Circuit Court for Cecil County
Case Nos. C-07-JV-18-000096
C-07-JV-18-000097

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1827

September Term, 2019

IN RE: J.J. AND L.J.

Graeff,
Reed,
Gould,
JJ.

Opinion by Graeff, J.

Filed: May 27, 2020

This appeal arises from an order issued by the Circuit Court for Cecil County, sitting as a juvenile court, that changed the permanency plan for minor siblings, L.J. and J.J., each of whom was adjudicated a child in need of assistance ("CINA")[1], from reunification to adoption by a non-relative. On appeal, the children's parents, Mr. and Mrs. J. present the following issue for our review:

> 1. Did the juvenile court err in changing the permanency plans for each child from reunification with the parents to adoption by a non-relative?

Mr. J. presents the following additional issue for review:

> 2. Did the circuit court abuse its discretion in failing to have a hearing on the appropriateness of DNA testing with respect to paternity?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTS AND LEGAL PROCEEDINGS

Mr. and Mrs. J. were married in 2011. Mrs. J. has given birth to nine children, and the family has a long history with the Department. Custody of Mrs. J.'s first child was transferred to the maternal grandmother, and Mr. and Mrs. J.'s parental rights were terminated for five children born thereafter. L.J. is Mrs. J.'s seventh child and J.J. is her eighth child.

On May 18, 2018, the Cecil County Department of Social Services ("the Department") received a report that L.J., born April 12, 2016, and J.J., born October 18,

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

2017, had been living in unsanitary conditions in their mother's home and then moved into the home of their maternal grandfather, who was a Level Three sex offender. According to the report, Mrs. J.'s home was "crawling with roaches," and the children had lice. There were dirty dishes all over the floor, and the children wore dirty clothing.

In April 2018, Mrs. J. moved into her father's home after the electricity in her own home was turned off. At that time, Mrs. J. was separated from Mr. J. and pregnant with her ninth child. She received food stamps and "disability money," but she was selling her food stamps and using her money to purchase suboxone for her boyfriend, "Eddie," who used suboxone and heroin. Mrs. J. left the children unattended, slept until noon, and allowed the children to cry until she awoke. Mrs. J. and her boyfriend fought and used inappropriate sexual language in front of the children.

On May 22, 2018, assessors from child protective services ("CPS") went to the police to request assistance for an unannounced visit to Mrs. J.'s home. The assessors were advised, and it was later confirmed, that Mrs. J. had attempted suicide by taking an overdose of Benadryl. CPS went to the home, where Mrs. J. acknowledged that she had overdosed on Benadryl after a fight with Mr. J., and L.J. and J.J. were in her care at that time. CPS advised Mrs. J. of their concerns about L.J. and J.J. living with her father due to his significant history of sexual abuse, but Mrs. J. "continued to state she did not understand why living with [her father] would be an issue" because "she does not let her father interact with the children unsupervised."

Mrs. J. advised that her boyfriend lived with her, and he was J.J.'s father, although Mr. J. was listed as his father on the birth certificate. She also confirmed that she was

approximately six weeks pregnant with her ninth child. Mrs. J.'s boyfriend informed CPS that another couple had been living in the home, but they "kept 'overdosing,'" so he asked them to leave. He confirmed that the overdoses and drug usage occurred when the children were in the home.

The home where the J.s were staying did not meet minimum standards. There was no floor covering, the plywood was exposed, and both children shared a bedroom with Mrs. J. and her boyfriend. Both children slept in pack-n-plays, and J.J.'s contained a bottle filled with curdled milk. There was a heater covered with clothing next to the children's sleeping area, an infant seat hovering over the pack-n-play where J.J. was sleeping, and stains and rips in the pillows, blankets, and beds. Both children were dirty, and "the bottoms of [L.J.'s] feet were black."

CPS arranged for a safety plan to be put in place. Mrs. J.'s brother and his wife, B.T. and H.T., agreed to care for the children. Mrs. J. advised that she did not have contact information for Mr. J. B.T. and H.T.'s home met minimum standards, and the children were placed there in shelter care.

In June 2018, Mrs. J. advised CPS assessor Kristen Berkowich that she was no longer seeing her boyfriend, she was back with Mr. J., who was incarcerated, and she continued to live with her father. On July 20, 2018, Ms. Berkowich called B.T. and H.T. to schedule a home visit and follow up on the safety plan. She was advised that H.T. had given birth to a child on July 16, 2018, and that L.J. and J.J. had been staying with friends since July 15, 2018, in violation of the safety plan. B.T. and H.T. acknowledged that

having L.J. and J.J. was difficult financially, but they wanted to keep the children and were willing to be a long-term resource for them.

H.T. reported that Mrs. J.'s father was trying to pay Mrs. J. to have sex with him, but she would not consent. The Department's history reflected that Mrs. J.'s mother took Mrs. J.'s underwear to her father when he was in jail after his arrest for sexually abusing Mrs. J.

Mrs. J. did not make progress in finding appropriate housing for herself and the children. For that reason, and because of Mrs. J.'s inability to assess safety and her extensive history with the Department, including the termination of her parental rights to five other children, the Department placed both children in kinship care with B.T. and H.T. Ms. Berkowich told both Mr. and Mrs. J. of the removal. Mr. J. advised that he would be released from the Cecil County Detention Center ("CCDC") in August 2018, and he was willing to cooperate with the Department. He stated that J.J. was not his biological child, but he acknowledged that he was listed as the father on the child's birth certificate and had provided care since the child was born.

On July 23, 2018, after the Department found out that B.T. and H.T. had allowed the children to be supervised by unauthorized caregivers, L.J. and J.J. were moved to a licensed foster home. On that same date, the Department filed petitions asking the court to find L.J. and J.J. to be CINAs.

A hearing on the CINA petitions was held on September 4, 2018. Both Mrs. J. and Mr. J., who was released from incarceration on August 21, 2018, were present. Mr. and Mrs. J. waived their rights to a contested hearing and agreed to submit the case on the

Department's report. Mrs. J. did not admit to any guilt or wrongdoing, denied the facts as set forth in the report, and objected to a finding that the children were CINAs. She asked the court to find that the children were not CINAs and place them with B.T. and H.T. Counsel for Mrs. J. advised the court that a home study was being performed for B.T. and H.T., but it had not been completed. Mrs. J. requested the court to "either find that the children are not CINA" or continue shelter care until the home study could be completed. Mr. J. also asked that the court "hold off" on making a CINA determination until the Department completed the home study for B.T. and H.T. Counsel for Mrs. J. advised the court that Mrs. J. had entered a service agreement with the Department, started counseling, found a new place to live, but had not yet moved in, had gone to the health department for a drug and alcohol evaluation, and signed up for parenting classes. With regard to housing, the proposed lease agreement indicated that, in addition to Mr. and Mrs. J., Mrs. J.'s brother intended to live in the residence.

Counsel for the children reported that she had visited with the children in their foster home. They were both healthy and doing well, they each had separate sleeping quarters, had received medical attention, and L.J. had been to a dentist.

The report prepared by the Department contained conflicting information regarding J.J.'s birth certificate. It indicated at one point that both parents had confirmed that J.J.'s birth certificate listed Mr. J. as his father. It also stated that foster care worker Erika Ehrhardt had obtained birth certificates for both children, and J.J.'s birth certificate did not have a father listed.

The court determined that the Department's report contained sufficient facts for a CINA finding, and it rejected the requests to place the children with their relatives, B.T. and H.T. After the court announced its decision, Mr. J. requested paternity testing with respect to J.J. The court denied that request because Mr. J. was married to Mrs. J. at the time J.J. was born.

On September 27, 2018, Mrs. J. completed a psychological evaluation with licensed psychologist Nelson G. Bentley, Ph.D. In his report, Dr. Bentley noted that the Department had requested the evaluation to assess Mrs. J.'s "cognitive and emotional functioning, her needs, and to obtain recommendations regarding her potential to be reunified with her two children and/or maintain care of the unborn child once it is born." Dr. Bentley reported that Mrs. J. was generally cooperative with the evaluation process, but she did not accept responsibility for, or express any guilt or remorse for, the fact that five of her children had been permanently removed from her care or that L.J. and J.J. had been recently removed "due to her poor judgment in allowing the children to reside with her father, the perpetrator of her childhood sexual abuse[,]" who was a Level Three Sex Offender. Mrs. J. acknowledged a "history of unhealthy relationships with her husband and her recent boyfriend, the potential father of her unborn child."

Dr. Bentley determined that Mrs. J. was "functioning within the Borderline range of intelligence, and there are concerns about her cognitive limitations." Dr. Bentley reported that, "[e]motionally, [Mrs. J.] has a very strong need for social approval, and she is extremely naïve about psychological matters. Furthermore, she has low self-esteem and lacks confidence, but she tends to suppress these feelings." Test results indicated that Mrs.

J. was "generally unwilling to accept responsibility for her circumstances." Dr. Bentley diagnosed Mrs. J. with a tentative diagnosis of unspecified bipolar disorder and borderline intellectual functioning.

Dr. Bentley expressed significant concern about Mrs. J.'s "potential to provide healthy and appropriate parenting to her minor children." He concluded that Mrs. J. "is totally lacking insight and/or an understanding of the seriousness of her circumstances including her history of serious traumas as well as the traumas to which she has exposed her children." He recommended that the Department "should be very cautious with regards to returning" L.J. and J.J. to Mrs. J.'s care at that time.

Dr. Bentley also reported that Mrs. J. had started to receive counseling, but had only had one appointment with her therapist. He was concerned that Mrs. J. had waited so long to seek treatment because of her long history of mental health issues, including multiple traumas suffered in her childhood. Mrs. J. reported that she previously had been diagnosed with bipolar disorder, but she was not taking any medication for that condition and had not stayed on medication prescribed in the past. According to Dr. Bentley, "[w]ithout extensive mental health treatment to include medication management and monitoring, it is felt that [Mrs. J.] will remain at high risk for future problems as a result of her mental health issues. . . . [I]t will be very important to monitor [Mrs. J.'s] mood over time to determine if in fact she is meeting criteria for diagnosis of a Bipolar Disorder."

Dr. Bentley also reported concerns about the impact prior traumas had on Mrs. J.'s self-perceptions and personality functioning. He wrote that she

> lacks confidence and has assumed a very passive and submissive role in her relationships. It is felt that she continues to be very vulnerable, and that she is at risk for future unhealthy relationships. This, too, is a concern with regards to her potential to resume care of her children.

Although Mrs. J. was reportedly completing a parenting course, Dr. Bentley reported that, "given her cognitive limitations, there are questions as to how much of the information she will absorb and then incorporate into her parenting."

Finally, Dr. Bentley strongly recommended

> that the Department should be very cautious with regards to any plan to reunify the two minor children with [Mrs. J.]. With regards to the unborn child, should the Department determined [sic] that the child can remain in [Mrs. J.'s] care, it will be extremely important that she obtain alternative housing; she should not be allowed to have this child in her care if she remains at her father's home. Given the long-standing issues and [Mrs. J.'s] history of using poor judgment, should the Department allow the newborn child to remain in her care, it will be very important for the Department to monitor her care of the child for an extended period of time.

In preparation for the first CINA review hearing on February 19, 2019, the Department submitted a report indicating that, in December 2018, Mrs. J. had given birth to her ninth child, S.J. Mrs. J. remained in regular contact with the Department, maintained weekly supervised visits with L.J. and J.J., and was an active participant in the children's medical care. She signed a service agreement and completed her parent and psychological assessment with Dr. Bentley. She also obtained employment at a McDonald's restaurant in October 2018. She struggled, however, to find stable housing and reported difficulty taking classes through the Heritage Pregnancy Center due to holidays and her work schedule. Mrs. J. also started to receive therapy twice a month, but she reported difficulty attending sessions after the birth of S.J.

Mr. J., who was released from incarceration on August 21, 2018, was placed on probation through a drug court program. He entered a service agreement with the Department on August 30, 2018, but a warrant subsequently was issued for his arrest due to a failure to comply with the terms of his probation. He was terminated from the drug court program, and ultimately incarcerated at CCDC. According to the Department's report, Mr. J. was serving an 18-month sentence for second-degree assault and a 6-month sentence for theft of property valued at less than $1,000.

L.J. and J.J. remained in the same licensed foster home. Their foster care worker reported that the children were up to date on all medical appointments, L.J. was being potty trained, and J.J. was learning to walk.

Based on their home study, B.T. and H.T.'s home was denied as a placement, and a Department worker assisted them in filing an appeal. B.T. and H.T. requested a postponement of the appeal hearing due to their vacation, but that request was denied on February 5, 2019, because of a failure to provide documentation. A Court Appointed Special Advocate ("CASA")[2] for the children reported that, since delivering her 9th child, Mrs. J. had shown decreased attention and focus on L.J. and J.J. during her visits.

At the February 19, 2019, review hearing, the Department recommended, and Mrs. and Mr. J. agreed, that the permanency plan of reunification should be continued. The court agreed and entered a primary permanency plan of reunification and a secondary plan of adoption by a relative. The Department continued to work with B.T. and H.T. as a

[2] *See* CJP § 3-830, which establishes a Court Appointed Special Advocate program.

possible relative placement for the children. Mrs. J. was working full-time at McDonald's and had not missed any visits with the children. She requested a home study on her own home and additional visits with the children, at least twice per week. Counsel for the Department argued that the Department does not "do home studies on parents as such. That's what this process is all about." The court agreed, stating: "That's the whole object of these proceedings. . . . If the home was stable and in good shape we wouldn't be where we are." The Department advised that it was "contemplating additional visitation" and "that is something the department does in any case when things are going well." At the time of the hearing, Mr. J. was incarcerated; he anticipated that he would be released some time around February 2020.

On March 27, 2019, licensed psychologist Robert Kraft conducted a psychological evaluation of Mr. J. Mr. J. reported that he and Mrs. J. separated in March 2018 because Mrs. J. was seeing J.J.'s father. He had been prescribed an anti-depressant medication for "significant symptoms of depression that occurred while he was jailed." Dr. Kraft stated that Mr. J. "essentially presents as an antisocial character who was trying to present himself in the best light possible and used deception to do so." Dr. Kraft set forth the following recommendations and opinions with regard to Mr. J.:

> 1. When Mr. J. is released from incarceration, he should follow up with outpatient mental health treatment at a community mental health clinic . . . . The treatment should include a focus on his recurrent episodes of depression but also problems he has with anger and aggression that has [sic] resulted in his freedom being taken away and him being incarcerated on at least two occasions.
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> 2. Mr. [J.] should complete a substance abuse evaluation and follow any and all recommendations made.

> 3. Mr. [J.] should complete an anger management course. He has now twice been incarcerated for [second-degree] assault.
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> 4. If [Mr. J.] complies with the above recommendations to the satisfaction of his treatment providers, for a period of time deemed appropriate by the department, then it may be reasonable to slowly work towards reunification with close and careful monitoring by the department.

A permanency planning hearing was held on July 23, 2019. Prior to the hearing, the Department submitted a report advising that Mrs. J. had remained in regular contact with the Department, had maintained employment at a McDonald's restaurant since October 2018, had actively participated in the children's medical care, and had weekly supervised visits with L.J. and J.J., which were increased to two hours per week in March 2019. Mrs. J. signed an updated service agreement on April 11, 2019. Mrs. J. had started individual therapy in October 2018, but she reported that she "does not like therapy" and has not "maintained attendance." Mr. J. continued to be incarcerated. The Department recommended that L.J. and J.J. continue to be found CINA, and the permanency plan remain reunification with a secondary plan of custody with a relative.

The court interviewed the foster parents on the record. The foster parents reported that L.J. had been prescribed glasses, they had taken the children to the zoo, and they were planning a vacation to Disney World. Counsel for the children reported that both children were "well integrated and well adjusted into" the foster parents' household, and their social, emotional, and educational needs were being met.

The Department advised the court that the home study for B.T. and H.T. was "ongoing" and "close to being completed." A previously scheduled Family Involvement

Meeting ("FIM") was canceled and another one would be set up. B.T. and H.T. had been having home visits with the children, and Mrs. J. requested that overnight visits begin so the children could begin integrating into the T.s' home. The court declined to order overnight visits, stating: "That's up to the department" and "I think that's also a question for the FIM, to tell you the truth."

The court found, *inter alia*, that the children "appear to be healthy, and are meeting developmental milestones," the children "can not be safe and healthy in the home of the natural mother at this time due to her longstanding and documented inability to provide safe and stable care for any children," the children have an attachment to Mrs. J., who has been visiting regularly, the children have "little attachment" to Mr. J., the children have an emotional attachment to their "current caregivers, with whom they have been placed since removal," the children "would suffer emotional, developmental and educational harm if moved from their current placement," and the children "would be subjected to harm by remaining in state custody for an excessive period of time." The court continued the permanency plan of reunification with a secondary plan of custody and guardianship to a relative.

The next permanency plan review hearing was scheduled for October 22, 2019. In a report prepared in anticipation of that hearing, the Department noted that, in March 2019, Mrs. J.'s visitation with the children was increased to two hours per week and she remained employed at McDonald's, but she had not engaged in therapy or ongoing parenting courses. On September 15, 2019, Mr. J. was suspended from work release because he tested positive for cocaine. An FIM was held on August 22, 2019, and it was decided that the children

would begin progressive visits with B.T. and H.T., with the intention that the children's placement would change by September 30, 2019. On September 12, 2019, H.T. spoke with a Department worker about concerns she had about taking the children. She reported that she felt "very pressured" and was not sure if she could handle being the primary caretaker. The Department met with B.T. and H.T. and expressed concerns that they were not "on the same page" about placement of the children. On October 8, 2019, B.T. and H.T. advised the CASA that they had "decided not to pursue guardianship as they feel that the best place for the children would be to remain with the foster parents long-term."

At the October 22 hearing, the Department requested a postponement because B.T. and H.T. had decided that they no longer could be a placement resource for L.J. and J.J. Counsel for the children, however, asked the court to deny the request for a postponement and change the permanency plan to adoption by a non-relative. Counsel for the children argued that the foster parents were adoptive resources, the children were well integrated into their family and bonded to the foster parents, and all of their needs were being met, so there was no need for the children to be held in limbo when permanency was available.

Counsel for Mrs. J. requested that the permanency plan remain reunification for three months and that an FIM be held. Counsel noted that Mrs. J.'s father was in prison and would not be out "for a long time," that Mrs. J. had a home, that S.J. was in her care, and Mrs. J. had been consistent with visits and had a bond with L.J. and J.J. Counsel asserted that Mrs. J. could be ready to have L.J. and J.J. with her in three months.

Counsel for Mr. J. also requested that the permanency plan remain reunification. Mr. J. was scheduled to be released from incarceration between February 13 and March

13, 2020. He requested a review hearing in six months instead of three so that he would be able to become "productive" after being released. Mr. J. also renewed his request for paternity testing as to J.J. Mr. J. stated that it would be "hard enough" for him to get custody of L.J., let alone both of the children, and he knew he was not J.J.'s father. Counsel for Mr. J. stated that paternity testing would not take long, J.J.'s father was known, and Mr. J. had not had significant contact with J.J. or played a major role in his life.

Counsel for the children did not object to the request for paternity testing as to J.J., asserting that it would be unfair to the child not to know the true identity of his father. She expressed concern, however, about time passing and the need for the children to have permanency. Ultimately, counsel for the children urged the court to change the permanency plan because paternity was a lesser concern.

The Department objected to paternity testing because Mr. and Mrs. J. were married. Counsel expressed concern about the time the children would spend in care, and that Mr. J. would need to show what he could do after his release, which would require time. The Department argued that it would have to be established that it was in J.J.'s best interest to have paternity testing before it was ordered, and it asserted that, if the child's real father had an interest in obtaining custody of J.J., he would be in court. The Department argued that paternity should be left as it was and the most important thing for J.J. was to obtain permanency quickly.

Mrs. J. objected to paternity testing, asked for the permanency plan to remain the same, stating that she could be ready to take custody of the children in March. The CASA

argued that giving custody of L.J. and J.J. to Mrs. J. would set her up to fail because Mrs. J. had "already admitted that she can't do all three [children] at the same time."

The court determined that it was not in the children's best interests to have paternity testing done and that it was in their best interest for the permanency plan to be changed from reunification to adoption by a non-relative with a secondary plan of reunification. In a written order, the court found as follows:

> 1. The Department has an extensive history with the family, to include the removal of many children, and the termination of parental rights as to five (5) prior children of the parents.
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> 2. The current removal was due to referrals advising that the mother was residing with her father, who is a Level Three Sex Offender, and that the home was in deplorable condition, full of roaches, and unsafe for infants. The mother was also reportedly fighting with her new boyfriend in front of the children, and was using her food stamps and disability funds to buy drugs for the boyfriend.
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> 3. Upon engagement, the Department learned that the mother had recently attempted suicide by ingesting approximately 80 Benadryl pills, and was emergently petitioned to Union Hospital.
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> 4. The mother reported that there had been another couple living in the home, but that they were asked to leave due to repeated drug overdoses. The mother acknowledged that the children were present during these overdoses.
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> 5. The mother was then pregnant with her ninth (9^{th}) child, which she delivered on December 9, 2018. The mother has stated that she did not know she was pregnant when she attempted suicide.
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> 6. The mother appears not to recognize any concerns regarding her father, who sexually abused the mother when she was a child, and who reportedly now tries to pay the mother for sex. The father apparently thinks, "based upon his beliefs," that it is acceptable for him to have sex with his daughter.
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> 7. Since removal, the mother has completed a psychological assessment which concluded that her lack of insight, low cognitive functioning, and poor parenting abilities were a major danger to any children in her care. The

mother currently resides with a relative and has maintained contact with the Department and the children.

8. The father of the children has been incarcerated at CCDC since November 1, 2018. He expects to be released in March 2020.

9. The children are placed together in a licensed foster home. They appear to be healthy, and are meeting developmental milestones.

10. The court finds that the children can not be safe and healthy in the home of either parent. The father remains incarcerated. The mother is caring for her most recent child, and has acknowledged that she would be overwhelmed if both of the respondents were added to the household.

11. The court finds that the respondent minor children have some attachment and emotional ties to the natural mother, who has been visiting regularly. They have no attachment to the father.

12. The children have a strong attachment to the foster parents.

13. The children have been in the foster home since July 23, 2018.

14. The court finds that the children would suffer emotional, developmental and educational harm if moved from the current placement.

15. The court finds that the respondent minor children would be subjected to harm by remaining in state care for an excessive period of time.

STANDARD OF REVIEW

We review child custody cases under three "different but interrelated" standards of review. *In re Adoption/Guardianship of Cadence B.*, 417 Md. 146, 155 (2010). First, we review the juvenile court's factual findings under the clearly erroneous standard. *Id.* (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). Second, if it appears that the juvenile court erred in its determinations as a matter of law, further proceedings will ordinarily be required, except in cases of harmless error. *Id.* Finally, "when reviewing a juvenile court's decision to modify the permanency plan for the children, [we] 'must determine whether the court

abused its discretion.'" *In re A.N., B.N., and V.N.*, 226 Md. App. 283, 306 (2015) (quoting *In re Shirley B.*, 419 Md. 1, 18 (2011)). "There is an abuse of discretion 'where no reasonable person would take the view adopted by the [juvenile] court,'" or when the court acts "without reference to any guiding rules or principles." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (quoting *North v. North*, 102 Md. App. 1, 13 (1994) (internal citations omitted)). To warrant reversal, the juvenile court's decision must "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 Shirley B.*, 419 Md. at 19 (quoting *In re Yve S.*, 373 Md. at 583–84 (internal quotations omitted)).

DISCUSSION

I.

We begin with Mr. J.'s contention that the juvenile court failed to consider evidence of paternity with respect to J.J. The Department contends that Mr. J.'s issue is not properly before us because there has been no final appealable order with respect to the issue of J.J.'s paternity. We agree with the Department.

The Court of Appeals has made clear "that the right to seek appellate review of a trial court's ruling ordinarily must await the entry of a final judgment[.]" *In re C.E.*, 456 Md. 209, 221 (2017) (quoting *Salvagno v. Frew*, 388 Md. 605, 615 (2005)). "A ruling of the circuit court constitutes a final judgment when it either determines and concludes the rights of the parties involved or denies a party the means to 'prosecut[e] or defend[] his or her rights and interests in the subject matter of the proceedings.'" *In re Katerine L.*, 220 Md. App. 426, 437 (2014) (quoting *In re Samone H.*, 385 Md. 282, 297–98 (2005)). The

court's ruling must be intended "as an unqualified, final disposition of the matter in controversy." *In re C.E.*, 456 Md. at 221 (quoting *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989)). "In determining whether a particular court order or ruling is appealable as a final judgment, we assess whether any further order was to be issued or whether any further action was to be taken in the case." *In re Katerine L.*, 220 Md. App. at 437–38. "An order that is not a final judgment is an interlocutory order and ordinarily is not appealable[.]" *Nnoli v. Nnoli*, 389 Md. 315, 324 (2005).

The court's denial of Mr. J.'s request for paternity testing clearly was not meant to be an unqualified, final disposition of the matter in controversy regarding his parental rights. The juvenile court retains jurisdiction over CINA cases and is free to revisit the issue of J.J.'s paternity at any time. *See In re Katerine L.*, 220 Md. App. at 439.

There are three exceptions to the requirement that an appeal may be taken only from a final judgment. *Salvagno v. Frew*, 388 Md. 605, 615 (2005). Those exceptions are "appeals from interlocutory orders specifically allowed by" Md. Code (2013 Repl. Vol.), § 12-303 of the Courts and Judicial Proceedings Article ("CJP"),[3] appeals of issues certified as final judgments pursuant to Maryland Rule 2-602(b), "and appeals from interlocutory rulings [permitted] under the common law collateral order doctrine." *Id.*

Mr. J.'s appeal of the court's denial of his request for paternity testing does not fall under any of those exceptions. The denial of Mr. J.'s request for a paternity test did not

[3] Md. Code (2013 Repl. Vol.), § 12-303(3)(x) of the Courts and Judicial Proceedings Article permits an appeal from 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[.]"

deprive him of the care of J.J., nor did it change the terms of a prior court order. And the issue was not certified as a final judgment. Finally, the denial of a request for a paternity test is not appealable under the collateral order doctrine. *In re Katerine L.*, 220 Md. App. at 443–44. Accordingly, Mr. J.'s appeal with respect to the circuit court's denial of his request for paternity testing is not properly before this Court.

II.

Mr. and Mrs. J. contend that the juvenile court abused its discretion in changing the permanency plan for each child from reunification to adoption by a non-relative. Mrs. J. argues that she was making reasonable efforts to comply with court orders and treatment recommendations and that the CASA believed that she "had been doing everything in her power 'to be what she's supposed to be as a mother.'" Mr. J. argues that he received a service agreement days before the October 2019 permanency review hearing, but he failed to receive meaningful services while incarcerated. Like Mrs. J., he argues that the best interests of the children are not served by terminating reunification efforts because he was making reasonable efforts to comply with court orders and treatment recommendations. Mr. J. also asserts that the juvenile court abused its discretion by changing the permanency plan to adoption by a non-relative without making an inquiry or determination as to whether there was good cause to order paternity testing. He maintains that, in light of the evidence provided at the October 22, 2019, hearing, the court should have held a hearing on the issue of J.J.'s paternity and then determined whether "dis-established" paternity was in the children's best interests.

A parent's right to raise his or her children without undue interference by the State is a fundamental constitutional right that cannot be taken away "unless clearly justified." *In re A.N., B.N., and V.N.*, 226 Md. App. at 306 (quoting *In re Yve S.*, 373 Md. at 565–66). That right, however, is not without limitation, and must be balanced against the State's interest in protecting the health, safety, and welfare of the child. *Id.* In CINA cases where the child has been placed outside of the home, the Department's primary concern in the development of a permanency plan must be the best interests of the child. *See* Md. Code (2019 Repl. Vol.), § 5-525(f)(1) of the Family Law Article ("FL") ("In developing a permanency plan for a child in an out-of-home placement, the local department shall give primary consideration to the best interests of the child[.]"); *In re Andre J.*, 223 Md. App. 305, 320 (2015) (Where a CINA is "placed outside the family home, the juvenile court must determine a permanency plan consistent with the child's best interests.").

CJP section 3-823(e)(1) provides, in part, that:

> (e)(1) At a permanency planning hearing, the court shall:
> (i) Determine the child's permanency plan, which, to the extent consistent with the best interests of the child, may be, in descending order of priority:
> 1. Reunification with the parent or guardian;
> 2. Placement with a relative for:
> A. Adoption; or
> B. Custody and guardianship under § 3-819.2 of this subtitle;
> 3. Adoption by a nonrelative;
> 4. Custody and guardianship by a nonrelative under § 3-819.2 of this subtitle[.]

Reunification with a parent is the first option because it is presumed to be in the child's best interest to remain in the care and custody of his or her biological parent. *In re Adoption/Guardianship of Cadence B.*, 417 Md. at 157. Nonetheless, "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." *Id.*

The Department and the court must consider the following factors in determining the best interests of the child when creating a permanency plan:

> (i) the child's ability to be safe and healthy in the home of the child's parent;
> (ii) the child's attachment and emotional ties to the child's natural parents and siblings;
> (iii) the child's emotional attachment to the child's current caregiver and the caregiver's family;
> (iv) the length of time the child has resided with the current caregiver;
> (v) the potential emotional, developmental, and educational harm to the child if moved from the child's current placement; and
> (vi) the potential harm to the child by remaining in State custody for an excessive period of time.

F.L. § 5-525(f)(1).

Once the juvenile court establishes the permanency plan, the goal of the plan must be revisited periodically to evaluate progress toward the permanency goal and to assess whether the permanency plan should be changed based on current circumstances. CJP § 3-823(h)(1) and (2) (addressing review of permanency plan); *In re Andre J.*, 223 Md. App. at 322. At the review hearing, the court must consider, *inter alia*, whether the commitment remains necessary and appropriate, whether reasonable efforts have been made to finalize the plan, and the extent of progress that has been made "toward alleviating or mitigating the causes" that necessitated commitment. CJP § 3-823(h)(2)(i)–(iii); *In re Yve S.*, 373 Md. at 581. The court must change the permanency plan "if a change in the permanency plan would be in the child's best interest." *In re Yve S.*, 373 Md. at 581 (quoting CJP § 3-823(h)(2)(vi)). *See also In re Adoption/Guardianship of Cadence B.*, 417 Md. at 157 ("[I]f

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.").

At a permanency plan review hearing, the juvenile court must "[d]etermine and document in its order whether reasonable efforts have been made to finalize the permanency plan that is in effect." CJP § 3-823(h)(2)(ii). Whether reasonable efforts have been made is determined on a case-by-case basis, but the Court of Appeals has "recognized that there are limits to what the Department is required to do." *In re Shirley B.*, 419 Md. at 26. The Court wrote:

> **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. . . .**
>
> **The State is not required to allow children to live . . . in temporary shelters . . . or to grow up in permanent chaos and instability, bouncing from one foster home to another until they reach eighteen and are pushed onto the streets as adults because their parents, even with reasonable assistance from [the Department], continue to exhibit an inability or unwillingness to provide minimally acceptable shelter, sustenance, and support for them.**

Id. (emphasis in *In re Shirley B.*) (quoting *In re Adoption/Guardianship of Rashawn H. and Tyrese H.*, 402 Md. 477, 500–01 (2007)).

Here, the juvenile court applied the factors required by FL § 5-525(f)(1) and revised the children's permanency plans in accordance with their best interests. With respect to the first factor, the children's ability to be safe and healthy in the home, the court recognized that Mr. J. was incarcerated for almost all of the time that the children were in

foster care. Mrs. J. admitted that she could not care for L.J. and J.J. as well as her new baby. Although Mrs. J. had received services from the Department for years, she struggled to safely parent her children. The court found that the family's extensive history with the Department included the removal of many children and the termination of parental rights of five of Mr. and Mrs. J.'s other children. Mrs. J. had a history of trauma and mental illness and had attempted suicide, but she failed to attend therapy and pursue medication as recommended in her psychological evaluation. The court found that Mrs. J. did not appear "to recognize any concerns regarding her father, who sexually abused [Mrs. J.] when she was a child, and who reportedly now tries to pay [Mrs. J.] for sex." The court also found that the psychological assessment for Mrs. J. concluded that "her lack of insight, low cognitive functioning, and poor parenting abilities were a major danger to any children in her care."

With regard to the second factor, the child's attachment and emotional ties to the natural parents and siblings, the court recognized that Mrs. J. had maintained contact with the Department, regularly visited with the children, and that L.J. and J.J. had some attachment and emotional ties to her. Mr. J., however, had been incarcerated and the children had "no attachment to" him.

The third, fourth, and fifth factors address the children's emotional attachment to the current caregiver and the caregiver's family, the length of time the child has resided with the current caregiver, and the potential emotional, developmental, and educational harm to the child if moved from that placement. The court recognized that L.J. and J.J. had been with the same foster parents since 2018, and the foster parents wished to adopt

both children. The court found that the children had "a strong attachment to the foster parents[,]" and they "appear to be healthy, and are meeting developmental milestones." The court also found that "the children would suffer emotional, developmental and educational harm if moved from the current placement."

The sixth factor required the court to consider the potential harm to L.J. and J.J. of remaining in State custody for an excessive period of time. *See In re Jayden G.*, 433 Md. 50, 82–84 (2013) (It is in children's best interests to quickly transition them from foster care to safe, permanent, and nurturing home.). The children had been out of the care of their parents for more than 18 months. The court found that the children "would be subjected to harm by remaining in [S]tate care for an excessive period of time," and the change in permanency plan reduced the possibility that L.J. and J.J. would be subjected to that harm.

On this record, we conclude that the juvenile court adequately considered the required statutory factors when reviewing the permanency plans for L.J. and J.J. and reasonably concluded that it was in the children's best interests to change the permanency plans for L.J. and J.J. to adoption by a non-relative. We perceive no abuse of discretion in the court's decision in that regard.

Mr. J. argues that "[a] permanency change to adoption by a nonrelative cannot be in the best interests of these children when the Court ignores relevant and material evidence of rebutted paternity and lack of reasonable efforts." Because Mr. and Mrs. J. were married at the time of J.J.'s conception and birth, there was a presumption that Mr. J. was J.J.'s father. *See Evans v. Wilson*, 382 Md. 614, 624 (2004). The court was not required to

consider evidence that may have rebutted the presumption of paternity until it concluded that it was in the children's best interest to do so. *See* Md. Code (2017 Repl. Vol.) § 1-208.1 (b)(1) of the Estates and Trusts Article (With certain exceptions not applicable here, "a presumption of parentage under this subtitle may be rebutted only if a court of competent jurisdiction determines in a written order that it is in the best interest of the child to receive and consider evidence that could rebut the presumption."). On two occasions, Mr. J. requested paternity testing as to J.J., and on both occasions, the court denied his requests. At the October 22, 2019 hearing, the court specifically found that "it is in the best interest of the minor children not to have the paternity testing done." As we have already noted, the denials of Mr. J.'s requests for paternity do not constitute final judgments from which an appeal may be taken.

Mr. J. also contends that the Department failed to provide him with reasonable efforts toward reunification. The Department was obligated to provide "time-limited family reunification services," FL § 5-525(c)(1), which are defined as "the services and activities that must be made available to the parents or legal guardian to facilitate the reunification of the child during the first 15 months of out-of-home placement." COMAR 07.02.11.03(B)(63)(a).

This contention is not properly before us because Mr. J. did not raise that issue before the juvenile court. Nor did he object to any of the Department's reports detailing its efforts to work with him while he was incarcerated. The Department's report, submitted in advance of the October 22, 2019, hearing, advised the court that Mr. J. remained incarcerated, that a worker from the Department confirmed his potential release date as

February 21, 2020, that a Department worker received reports, which had been confirmed, that Mr. J. had been suspended from work release because he tested positive for cocaine. The Department also summarized the contents of Mr. J.'s service agreement, signed on August 30, 2018, and discussed Mr. J.'s March 27, 2019, parenting and psychological evaluation by Dr. Kraft as follows:

> Mr. [J.] failed to show for his first scheduled Parenting and Psychological Evaluation. Mr. [J.] completed a psychological with Dr. Robert Kraft on March 27, 2019. Worker Ehrhardt received the evaluation in June 2019. The following recommendations were made: 1) when Mr. [J.] is released from incarceration, he should follow up with outpatient mental health treatment to focus on his recurrent episodes of depression and problems he has with his anger and aggression, 2) to complete a substance abuse evaluation and follow any and all recommendations, 3) to complete an anger management course, 4) if tasks are completed to satisfaction for a period of time determined by the department it may be reasonable to slowly work towards reunification. Worker Ehrhardt mailed an updated service agreement including recommendations to Mr. [J.] at CCDC on July 9, 2019.

Even if Mr. J. had challenged the Department's reports, his incarceration made it difficult for the Department to offer reunification services. It is well established that reasonable efforts to achieve reunification are decided on "a case-by-case basis[,]" *In re Shirley B.*, 419 Md. at 25, and do not have to be perfect in order to be reasonable, *In re James G.*, 178 Md. App. 543, 601 (2008). Mr. J.'s attorney acknowledged that, due to his incarceration, Mr. J. was very limited in what he could do. There was no evidence that Mr. J. could, "or within a reasonable time w[ould] be, able to care for the child[ren] in a way that did not endanger the child[ren's] welfare." *In re Rashawn H.*, 402 Md. at 500. The circuit court did not abuse its discretion in determining that it was in the children's best interests to change the permanency plan from reunification to adoption by a nonrelative.

JUDGMENTS OF THE CIRCUIT COURT FOR CECIL COUNTY, SITTING AS A JUVENILE COURT, AFFIRMED; COSTS TO BE PAID BY APPELLANTS.