Circuit Court for Talbot County
Case No.: C-20-JV-22-000035

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1750

September Term, 2024

IN RE: C.B.

Reed,
Zic,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: August 6, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Born in July 2009, and adopted by Mrs. B. and Mr. Mc. shortly after his birth, C.B. came to the attention of the Talbot County Department of Social Services ("DSS" or the "Department") in March 2022 through a "Voluntary Placement" after he was hospitalized due to suicidal ideation. Upon discharge from the hospital, C.B. was placed in a residential treatment center. In August 2022, the Department filed a petition with the Circuit Court for Talbot County requesting, among other things, that C.B. be declared a Child in Need of Assistance ("CINA"). In October 2022, the Department, Mrs. B., and counsel for C.B. filed a stipulation with the court that C.B. is a CINA due to his mental health diagnosis and his adoptive parents' inability to provide the care he needs. The court found C.B. to be a CINA and placed him in the Department's custody.[1]

Following a permanency plan hearing in June 2023, the court ordered a concurrent permanency plan: (1) custody and guardianship to a relative and (2) custody and

[1] In 2011, Mrs. B. had been awarded sole legal and physical custody of C.B. When the CINA petition was filed, Mr. Mc. (C.B.'s adoptive father) was no longer in C.B.'s life and DSS could not determine his whereabouts. The Department located C.B.'s biological parents, whose parental rights had been terminated after C.B.'s birth. His biological mother could not be a resource for C.B. His biological father began supervised visits with C.B., but ultimately advised DSS that he could not be a placement resource either.

Prior to the CINA determination, it was stipulated by DSS, Mrs. B., and counsel for C.B. that C.B., who was born premature and diagnosed at birth with fetal alcohol syndrome disorder, had a history of aggression toward Mrs. B, his older adoptive sister, and the family's pets, and that he also had a history of engaging in property destruction in the family home. In addition, it was stipulated that the "family ha[d] exhausted community resources of medication management along with individual and or family therapy to address [C.B.'s] behavioral concerns."

guardianship to a non-relative.[2] At a hearing held in February 2024, Mrs. B. (who does not want reunification with C.B., has chosen not to communicate with C.B. or to participate in any of the court ordered counseling sessions, and refuses any contact by DSS) requested through her counsel that, at the next permanency plan review hearing, that the plan be changed to adoption by a non-relative. At this point in time, C.B. was residing with a foster care parent.

At a permanency plan review hearing held on May 17, 2024, Mrs. B. reiterated that she is not interested in reunification with C.B. and desired that the permanency plan be changed to adoption. In fact, her attorney informed the court that Mrs. B. had already filed a "General Consent to Termination of Parental Rights" and she wished to proceed with the termination of parental rights process. Both C.B. and DSS opposed changing the permanency plan to adoption at this time. Because no relative had been identified as a placement resource, C.B.'s counsel, however, suggested changing the order of the existing concurrent permanency plan to: (1) custody and guardianship to a non-relative and making this the "primary" plan and (2) custody and guardianship to a relative and making this the "secondary" plan. The Magistrate found that there was no "pre-adoptive resource"

[2] "'Permanency plan' means a plan specifying where and with whom the child shall live, and the proposed legal relationship between the child and the permanent caretaker or caretakers." COMAR 07.02.11.03(B)(39). Generally, a case plan "shall include concurrent permanency plans[.]" COMAR 07.02.11.13(A).

"'Concurrent permanency planning' means the process of taking concrete steps to implement both primary and secondary permanency plans, for example, by providing time-limited family reunification services while also exploring relatives as resources." COMAR 07.02.11.03(B)(16).

available and that changing the plan to adoption was not, at this time, in C.B.'s best interest. Rather, the Magistrate found that it was in C.B.'s best interest to flip the order of the existing concurrent permanency plan as C.B.'s counsel had suggested, and the Magistrate made that recommendation. Mrs. B. filed exceptions.

On August 16, 2024, the court held a hearing on Mrs. B's exceptions. C.B. was then 15 years old and he was not willing to consent to his adoption. The Department and C.B. opposed changing the permanency plan to include adoption given that no adoptive resources had been identified. Nonetheless, Mrs. B. urged the court to include adoption as a permanency plan, noting that the "main effect is that it would force the Department" to pursue the termination of her parental rights. The Department and C.B., however, asserted that terminating Mrs. B's parental rights at this point was not in C.B.'s best interest. By order entered on October 30, 2024, the court denied Mrs. B's exceptions and accepted and ratified the Magistrate's recommendations.

Mrs. B. appeals, raising the following question, which we quote:

> Did the trial court commit error by ratifying permanency plans of custody and guardianship for C.B. and not finding that any plan of adoption was in C.B.'s best interest?

We shall not address the question because we agree with the Department and C.B. that the order Mrs. B. appealed is not an appealable interlocutory order.

DISCUSSION

In their respective briefs, both Appellees (the Department and C.B.), assert that the court's October 30, 2024 decision is not a final judgment nor an appealable interlocutory order and, therefore, the appeal should be dismissed. Perhaps anticipating Appellees' motion, in her opening brief Mrs. B. correctly acknowledges that a change in a permanency plan is not an appealable *final* judgment, *see In re: D.M.*, 250 Md. App. 541, 555 (2021), but she asserts that, because the permanency plan here "reverse[d] the order" of the existing concurrent plan to Mrs. B's alleged detriment, the decision is an appealable *interlocutory* order under Md. Code, Courts & Judicial Proceedings ("CJP"), § 12-303(3)(x).

CJP § 12-303(3) allows for an immediate appeal of certain interlocutory orders, including from an 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[.]" § 12-303(3)(x). Thus, the Maryland Supreme Court has held that an initial permanency plan providing for reunification with parent concurrent with adoption is immediately appealable because reunification and adoption are "mutually exclusive" and "directly contradictory goals," the latter of which "is sufficiently far enough along the continuum of depriving a parent of [the] fundamental [and constitutional] right" to raise their children. *In re: Karl H.*, 394 Md. 402, 430-31 (2006). In reaching this decision, the Supreme Court provided the following guidance:

> 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*. It is immaterial that the order appealed from emanated from the permanency planning hearing or from the periodic review hearing. If the change could

> deprive a parent of the fundamental right to care and custody of his or her child, whether immediately or in the future, the order is an appealable interlocutory order.

Id. at 430 (emphasis added).

The Supreme Court has interpreted CJP § 12-303(3)(x) to allow an immediate appeal of an order changing a permanency plan *from* reunification with parent *to* foster care or adoption, which clearly is a material change that could deprive a parent of the right to care for the child. *In re: Damon M.*, 362 Md. 429, 437-38 (2001). In its discussion in that case, the Supreme Court highlighted the importance of a permanency plan and the statutory requirement for periodic review of the same:

> The permanency plan is an integral part of the statutory scheme designed to expedite the movement of Maryland's children from foster care to a permanent living, and hopefully, family arrangement. *It provides the goal towards which the parties and the court are committed to work. It sets the tone for the parties and the court and, indeed, may be outcome determinative*. Services to be provided by the local social service department and commitments that must be made by the parents and the children are determined by the permanency plan. And, because it may be not changed without the court first determining that it is in the child's best interest to do so, the permanency plan must be in the child's best interest. These are the reasons, no doubt, that the court is charged with determining the plan and with periodically reviewing it, evaluating all the while the extent to which it is being complied with.

Id. at 436 (emphasis added).

In *In re: Billy W.*, 386 Md. 675 (2005), the child's mother challenged the admissibility of hearsay testimony in a permanency plan review hearing that concluded with the court continuing the previously established permanency plans. The Maryland Supreme Court ultimately ordered the appeal dismissed because "the orders continuing the permanency plans for all four children . . . did not detrimentally affect [mother's] custody

rights or visitation with the children, even though [mother] had sought full custody." *Id*. at 692. *See also In re Samone H.*, 385 Md. 282, 316 (2005) (holding that the court's denial of mother's request for a bonding study in conjunction with a permanency plan review hearing where mother sought to change the existing permanency plan from adoption to reunification was not immediately appealable where the court maintained adoption as the permanency plan). In short, "when a CINA order does not adversely affect the parent's parental rights or change the permanency plan terms to the parent's increased detriment, the order is not appealable under CJP § 12-303(3)(x)." *In re: D.M.*, 250 Md. App. at 557 (cleaned up).

Here, the court did not change C.B.'s permanency plan in a manner that adversely affected Mrs. B's custody rights or visitation with C.B.—rights, in fact, that Mrs. B. refuses to exercise and wishes to relinquish. Nor did the court's order effectuate any real shift in the direction of permanency planning for C.B. Rather, at C.B.'s request the court merely flipped the order of the existing concurrent plans to make custody and guardianship with a non-relative the "primary" plan and custody and guardianship with a relative the "secondary" plan.[3] Given that no relatives had been identified as a viable placement resource for C.B. and relatives, should they be identified, are still very much an option, the very slight modification in C.B.'s permanency plan had no meaningful or material effect on the status quo. As such, the order is not an appealable interlocutory order.

[3] As noted in footnote 2, *supra*, "'[c]oncurrent permanency planning' means the process of taking concrete steps to implement *both* primary and secondary permanency plans[.]" COMAR 07.02.11.03(B)(16) (emphasis added).

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.