the parties were appearing for a permanency planning review hearing to review the plan of reunification, not for an original permanency planning hearing. CJP § 3-823(h) controls the procedure for a review hearing, and subsection (2) enumerates the factors that the court shall consider in deciding how to proceed with a permanency plan that is already in place. CJP § 3-823(h) supplies the following considerations:

> (i) Determine the continuing necessity for an appropriateness of the commitment;
> (ii) Determine and document in its order whether reasonable efforts have been made to finalize the permanency plan that is in effect;
> (iii) Determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating commitment;
> (iv) Project a reasonable date by which a child in placement may be

returned home, placed in a preadoptive home, or placed under a legal guardianship;

(v) Evaluate the safety of the child and take necessary measures to protect the child; and

(vi) Change the permanency plan if a change in the permanency plan would be in the child's best interest.

The entire CINA statutory scheme, as contained in CJP § 3-801, *et seq.*, by which the juvenile court was bound by, contains numerous provisions to guide courts when determining how to address instances of possible abuse or neglect and place children in homes that will guarantee their safety. However, the Court of Appeals has determined that the overarching "broad policy of the CINA Subtitle is to ensure that juvenile courts (and local departments of social services) exercise authority to protect and advance a child's best interests when court intervention is required." *In re Najasha B.*, 409 Md. 20, 33 (2009).

Pursuant to CJP § 3-804(b), if, as here, the juvenile court obtains jurisdiction over a child adjudicated CINA, "that jurisdiction continues in that case until the child reaches the age of 21 years, unless the court terminates the case." The only justification for the direct and continuing supervision of the juvenile court in a CINA case is when the court has determined that intervention is required to protect the child's health, safety, and well-being. *Koffley v. Koffley*, 160 Md. App. 633, 640-41 (2005) (citing *Frase v. Barnhart*, 379 Md. 100, 120-23 (2003)). If, on the other hand, the juvenile court has no concerns about the child's health, safety, and well-being and believes, after reviewing the evidence, that the child may safely be returned to the care and custody of one or both of his parents, there is no justification for keeping the CINA case open, as the goals of the CINA statutes have

been reached. *Id.*

In this case, Mother avers that although the matter began as a CINA matter, "it evolved into a custody dispute between two fit parents," which required the juvenile court to consider and articulate the factors set forth in *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406 (1977), to determine what was in A.G.'s best interest[7] and the factors set forth in *Taylor v. Taylor*, 306 Md. 290 (1986), to determine whether joint custody was appropriate. In failing to articulate its findings as they relate to those factors, Mother concludes, the juvenile court abused its discretion in granting sole legal and physical custody to Father. We disagree, first, with Mother's framing of this case as a custody dispute.

A CINA proceeding is governed by CJP sections 3-801 through 3-830, and does not implicate a custody determination between two fit parents committed to the jurisdiction of the equity court (rather than the juvenile court) under Section 1-201 of the Family Law Article of the Maryland Annotated Code. This is a crucial distinction, as the court's jurisdiction over children changes in the context of CINA custody decisions as compared

[7] The non-exclusive list for judicial determination of a child's best interest detailed in *Montgomery County Department of Social Services v. Sanders* includes: 1) fitness of the parents; 2) character and reputation of the parties; 3) desire of the natural parents and agreements between the parties; 4) potentiality of maintaining natural family relations; 5) preference of the child; 6) material opportunities affecting the future life of the child; 7) age, health and sex of the child; 8) residences of parents and opportunity for visitation; 9) length of separation from the natural parents; and 10) prior voluntary abandonment or surrender. 38 Md. App. 406, 420 (1978).

to private custody disputes. *Koffley*, 160 Md. App. at 640-41. In *Koffley*, we discussed the difference between the two, noting that

> [i]t is common—and in some instances required—for juvenile courts, in dealing with children who have been found in need of assistance (CINA), to have periodic review hearings to monitor the progress of the child, the child's parents, and any other guardian or potential custodian. In that setting, of course, the child has already come under the direct jurisdiction and supervision of the court and may well be in the legal custody of the court. By statute, the court's comprehensive jurisdiction extends until either the child turns 21 or the jurisdiction is affirmatively terminated by the court. The context, which justifies the direct and continuing supervision of the court, is that, as part of the CINA finding, the court has determined that court intervention is required to protect the child's health, safety, and well-being.
>
> The court's role is different in a normal private custody dispute. It is to take evidence and decide the dispute, so that the child and the other parties can get on with their lives. The court does not retain jurisdiction until the child turns 21, or even 18.

Id. (internal citations omitted) (quoting *Frase*, 379 Md. at 120-21). But, even though the juvenile court has authority to retain extended jurisdiction over the child, as Judge Adkins underscored in *In re Jaden G.*, "[a] critical factor in determining what is in the best interest of a child is the desire for permanency in the child's life. . . . '[L]ong periods of foster care' are harmful to the children and prevent them from reaching their full potential." 433 Md. at 82-83 (quoting *In re Adoption/Guardianship of Victor A.*, 157 Md. App. 412, 427-29 (2004)).

In this case, the court was confined to the rules applicable to CINA proceedings and was not required to apply the *Taylor* factors as if this were a private custody dispute between Mother and Father. The juvenile court instead abided by CJP § 3-823(h) to review A.G.'s current placement in foster care with the goal of reunification, and found that despite

Mother's numerous, well-documented roadblocks to assuming custody of A.G., Father stood ready, able, and willing to care for A.G., which permitted the court to find that A.G. is no longer a CINA and to award custody to Father.

Although the court did not enumerate all its factual findings during the May 31, 2017 review hearing, there was no absolute requirement to do so as Mother suggests. Rather, the record, spanning roughly five years, sufficiently supported the court's ruling. *See In re Beverly B.*, 72 Md. App. 433, 442 (1987) (stating that "'not every step in a [judge's] thought process needs to be explicitly spelled out[,]'" so long as "the reasons underlying his decision are supported by the record." (Citations omitted)).

In this case, the magistrate and juvenile court were intimately familiar with A.G.'s case, as Mother had filed numerous *pro se* motions, exceptions, and requests for immediate review—on average of two per month—since at least November 2014, when she dismissed her attorney and decided to represent herself. In addition, the juvenile court had conducted review hearings at least twice-yearly since 2012. The magistrate, in determining and recommending that Father should be granted sole legal and physical custody did not specifically reference the *Sanders* best interest factors, but specified that she made the decision that "is in the best interest of [A.G.]" and stated that she was factoring in "the current state of affairs as well as the past history of the case." Even if the magistrate had explicitly applied each of the *Sanders* factors to this case, the resulting decision remains unchanged.

Reviewing the record in light of the magistrate's ruling—and subsequently the juvenile court's order—we discern no error or abuse of discretion in awarding Father sole

custody. Based on all the evidence, it is clear that Father had demonstrated that he was a fit, willing and loving parent. Although he was not a placement resource for A.G. when the child was removed from Mother's care, due to his incarceration, Father began to attend the CINA review hearings and indicated his desire for reunification with A.G. as soon as he was released from prison in 2015. At the time of the May 31, 2017 hearing, Father had undertaken progressively longer unsupervised visitation with A.G. (reverting to supervised visits only after Mother accused him of domestic violence, which was ruled unfounded), with no concern by the Department for A.G.'s safety. Father was bonded and involved with A.G. He was gainfully employed and had a plan in place to transport A.G. to and from school and provide for his care during non-school hours. Father had a suitable home with a furnished bedroom for A.G. He had no mental health concerns, was in complete compliance with his parole and probation requirements, and promised to facilitate visits between A.G. and Mother and Grandmother. In addition, the Department expressed no concerns about Father's care of A.G., and its ultimate recommendation was to close the CINA case because it believed A.G. would be safe in Father's care.

On the other hand, Mother had created the situation that led to A.G.'s removal from her care and had not, in the five years since his removal, proved that she was ready for reunification. She had lost custody of her two older children but did not understand why that should have any effect on A.G.'s return to her care. She had abducted A.G. from Grandmother's house with no understanding why that created a problem and was found mentally incompetent to stand trial on the abduction charges and was committed to a psychiatric hospital for several months. Her claim of improved mental health—which

included diagnoses of bipolar and anxiety disorders—although apparently monitored by a psychiatrist and a therapist, was generally supported only by her self-reports of progress and compliance with medication management. While Dr. Stagg largely corroborated Mother's self-reporting, he acknowledged his inability to determine whether a child would be safe in her care.

By her own acknowledgment, Mother was only sporadically employed, having taken at least six months off during her most recent two-year employment. She lived in a one-bedroom apartment, and she had only procured that home months before the hearing, after alternating between living at a friend's house and a shelter. Her relationship Grandmother, who—as admitted by Mother—comprised the largest foundation of her support system, remained rocky.

Mother had suffered angry outbursts during court and supervised visitation, which required intervention by security personnel, and she had lost the privilege of unsupervised visitation with A.G. based on the Department's concerns about her behavior. She had also filed apparently frivolous charges of domestic violence against Father and the pair had apparently not spoken since the court hearing in January 2017.

Although Mother argues that the court considered only Mother and Father's inability to communicate in making its custody determination, the court specified that it based its decision not only on the lack of communication between the parents but "on the current state of affairs as well as the past history of the case, which I'm very familiar with." The magistrate also made clear that her recommendation was in what "I think is in the best interest of [A.G.,]" the overarching standard in CINA matters. It was not necessary for the

magistrate under the circumstances that were presented to once again repeat these painful facts—which were made clear during the hearing and known by all parties given the lengthy history of this case—in front of Mother. The transcript makes clear that Mother was clearly agitated and having difficulty navigating the legal proceedings; further fleshing out Mother's inadequacies as a custodial parent would have only exacerbated the problems.

With regard to Mother's claim of error in the court's award of only "minimal" visitation with A.G., we review the court's decision regarding visitation for an abuse of discretion. *In re Mark M.*, 365 Md. at 704. For the same reasons we concluded the juvenile court properly awarded custody to Father and closed A.G.'s CINA case, we perceive no abuse of discretion in the court's award of bi-weekly overnight weekend visitation to Mother, which, as the magistrate reminded Mother, actually "provided [her] with increased visitation" from the previous order of visitation. The court viewed the increase in visitation as worthy of congratulation for Mother's having taken a step forward with her hard work to achieve the increased visitation but made clear there was much more to be done to achieve longer visitation periods. The magistrate additionally expressed her belief that Father would provide reasonable accommodations for Mother to exercise visitation rights on specifically requested weekends and urged the two to "mak[e] an effort to get along and co-parent [A.G.]."

Therefore, after careful review of the lengthy record in this case, we discern no error or abuse of discretion in the juvenile court's decision to award custody to Father or in Mother's visitation schedule.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE DIVIDED EQUALLY BETWEEN THE PARTIES.