

Circuit Court for Cecil County
Case No. 07-I-14-022

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1634

September Term, 2017

IN RE: T.M.

Woodward, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 1, 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.

In 2014, “T.M.,” child of Ashlie R., appellant (“Mother”), was declared a Child in Need of Assistance (“CINA”) in the Circuit Court for Cecil County. In 2016, the court altered T.M.’s permanency plan to include a primary plan of reunification with Mother and a secondary plan of adoption by a non-relative. Six months later, the court held a review hearing, after which it changed T.M.’s permanency plan to one of adoption by a non-relative (with a secondary plan of reunification with Mother). In this appeal, Mother asks: “Did the circuit court err by changing T.M.’s permanency plan without considering the statutory factors set forth in Maryland Code, § 5-525(f)(1) of the Family Law Article; where evidence regarding those factors was not presented to the court; and where the details of the child interview were not fully presented to opposing counsel?” For reasons to follow, we affirm.

BACKGROUND

T.M. came under the care of the Department of Social Services (the “Department”) at age eight and was declared CINA and placed in foster care. In 2016, Mother and T.M.’s father (“Father”) consented to the termination of their parental rights (“TPR”) upon the condition that T.M. be adopted by his foster parents.¹ That adoption failed, however, after it was alleged that T.M. had sexually abused three children who were also staying at the foster home.

After the failed adoption, the TPR was vacated and the CINA case reopened. Subsequent to the case being reopened, the Department asked the circuit court to change

¹ Father is not a party to this appeal.

T.M.'s permanency plan "back to reunification to make a second attempt due to changes in circumstances." Following a hearing on March 21, 2017, the court granted the Department's request and changed T.M.'s permanency plan to include a primary plan of reunification with Mother and a secondary plan of adoption by a non-relative. The court also scheduled a review hearing for September 19, 2017.

In anticipation of that hearing, the Department completed a "Progress Review Report," which included a summary of the Department's contact with T.M. and Mother and the reasonable efforts made by the Department in effectuating reunification. As part of that summary, the Department noted that T.M. was doing well in his current placement and that Mother, while "making improvement toward completing Service Agreement," had failed to acquire adequate housing and was currently living with a registered sex offender. The Department also noted that Mother had "not currently been compliant with the Department" and that she had failed to respond to communications and maintain scheduled appointments. The Department ultimately recommended that T.M.'s permanency plan be changed to one of adoption by a non-relative.

At the review hearing on September 19, the circuit court conducted a closed interview with T.M., who was 11 years old at the time and had been living with a "licensed treatment foster family" for approximately one year. During the interview, T.M. stated that he enjoyed living in his foster home and seeing Mother "every week." Although T.M. did state that he envisioned living with Mother in "the future," he later stated that he was "okay" with staying with his foster family and having visits with Mother. T.M. also

reported that he was doing well at school, that he was attending church, and that he had been on several vacations and attended several summer camps.

After its interview with T.M., the circuit court began the review hearing by summarizing its interview with T.M. The court then heard from the Department, which argued that, due to T.M.'s age, it would be difficult to find a pre-adoptive home for T.M. without first instituting proceedings to terminate both Mother and Father's parental rights, which was why the Department was asking that the permanency plan be changed. T.M.'s counsel agreed that making the change would serve T.M.'s best interests and added that adoption would be "consistent with his wishes." The Department later reiterated that Mother was currently living with a registered sex offender, which served as a "considerable impediment" to reunification.

Opposing counsel argued against the change and maintained that taking steps to terminate parental rights without having an adoptive home in place would put T.M. in danger of becoming a ward of the state. Counsel also argued that, because she was not present during the court's interview with T.M., she was unsure if T.M. truly understood the ramifications of the Department's position. Counsel added that Mother and T.M. had a "significant" relationship and that the only impediment to reunification was appropriate housing, which Mother "has been pursuing." When asked how long T.M. had been out of Mother's care, counsel responded that T.M. had been in "multiple placements for a while."

After indicating that it had "listened carefully to the arguments" and had "read the report," the circuit court ordered that T.M.'s permanency plan be changed to one of adoption by a non-relative, with a secondary plan of reunification. The court also noted

that it's ruling was "not an easy call," but that there was "more uncertainty in letting it stay in the present status than changing the status."

DISCUSSION

Mother argues that the circuit court erred in changing T.M.'s permanency plan. Specifically, Mother maintains that the court erred in: 1) failing to mention the requisite statutory factors when rendering its decision; 2) changing T.M.'s permanency plan without evidence to support that change; and 3) providing a synopsis of its interview with T.M. rather than providing the parents an opportunity to hear, first-hand, the interview.

Our review of the circuit court's decision involves three interrelated standards. First, any factual findings made by the court are reviewed for clear error. *In re Yve S.*, 373 Md. 551, 586 (2003). Second, any legal conclusions made by the court are reviewed *de novo*. *Id.* Finally, if we find that the court's ultimate decision is founded upon sound legal principles and factual findings that are not clearly erroneous, that decision will be disturbed only if there has been a clear abuse of discretion. *Davis v. Davis*, 280 Md. 119, 234 (1977).

When a child is declared CINA and removed from the care of the parent, the court is required to hold a hearing to determine a permanency plan for the child. Md. Code Ann., Cts. & Jud. Proc. § 3-823(b)(1). In developing a child's permanency plan, the court's primary consideration is always the best interest of the child. Md. Code Ann., Fam. Law § 5-525(e)(1). That standard "embraces a strong presumption that the child's best interests are served by maintaining parental rights." *In re Yve S.*, 373 Md. at 571. Therefore, a court's priority in developing a permanency plan should be reunification with the parent or guardian. Md. Code Ann., Cts. & Jud. Proc. § 3-823(e)(1)(i).

Following its implementation of a permanency plan, the court is required to conduct a review hearing “every 6 months until commitment is rescinded or a voluntary placement is terminated.”² Md. Code Ann., Cts. & Jud. Proc. § 3-823(h)(1)(i). At the hearing, the juvenile court is required to consider: the appropriateness of the current plan; whether reasonable efforts have been made in achieving the goals of the permanency plan; the level of progress made toward remedying the circumstances that necessitated commitment; a reasonable date by which placement will be achieved; and, the overall safety and well-being of the child. Md. Code Ann., Cts. & Jud. Proc. § 3-823(h)(2).

In addition, the court is required to “change the permanency plan if a change . . . would be in the child’s best interest.” *Id.* Before such a change can be made, however, the court must consider the statutory factors outlined in Section 5-525(f)(1) of the Family Law Article of the Maryland Code. Md. Code Ann., Cts. & Jud. Proc. § 3-823(e)(2). Those factors are: the child’s ability to be safe and healthy in the parent’s home; the child’s attachment and emotional ties to the parent, any siblings, the current caregiver, and the caregiver’s family; the length of time the child has resided with the current caregiver; the potential harm to the child if removed from the current placement; and, the potential harm to the child in remaining in State custody. Md. Code Ann., Fam. Law § 5-525(f)(1).

That said, “a trial judge’s failure to state each and every consideration or factor in a particular applicable standard does not, absent more, constitute an abuse of discretion, so long as the record supports a reasonable conclusion that appropriate factors were taken into

² The statute does contain some exceptions to this rule; however, these exceptions are not applicable in the instant case. Md. Code Ann., Cts. & Jud. Proc. § 3-823(h)(1)(i).

account in the exercise of discretion.” *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003); *See also In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 738 (2014) (affirming the court’s decision to terminate parental rights despite the fact that the court “did not explicitly state that a termination of . . . parental rights would be in [the child’s] best interest in either its oral opinion or written order.”). Moreover, “[t]he exercise of a judge’s discretion is presumed to be correct, he is presumed to know the law, and is presumed to have performed his duties properly.” *Id.* (citations omitted). In the end, “if there are weighty circumstances indicating that reunification with the parent is not in the child’s best interest, the court should modify the permanency plan to a more appropriate arrangement.” *In re Adoption of Cadence B.*, 417 Md. 146, 157 (2010).

We hold that the circuit court did not err in changing T.M.’s permanency plan. The record reflects that T.M. was happy and thriving in his current placement; that he had been in that placement for over a year; that he was happy having weekly visits with Mother; and, that reunification with Mother was virtually impossible given that she was living with a registered sex offender at the time. The record also reflects that the court considered those factors when rendering its decision. In short, we cannot say that the court abused its discretion in changing the permanency plan.

As for the circuit court’s interview with T.M., Mother fails to cite, and we could not find, any Maryland case or statute that suggests that the court’s actions were improper. To the contrary, “[t]he propriety of private in-chambers interviews with children is well-settled in Maryland.” *Wagner v. Wagner*, 109 Md. App. 1, 48 (1996). Nevertheless, Mother did not object at any time either following the court’s interview with T.M. or when said

interview was summarized for the parties in open court. Consequently, that issue was waived. Md. Rule 2-517(a).

**JUDGMENT OF THE CIRCUIT
COURT FOR CECIL COUNTY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**