Circuit Court for Calvert County
Case No: C-04-JV-18-102

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1223

September Term, 2019

IN RE: R.V., JR.

Fader, C.J.,
Reed,
Shaw Geter

JJ.

Opinion by Shaw Geter

Filed: February 10, 2020

In September 2018, the Circuit Court for Calvert County, sitting as the juvenile court, found that R.V., Jr. ("Child") was a child in need of assistance and placed him in the care and custody of the Calvert County Department of Social Services (the "Department"). Upon Child's father's appeal of that decision, a panel of this Court affirmed the judgment. *See In Re: R.V., Jr.*, No. 2353, September Term, 2017 (Md. App. March 19, 2019).

Child's parents, R.V. and E.M. ("Father" and "Mother"), were married to one another when Child was born in April 2016, but they separated shortly thereafter. Mother resides in Maryland and Father in Florida. Mother and Father have both suffered from substance-abuse disorders. Father has been involved in a number of domestic violence incidents, both with Mother and with the mothers of his four other children. A motorcycle accident in 2017 left Father a paraplegic.

The permanency plan order, dated February 27, 2019, ordered that "the permanency plan shall be reunification[.]" Several subsequent "interim" orders (dated June 28, 2019, August 14, 2019, and August 21, 2019) also reflect a permanency plan of reunification. None of the orders indicate reunification solely with one parent, so we assume that the reunification plan includes both parents—none of the parties in this appeal assert otherwise.

Following a permanency plan review hearing held on August 30, 2019, the court, on September 5, 2019, entered an order that, among other things, found that Mother has completed all court-ordered services, that she continues to participate in weekly random urinalysis and has been negative for all substances, that she continues to utilize a breathalyzer in her vehicle, and that she has had weekly visits with Child, with visits unsupervised since the June 28th order. The court found that Father has completed all

court-ordered services and found that he has not visited Child since June 2019. The court concluded that Child continues to be a child in need of assistance and ordered that his care and custody remain with the Department. The court also ordered that the permanency plan remain reunification.

The September 5th order directed that Child "begin a trial home visit" with Mother. The court ordered a "loosely supervised" visit with Father "for two (2) hours one day and for four (4) hours the next day" and thereafter unsupervised visitation with Father "at the discretion of the Department, provided that there are no concerns during the loosely supervised visits[.]" The order regarding Father's visitation is essentially the same (except for the dates of visitation) as that set forth in the August 14, 2019 interim order, but Father did not visit the child as directed in that August order.

Father appeals the September 5th permanency plan review hearing order and presents the following two questions for our review:

1. Did the juvenile court properly exercise its broad discretion in allowing the Department of Social Services to introduce a 27-page court report with 70 attachments where reliability of such documents could not be ascertained?

2. Did the juvenile court properly exercise its broad discretion in allowing mother to have a trial home visit with the [Child] where her compliance with her mental health management was not properly documented?

In her brief, Mother moves to dismiss the appeal on the grounds that (1) the appeal is not taken from a valid appealable interlocutory order; and (2) Father "consented" to the order when its terms were placed on the record without any significant objection by him. The Department also moves to dismiss the appeal, asserting that Father "lost his right to

appeal by agreeing" to the terms of the order. Child, through his attorney, adopts the Department's brief.[1] In a Response to Motion to Dismiss, Father maintains that he had "properly preserved his right to appeal" because he had "repeatedly objected to the admission of the Court Reports which were the basis for the court to have awarded the extended visit to Mother."

We need not address whether Father consented to the terms of the September 5th order because we agree with Mother that the order was not an appealable interlocutory order. Interlocutory appeals to this Court are permitted in only a few, limited instances: (1) pursuant to an express statutory exception; (2) pursuant to the collateral order doctrine; or (3) pursuant to Maryland Rule 2-602(b), which permits a circuit court to specifically certify an interlocutory order as final when "there is no just reason for delay." *Silbersack v. Acands, Inc.*, 402 Md. 673, 683–84 (2008). Categories two and three are inapplicable here, and category one does not apply in this instance.

Section 12-303(3)(x) of the Courts & Judicial Proceedings Article authorizes an immediate appeal of an interlocutory order "[d]epriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order[.]" Pursuant to this exception, the Court of Appeals has held that an order changing a permanency plan from reunification to a concurrent plan of reunification and adoption is

[1] At the August 30th hearing, the terms of the proposed order were read into the record. Father's counsel objected to a condition requiring Father to sign certain medical releases and the court agreed not to order him to sign them. Father's counsel also made clear that Father wanted to have unsupervised visits with the child at Father's home in Florida, rather than visits in Maryland. The court did not foreclose that possibility, but ordered that the visits occur first in Maryland.

an appealable interlocutory order. *In re Karl H.*, 394 Md. 402, 430–31 (2006). The Court noted that reunification and adoption are "directly contradictory goals" and an interlocutory order "which includes adoption as a possible outcome has the potential to both accelerate the termination and to terminate a parent's custodial rights" and, therefore, "such orders adversely affect a parent's rights to care and custody and entitle the parent to an immediate appeal." *Id.* at 431. In other words, "to be appealable, court orders arising from the permanency plan review hearing must operate to either deprive [a parent] of the care and custody of [his or] her children or change the terms of [the] care and custody of the children to [the parent's] detriment." *Id.* at 428 (internal quotations omitted). Further, "in determining whether an interlocutory order is appealable, in the context of custody cases, the focus should be on whether the order and the extent to which that order changes the antecedent custody order." *Id.* at 430.

In *In re: Joseph N.*, the Court of Appeals held that, where the ultimate permanency plan was reunification with only the mother, an order changing the child's placement from foster care to temporary supervised custody by the child's father, could immediately be appealed by the mother because the change in physical custody substantially increased the probability that the child would be reunified with both the mother and the father, instead of solely with the mother. 407 Md. 278, 292 (2009). In other words, giving temporary supervised custody to the child's father was a "meaningful shift in direction" which "had the potential to facilitate and accelerate a grant of full custody" to the father to the detriment of the mother. *Id.*

In contrast, the Court of Appeals has held that an order denying a bonding study is not an immediately appealable order where the permanency plan remained unchanged. *In re Samone H.*, 385 Md. 282, 316 (2005). The Court of Appeals has also held that a court's order granting the Department's waiver of reasonable reunification efforts was not immediately appealable where the child remained in the custody of relatives and the permanency plan, which called for the child to be placed with relatives, was not changed. *In re C.E.*, 456 Md. 209, 224 (2017). The Court of Appeals concluded that the order waiving reasonable reunification efforts did deprive the mother seeking the appeal of "care or custody" or reflect a "meaningful shift in direction." *Id.*

Here, the September 5th order did not change the permanency plan for Child. Although the order directed that Child "begin a trial home visit" with Mother, it made no changes to Child's custody or living arrangement. The order did not alter the terms of Father's visitation with Child or foreclose his chances for unsupervised visits with Child in the future. In short, given that we perceive no "meaningful shift in direction" as it relates to the care or custody of Child or the plan for reunification, we hold that the September 5th order was not immediately appealable.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.