UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0924

September Term, 2015

IN RE: TYLER Z. & TYREONNA Z.

Eyler, Deborah S.,
Arthur,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: December 11, 2015

*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.

In September 2013, Tyler Z. and Tyreonna Z. were adjudicated to be children in need of assistance ("CINA").[1] The Circuit Court for Baltimore City, sitting as the juvenile court, committed both children to the Baltimore City Department of Social Services ("BCDSS"), granting BCDSS limited guardianship of both with permanency plans of reunification.

On March 30, 2015, a magistrate recommended that the juvenile court grant custody and guardianship of Tyreonna to her paternal aunt, Tawna H., and terminate her CINA case.[2] On the same date, the magistrate recommended that the juvenile court change the permanency plan for Tyler to "placement with a relative for adoption or custody and guardianship."

The children's mother, Ms. F., filed exceptions, which the juvenile court denied after a May 21, 2015, hearing. On June 15, 2015, Ms. F. appealed the court's order. Ms. F. presents us with the following question: Did [BCDSS] meet its burden to make reasonable efforts to reunify the children with their mother?

For the reasons to be discussed, we affirm the juvenile court.

[1] "'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." Md. Code (1974, 2013 Repl. Vol.), § 3-801(f) of the Courts and Judicial Proceedings Article ("CJP").

[2] Throughout the record and briefs, the parties and court refer to the paternal aunt alternately as "Tawana" and "Tawna." The documents relating to her guardianship agreement for Tyreonna—many of which were completed or signed by Ms. H.—suggest that the correct spelling of her name is "Tawna."

FACTUAL BACKGROUND

Tyler Z., born in June 2005, and Tyreonna Z., born in May 2007, are siblings.[3] They first came to BCDSS's attention on approximately August 14, 2013. Ms. F. who had been evicted from her residence for failure to pay rent and was being held in Anne Arundel County Detention Center because of an arrest for theft, had placed Tyler and Tyreonna in the care of their aunt, Tawna H., in June 2014. Ms. F. did not arrange for the children's long-term care and did not assist Ms. H. in caring for the children (even though she received Temporary Cash Assistance benefits).[4]

In August 2013, BCDSS filed—and the court granted—petitions with requests for shelter care regarding both children. Both children continued to live with Ms. H. until some time between August and November 2014, when Tyler moved into the home of Tammy B., another paternal aunt, because of an incident between Tyler and Ms. H.'s son.

On June 24, 2014, the court held a permanency plan review hearing, which was attended by Ms. F. and counsel, the children's father and counsel, Sherry Ford (the BCDSS caseworker), appointed counsel for Tyler and Tyreonna, and counsel for BCDSS. In an order that continued the permanency plan after that review, the court stated that Ms. F. "had not visited with [Tyler and Tyreonna]" between August 2013, when they were "placed in care," and "March of 2014." The court also stated that "[a]nother visit took

[3] Ms. F. has another child, who was born during the pendency of the juvenile court proceedings. Additionally, the record indicates the children have an older half-sibling, who is in his biological father's custody.

[4] Tyler's and Tyreonna's father, Mr. Z., is serving a ten-year sentence. He supported the initial change in permanency plan and did not join in this appeal.

place for Tyreonna's birthday" in May 2014. The court remarked that the children were "frustrated with [the] lack of visitation from their mother."

The court found that BCDSS had "made reasonable efforts to accomplish the permanency plan." Specifically, the court found BCDSS to have:

> entered into a service agreement[;] made home visits[;] provided financial assistance for furniture[;] provided financial assistance for utilities (gas, electric, heat and water)[;] referred child[ren] for therapeutic services[;] . . . monitored the [children's] health, education, and mental health needs; maintained contact with the mother, monitor[ed the] father's detention status; . . . supervised visits between mother and the [children]; conduct[ed] home visits with the care[-]giver; and discuss[ed] permanency planning with the parents and care[-]giver.

The order directed that the permanency plan "shall be achieved" by June 24, 2015. All parties, including Ms. F., signed a stipulation, "waiv[ing] any right they may [have had] to note an exception to immediate passage of th[e] order."

On March 30, 2015, a magistrate held a contested six-month review hearing, at which Ms. Ford (the BCDSS caseworker), Tawna H., and Ms. F. testified.[5] Much of the hearing involved two issues: (1) the limited contact between Ms. F. and her children and (2) BCDSS's efforts to communicate with Ms. Ford. On the basis of the testimony, the magistrate made the following findings of fact relevant to this appeal:

- Because the declared permanency plan had been one of reunification, Ms. F. could visit her children as frequently as once a week. But Ms. Ford was aware

[5] The parties had attended a hearing on December 4, 2014, but because the parties could not reach an agreement, the court set a contested hearing for February, 3, 2015. Because counsel for Ms. F. could not attend that hearing, the court granted a continuance until March 30, 2015.

of only three to four visits since the commencement of the case in 2013. Ms. Ford believed there had been visits in March, April, and May 2014 (before she was assigned the cases).

- When the cases were first assigned to Ms. Ford, she provided Ms. F. with her contact information and received contact information from Ms. F.. That information proved to be incorrect. Ms. Ford did not get reliable contact information for Ms. F. until she saw her at a review hearing on December 4, 2014.
- Ms. Ford arranged for a supervised visit on December 8, 2014, for which Ms. F. did not show up. Ms. F. did not communicate with Ms. Ford to say that she would be unable to appear or to reschedule. To Ms. Ford's knowledge, there had been only one subsequent visit, which was on March 27, 2015. Ms. Ford had initiated all of the calls to arrange the visits.
- Ms. Ford did describe Ms. F.'s conduct, at the one visit that she supervised, as affectionate and communicative. Ms. F. purchased some treats for the children from a vending machine.
- According to Ms. Ford, visits had been scheduled to occur in the homes of the aunts, but because Ms. F. had missed them without notice or explanation, visits would now be conducted only in the BCDSS office.
- Ms. Ford had asked Ms. F. to allow her to visit her new residence, but had not succeeded in arranging a visit. She believed that Ms. F. had another child

living with her at that residence. Ms. Ford did not know what obstacles prevented Ms. F. from visiting with her children.

- On cross-examination, Ms. F.'s counsel established that Ms. Ford had sent only two contact letters to Ms. F.: one mailed in June 2014 to an incorrect address, and the second in December to the correct address. The magistrate found that Ms. F. provided Ms. Ford with the "erroneous contact information."
- Even though BCDSS had known since June 2014 that Ms. F. was on supervised probation, Ms. Ford conceded on cross-examination that she did not use VINELink[6] as a way of communicating with her.
- Ms. F. had entered into a service agreement in March 2014, which would have expired after six months, and none of the conditions were met. BCDSS made a referral to family preservation services to meet the condition of stable housing, but Ms. F. "made herself unavailable." It did not appear that BCDSS had attempted to make referrals for the other conditions of parenting classes and anger management, but it was also unclear that it could have made such referrals, given the lack of contact between Ms. F. and BCDSS.

[6] VINELink gives "crime victims, victim advocates, and other concerned citizens free offender information and confidential notification on: District and Circuit criminal court case hearings[, a] particular inmate's release, transfer or escape from all city, county and state jails and facilities[, i]ndividuals under the supervision of the Maryland Division of Community Supervision[, and a] particular sex offender's compliance status." *See* https://www.vinelink.com/vinelink/siteInfoAction.do?siteId=21999 (last visited Dec. 9, 2015).

- In questioning Ms. Ford, Ms. F.'s counsel asserted that Ms. F. had been living at an abused woman's shelter from June to October 2014. Ms. Ford was unaware that Ms. F. had been living at the shelter, but nor had Ms. F. informed Ms. Ford of that fact. Ms. F.'s counsel suggested that from her contact with the paternal aunts, with whom the children were living, Ms. Ford could or should have ascertained that Ms. F. was living in a shelter.
- Ms. F.'s counsel asserted that, although the official permanency plan was one of reunification, BCDSS was moving toward a plan of custody and guardianship. Ms. Ford explained BCDSS's actions as a logical response to Ms. F.'s "sparse" contact with BCDSS and her children.
- In her testimony, Ms. F. explained (with some uncertainty) when she had been in the woman's shelter. She said that she had gone there because of homelessness and abuse. She reviewed her various previous addresses, none of which included the incorrect address to which BCDSS had sent its June 2014 letter, and she confirmed that she had maintained her present cell phone number while moving from place to place. She was not sure of the duration of the lease for her present residence.
- Ms. F. insisted that she had visited with her children "more than four" times during the life of the cases, but could not recall exactly when. As an explanation for not visiting more often, she said that she has been "trying to get [her]self together." She also said that she would have liked to have had visits with her children "every day." She did not recall receiving any letters from

BCDSS and said that until December 2014 she did not know that her case manager had changed. In response to the last statement, the court took notice of a June 24, 2014, stipulation, signed by Ms. F. and Ms. Ford, which demonstrated Ms. F.'s actual knowledge of the reassignment.

Based upon these facts, the magistrate found, by a preponderance of evidence, that BCDSS made reasonable efforts to achieve the permanency plan of reunification, to which the parties had stipulated, and which the court had adopted, on June 24, 2014. The magistrate reasoned that, while Ms. Ford could have done more to seek out Ms. F., Ms. Ford was unable to maintain contact with Ms. F. because she provided Ms. Ford with erroneous contact information and failed to make efforts to inform Ms. Ford of her relocation to a shelter. By contrast, the magistrate reasoned that Ms. Ford had maintained contact with the aunts with whom they were living. The magistrate stressed that BCDSS's efforts need only be "'reasonable,' not herculean."

The magistrate also found that Ms. F. "did not fulfill her obligation of reciprocity in working with BCDSS to achieve the permanency plan of reunification." "Accepting her testimony that she ha[d] been 'trying to get [her]self together,'" the magistrate stated that "she did so without significant efforts to maintain connection to her children." "[T]he result," the magistrate said, "has been alienation from her children, even while they thrived in their relative placements."

On the basis of these findings, the magistrate recommended that Tyreonna's permanency plan should be changed to grant custody and guardianship to Tawna H. and

that Tyler's plan should be changed to placement with a relative for custody and guardianship.

Ms. F. filed a notice of exception and request for a hearing. She contended, among other alleged errors, that (1) BCDSS "did not meet its burden with regard to reasonable efforts, and that (2) "BCDSS had not engaged [Ms. F.] with regard to reunification." She filed a half-page memorandum in support of her notice of exception, offering little elaboration.

At a May 21, 2015, hearing regarding Ms. F.'s exceptions, the circuit court reviewed the transcript of the March 30th hearing, including the magistrate's recommendation. The court took note of the magistrate's observation that "reasonable" efforts do not mean "herculean" efforts and that the parent has an obligation of reciprocity. Based on its review of the record and the arguments of counsel, the court found that the magistrate did not abuse his discretion. Accordingly, the court denied the exceptions.

STANDARD OF REVIEW

We apply three levels of review in CINA cases:

> [First, w]hen the appellate court scrutinizes factual findings, the clearly erroneous standard . . . applies. [Second,] [i]f it appears that the [juvenile 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 [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [juvenile court's] decision should be disturbed only if there has been a clear abuse of discretion.

In re Yve S., 373 Md. 551, 586 (2003) (quoting *Davis v. Davis*, 280 Md. 119, 125-26 (1977)).

"[H]ere, we apply the clearly erroneous standard when reviewing the juvenile court's factual finding that the Department made reasonable efforts to preserve and reunify the family." *In re Shirley B.*, 419 Md. 1, 18 (2011). Under that standard, "'[o]ur task is limited to deciding whether the circuit court's factual findings were supported by "substantial evidence" in the record.'" *GMC v. Schmitz*, 362 Md. 229, 234 (2001) (quoting *Ryan v. Thurston*, 276 Md. 390, 392 (1975)). "[T]o that end, we view all the evidence 'in a light most favorable to the prevailing party.'" *Id.* (quoting *Ryan*, 276 Md. at 392) *accord Goss v. C.A.N. Wildlife Trust, Inc.*, 157 Md. App. 447, 456 (2004).

DISCUSSION

"The purpose of CINA proceedings is 'to protect children and promote their best interests.'" *In re Priscilla B.*, 214 Md. App. 600, 622 (2013) (quoting *In re Rachel T.*, 77 Md. App. 20, 28 (1988)). "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/Guardianship of Jayden G.*, 433 Md. 50, 82 (2013).

The Court of Appeals recently summarized the role of the permanency plan in CINA cases:

> In CINA cases where a child had been removed from the family home, a juvenile court is required to periodically conduct "a permanency planning hearing to determine the permanency plan for a child[.]" Md. Code (1974, 2006 Repl. Vol., 2009 Supp.), § 3-823(b) of the Courts and Judicial Proceedings ("CJP") Article. Thereafter, the court must review the child's

> permanency plan "at least every 6 months until commitment is rescinded . . . ." CJP § 3-823(h)(1)(iii).

Shirley B., 419 Md. at 19.

Maryland law contemplates five possible permanency plans, which a juvenile court—consistent with the best interests of the child—may consider in descending priority:

> 1. Reunification with the parent or guardian;
> 2. Placement with a relative for:
>   A. Adoption; or
>   B. Custody and guardianship . . . [;]
> 3. Adoption by a nonrelative;
> 4. Custody and guardianship by a nonrelative . . . [;] or
> 5. 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[.]

Md. Code (1974, 2013 Repl. Vol.), § 3-823(e)(1)(i) of the Courts and Judicial Proceedings Article ("CJP").

At issue here is whether the circuit court was clearly erroneous in rejecting the exception to the magistrate's finding that BCDSS made "reasonable efforts" in support of the initial permanency plans of reunification for Tyler and Tyreonna with their mother, as

required by Md. Code (1984, 2012 Repl. Vol.), § 5-525(e) of the Family Law Article ("FL"). That statute provides:

> (1) Unless a court orders that reasonable efforts are not required under § 3-812 of the Courts Article or § 5-323 of this title, reasonable efforts shall be made to preserve and reunify families:
>
> > (i) prior to the placement of a child in an out-of-home placement, to prevent or eliminate the need for removing the child from the child's home; and
> >
> > (ii) to make it possible for a child to safely return to the child's home.
>
> (2) In determining the reasonable efforts to be made and in making the reasonable efforts described under paragraph (1) of this subsection, the child's safety and health shall be the primary concern.
>
> (3) Reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with the reasonable efforts described under paragraph (1) of this subsection.

"The 'reasonable efforts' requirement . . . has its genesis in federal law," with the original aims of family preservation and reunification. *In re James G.*, 178 Md. App. 543, 572 (2008). In response to criticisms that the legal framework left children to "languish in foster care drift," Congress amended the relevant federal law to "narrow [the reasonable efforts mandate] by making the health and safety of the child the paramount consideration when determining reasonable efforts to be made . . . and in making such reasonable efforts." *Shirley B.*, 419 Md. at 23 (internal quotation marks and citations omitted).

The General Assembly has defined "reasonable efforts" as those "that are reasonably likely to achieve the objectives set forth in § 3-816.1(b)(1) and (2)" of the CINA subtitle. CJP § 3-801(v). That provision, in turn, requires in part that:

> In a review hearing conducted in accordance with § 3-823 of this subtitle or § 5-326 of the Family Law Article, the court shall make a finding whether a local department made reasonable efforts to:
>
> > (i) Finalize the permanency plan in effect for the child; and
> >
> > (ii) Meet the needs of the child, including the child's health, education, safety, and preparation for independence[.]

CJP § 3-816.1(b)(2).

Therefore, by statute, BCDSS must make efforts "reasonably likely to achieve" (CJP § 3-801(v)) the dual objectives of "[f]inaliz[ing] the permanency plan in effect for [Tyler and Tyreonna]"—at the time, reunification—and "[m]eet[ing] the needs of [Tyler and Tyreonna], including . . . [their needs for] health, education, safety, and preparation for independence." CJP § 3-816.1(b)(2). We have described this statutory definition as "amorphous," opining that "there is no bright line rule to apply to the 'reasonable efforts' determination; each case must be decided based on its unique circumstances." *In re Shirley B.*, 191 Md. App. 678, 710-11, (2010), *aff'd*, 419 Md. 1 (2011).

The Court of Appeals has directed agencies such as BCDSS to pursue services aimed toward reunification:

> The statute does not permit the State to leave parents in need adrift and then take away their children. The court is required to consider the timeliness, nature, and extent of the services offered by DSS or other support agencies, the social service agreements between DSS and the parents, the extent to which both parties have fulfilled their obligations under those agreements, and whether additional services would be likely to bring about a sufficient

> and lasting parental adjustment that would allow the child to be returned to the parent. Implicit in that requirement is that a reasonable level of those services, designed to address both the root causes and the effect of the problem, must be offered[.]

In re Adoption/Guardianship of Rashawn H., 402 Md. 477, 500 (2007).

The Court also acknowledged, however, the limits of the efforts the State must make:

> The State is not obliged to find employment for the parent, to find and pay for permanent and suitable housing for the family, to bring the parent out of poverty, or to cure or ameliorate any disability that prevents the parent from being able to care for the child. It must provide reasonable assistance in helping the parent to achieve those goals, but 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. at 500-01 (emphasis added).

"Maryland regulations for out-of-home placements provide some insight into the contemplated range of reunification services." *James G.*, 178 Md. App. at 581. Section 07.02.11.14 Code of Maryland Regulations (or "COMAR") provides:

> B. The types of services which may be purchased, provided, or accessed through referral to another agency may include but are not limited to:
>
> (1) Transportation costs for family visits or other reasons;
>
> (2) Rent deposits;
>
> (3) Household items;
>
> (4) Vocational counseling or training;
>
> (5) Mental health services;
>
> (6) In-home aide service;
>
> (7) Day care, including temporary day care or respite;

(8) Individual, group, and family counseling;

(9) Assistance to locate housing;

(10) Crisis intervention services;

(11) Parenting classes;

(12) Special education services; and

(13) Inpatient, residential, or outpatient substance abuse treatment services.

Moreover, in making its reasonable efforts determination, the court must consider the following factors:

(2) Whether a local department has ensured that:

(i) A caseworker is promptly assigned to and actively responsible for the case at all times;

(ii) The identity of the caseworker has been promptly communicated to the court and the parties; and

(iii) The caseworker is knowledgeable about the case and has received on a timely basis all pertinent files and other information after receiving the assignment from the local department; [and]

(3) For a hearing under § 3-823 of this subtitle, whether a local department has provided appropriate services that facilitate the achievement of a permanency plan for the child, including consideration of in-State and out-of-state placement options[.]

CJP § 3-816.1(c).

Here, the record reflected that BCDSS had made numerous efforts to promote reunification, including making home visits; providing financial assistance for furniture and for utilities; referring the children for therapeutic services; monitoring the children's health, education, and mental health needs; maintaining contact with the mother;

monitoring the father's status; supervising visits between the mother and her children; conducting home visits with the caregivers, and discussing the permanency plan with the mother and the caregivers. Although the caseworker maintained contact with Tyler and Tyreonna, as well as their caregivers, she was—through little fault of her own—unable to maintain lines of communication with Ms. F. The magistrate found that the failure of communication occurred because even though Ms. Ford gave Ms. F. her contact information, Ms. F. gave Ms. Ford "erroneous contact information and failed to make efforts to inform Ms. Ford of her relocation to a shelter."

In addition, the court credited Ms. Ford's testimony that Ms. F. was, in substance, "unwilling to provide appropriate care" for Tyler and Tyreonna. *Rashawn*, 402 Md. at 501. That finding was nowhere near being clearly erroneous: as of the date of the hearing before the magistrate, the children had been CINA for more than 19 months, yet their mother had visited them only a handful of times. It was reasonable to infer that Ms. F.'s lack of interest in her children's lives would continue, as her past conduct is relevant to a consideration of her future conduct. *In re Dustin T.*, 93 Md. App. 726, 731 (1992). BCDSS's "efforts need not be perfect to be reasonable," and BCDSS "need not expend futile efforts on plainly recalcitrant parents." *James G.*, 178 Md. App. at 601.

This case differs from *In re Adoption/Guardianship Nos. J9610436 & J9711031*, 368 Md. 666, 682 (2002), in which the Court of Appeals reversed a juvenile court's order terminating the parental rights of a mentally-disabled father because the department could not show that it had "offered any specialized services designed to be particularly helpful to a parent" with cognitive limitations. This case also differs from *James G.*, 178 Md.

App. at 599, where the only impediments to parental reunification were the father's lack of stable employment and lack of housing, but "the only effort the Department made to address [his] unemployment was a single referral to an organization that could not address [his] employment needs."[7]

Here, BCDSS provided a plethora of services aimed at providing a suitable home environment in which reunification was possible. "[I]t is clear that the Department did not sit on its hands and wait for the necessary services to materialize." *Shirley B.*, 419 Md. at 30. Ms. F.'s corresponding failure to communicate with BCDSS does not lie at the department's feet. Where, as here, BCDSS has made substantial attempts to further reunification, but was stymied by a parent's lack of reciprocation, we fail to see how the juvenile court was clearly erroneous in finding reasonable efforts.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[7] This case also differs from *In Re Adoption/Guardianship Nos. CAA 922-10852 and 92-10853*, 103 Md. App. 1 (1994), which concerns the termination of parental rights upon clear and convincing evidence, not a change in a permanency plan upon a mere preponderance of the evidence. In fact, because the court did not terminate Ms. F.'s parental rights, she may petition for a modification of custody, guardianship, or visitation upon a showing of a material change in circumstances affecting Tyreonna's best interests. Furthermore, because Tyler remains a CINA, he will still have periodic review hearings, at which the court can change the permanency plan if it is in Tyler's best interests to do so.