Circuit Court for Prince George's County
Case Nos. CINA-09-0027 & CINA-09-0029

CHILD ACCESS

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1939

September Term, 2017

&

No. 1940

September Term, 2017

IN RE: T.G. & K.G.

Meredith,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: July 2, 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.

The nearly decade-long litigation regarding two children, T.G. and K.G. (collectively, "the Children"), returns to this Court. The Children were adjudicated as children in need of assistance ("CINA")[1] in 2009, and the parents' struggles and minimal efforts have formed the narrative of the underlying cases.

Since January 2009, the Children have been in and out of the foster care system—and their cases have been in and out of this Court. The current appeal is a consolidation of appeals from decisions by the Circuit Court for Prince George's County, sitting as a juvenile court, to change the Children's permanency plans from reunification to adoption by a non-relative and termination of parental rights as advocated by Appellee, the Prince George's County Department of Social Services ("the Department"). At the October 30, 2017 hearing during which the juvenile court rendered the decisions now on appeal, neither Father nor Mother[2] attended nor informed the court of their whereabouts.

Father timely noted his appeal, positing two questions for our review:

1. "Did the trial [c]ourt commit reversible error when it waived [F]ather's right to counsel and failed to conduct a proper *McNeil* inquiry?"

2. "Did the trial court erroneously change the permanency plan of T.G. and K.G. without proper findings of any detrimental interest?"

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[1] Maryland Code (1973, 2013 Repl. Vol., 2017 Supp.), Courts and Judicial Proceedings Article ("CJP"), § 3-801(f) defines "Child in need of assistance" as "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."

[2] We note that Mother, Deborah A., also filed an appeal in this matter. However, as noted by Father, Mother has since passed away.

We discern no error in the juvenile court's decision to strike the appearance of Father's counsel, as Father had ample opportunities to discuss and revisit his apparent decision to proceed without counsel—opportunities that he repeatedly ignored. Further, because Father was *pro se* when the court turned to the merits of the case on October 30, there can be no ineffective assistance of counsel. We exercise our discretion to review the second issue, although it was not preserved, and discern no abuse of discretion by the juvenile court in changing the Children's permanency plans from reunification to termination of parental rights and adoption by a non-relative.

BACKGROUND

A. Previous Proceedings

T.G., born in October 2000, and K.G., born in May 2004, are both severely autistic and non-verbal. They have been under the Department's watchful eye for over nine years. Over that time, this Court has resolved multiple appeals in this case. *See In re: T.G. & K.G.*, No. 2429, Sept. Term 2016, 2017 WL 3446470 (filed Aug. 10, 2017) (unreported); *In re: K.G. & T.G.*, Nos. 2408 & 2409, Sept. Term 2014, 2015 WL 7301343 (filed Nov. 18, 2015) (unreported); *In re: T.A. & K.A.*, No. 1598, Sept. Term 2013 (filed Aug. 20, 2014) (unreported).[3] In a 2015 unreported opinion, Judge Moylan, writing for this Court,

[3] In addition to the three cases noted above, appeals to this Court in this litigation include the following: (1) *In re: T.G.*, No. 2291, Sept. Term 2015, dismissed by appellant on January 19, 2016; (2) *In re: K.G.*, No. 2334, Sept. Term 2015, dismissed by appellant and judgment dated February 24, 2016; and (3) *In re: T.G.*, No. 859, Sept. Term 2017, dismissed by appellant on January 19, 2018. On March 23, 2018, the Department filed an unopposed motion to correct the record, contending that necessary documents, including from these prior appeals were missing from the record. This Court denied the motion on

described the Department's first interaction with the Children and their two siblings (who are not involved in this appeal), stating that on January 29, 2009,

> [A]ll four children, including [T.G.] and [K.G.], were living in "deplorable" and unsanitary living conditions. The social workers sent to the home by the Department found the smell of urine and of feces to be so strong as to be detectible even from outside the home. Inside the residence, there was urine, feces, and dried food on the floor. [K.G.] had feces running down his leg and caked on the bottom of his feet. He was eating insects off the floor. The back door was blocked by a refrigerator. A gas water heater was described as a fire hazard by an investigator from Child Protective Services ("CPS") because it was surrounded by an unidentified substance, which the investigator described as "filth." The mattresses in the home were soiled and black mold was growing in the carpet. Four broken washing machines in a back room were deemed to be safety hazards for unsupervised children. The only heat source was a space heater. On that day, the home was declared to be unfit for human habitation and was boarded up.
>
> [T.G.] was in school at the time of the Department's safety check of the house. The school authorities, however, reported that she was dirty and had a strong odor. They further stated that she regularly arrives at school dirty and smells strongly of urine. . . . [T.G.] and [K.G.] were placed in St. Anne's Infant Home in Hyattsville, where the staff spent three days cleaning the children's hair. They also referred them for follow-up dental care because of their "brown" teeth.

In re: K.G. & T.G., Nos. 2408 & 2409, Sept. Term 2014, 2015 WL 7301343, at *1.

The following day, at a family facilitation meeting, Father did not present himself as a reunification resource; instead, he agreed to reunification of the Children with Mother. *Id.* at *2. Father and Mother were never married and lived separately. *In re T.G. & K.G.*, No. 2429, Sept. Term 2016, 2017 WL 3446470, at *1; *In re: K.G. & T.G.*, Nos. 2408 & 2409, Sept. Term 2014, 2015 WL 7301343, at *1.

April 3, 2018. We will, however, take judicial notice of our previous decisions. *See* Md. Rule 5-201.

On February 10, 2009, the juvenile court approved the removal of the Children from Mother's home. *In re: K.G. & T.G.*, Nos. 2408 & 2409, Sept. Term 2014, 2015 WL 7301343, at *1. Mother agreed to participate in a safety plan and services with the Department, although she refused the Department's offer to provide clean beds for the Children and other furniture. *Id.* at *2. A repetitive cycle of transfers from the Mother's home to foster care and back ensued. *Id.*

Judge Arthur composed this Court's opinion in the 2017 appeal challenging the juvenile court's decision to eliminate the option of reunification with Father and therein described the subsequent course of events:

> On March 5, 2009, the juvenile court found that the children were CINA because of neglect by their parents. The court placed the children in the custody of Mother and Father under an order of protective supervision ("OPS") by [the Department]. Mother and Father were required to participate in parenting classes and to undergo psychological evaluations, individual and family therapy, and any recommended substance abuse treatment[.]
>
> *Father went to parenting classes for about two months in late 2009, but he did not participate in court-ordered therapy or training for parents of autistic children. He missed his appointment for a psychological evaluation and refused to participate in the evaluation that [the Department] had arranged. Although [the Department] made many attempts to communicate with him and his attorney to discuss the services that [the Department] could offer, he did not respond.*

In re T.G. & K.G., No. 2429, Sept. Term 2016, 2017 WL 3446470, at *2 (emphasis added) (footnote omitted).

The pattern continued in early 2010, as the following occurred:

> On February 25 and 26, 2010, Mother denied [the Department]'s request to enter her home to conduct a home safety assessment. A visit to the children

> at school revealed that they often arrived in "unsanitary condition," with a foul odor[.] . . . [S]he refused to allow school employees to bathe the children or change their clothes.
>
> . . . Testing showed that she did not understand the need to plan for raising two children with special needs.
>
> On March 11, 2010, [the Department], with the assistance of a Community Response Team, gained access to Mother's home. It smelled of urine, and there was a sticky brown substance on the carpet. T.G.'s room was furnished only with a bicycle and television. . . .
>
> Mother would not work with professionals to provide educational and behavioral support in caring for the children's special needs. . . . The children continued to arrive at school smelling of urine and with unwashed and unbrushed hair. . . . They required daily bathing at school. *Father refused to identify himself when [the Department] was present in the home, and he had not completed a psychological evaluation.* Nonetheless, on July 27, 2010, the juvenile court allowed Mother and Father to retain custody, but ordered Mother to cooperate with [the Department] and attend therapy sessions.

Id. at *2-3. (Emphasis added).

Less than two months after the juvenile court's decision to permit the Children to remain in the custody of Mother and Father, the Children were again removed from Mother's home and placed in foster care for the next 14 months:

> On September 15, 2010, Mother's home had again been declared unfit for human habitation. . . . "On September 20, 2010, the court finally removed the children from Mother's custody after a hearing on the Department's emergency petition to change custody."
>
> "On December 1, 2010, the court continued the out-of-home placement, citing the Mother's stubborn denial of any need for in-home services despite the obvious evidence that she could not care for the children on her own, refused to disclose the status of the children's medical care, and failed to accept court-mandated oversight."
>
> The children thrived in their foster homes. T.G., who had been obese, lost weight because her foster mother provided well-balanced meals. K.G.

> learned some sign language, began to enjoy taking baths, and interacted well with other children in the foster home. "His foster parents even began to toilet train him."
>
> K.G.'s therapist reported that the child would benefit from receiving "individual attention with a strong emphasis on communication skills," but on May 15, 2011, Mother refused to cooperate in providing the required documentation for him[.] . . . She also refused to attend a facilitation meeting with [the Department] or to sign a service plan.

Id. at *3 (quoting *In re: K.G. & T.G.*, Nos. 2408 & 2409, Sept. Term 2014, 2015 WL 7301343, at *3) (alterations added).

The juvenile court returned the Children to Mother on November 7, 2011 and reaffirmed the permanency plan as reunification with her. *Id.* at *4. Nevertheless, Mother failed to cooperate:

> She failed to follow up on a referral to [the] Kennedy Krieger [Institute] for one-on-one supportive services for [K.G.] She missed many of her own therapy appointments. She again refused to enter into a service agreement. [The Department] had difficulty in contacting the Mother and in accessing her home. Although [T.G.] had been toilet trained while in foster care, she showed up to school in pull-ups. The school reported that [K.G.] "was not being cared for properly in the home."

Id. at *4 (quoting *In re: K.G. & T.G.*, Nos. 2408 & 2409, Sept. Term 2014, 2015 WL 7301343, at *3) (some alterations changed). The Department subsequently reported how Mother's and Father's continued failure to cooperate was affecting the Children:

> On May 23, 2012, [the Department] received yet another CPS referral regarding "filthy and inhuman" conditions in Mother's residence. When [Department] employees went to the residence on May 29, 2012, Mother would not allow them to enter.
>
> On June 19, 2012, [Department] workers attempted to perform a safety check at Mother's residence, but when they arrived, they learned that there had been

a fire and that the family no longer lived there. Mother had not notified [the Department] of the move.

The juvenile court issued body attachment writs for the children, who were not located until August 2, 2012. "As the juvenile court recalled the body attachment writs, it expressed its concern about the Mother's continued resistance to court-ordered services designed to help her parent children who have 'tremendous' special needs." When [Department] workers entered Mother's temporary apartment, "they 'gagged' because of the 'unpleasant smell' from soiled clothing and numerous bags of trash."

Meanwhile, on April 5, 2012, Father had refused to sign a service agreement with [the Department]. On June 27, 2012, when the children were missing, a case worker went to Father's mother's house in an attempt to locate him, but Father's sister said that she did not know where he was.

On September 4, 2012, [the Department] informed the court that Mother could not manage the children during visits to Kennedy Krieger. [The Department] reported that on those visits the children "would tear up stacks of brochures, enter private offices, yell, and slam doors while the Mother did nothing." [It] also reported that Mother "continued to provide unhealthy food for the children." T.G., who was overweight, "was allowed to eat multiple Pop-Tarts and bags of potato chips in one sitting." "Communication was difficult because the Mother did not have a working telephone."

. . . The [Children's] school was willing to purchase new clothes [for them], but could not do so without permission from either Mother or Father, whom the social workers could not reach. . . .

* * *

The school reported numerous unexplained absences by both children. It could not provide transportation for the children, because Mother had not supplied her new address and did not respond to phone calls or to notes that it sent home with the children. Teacher aides reported that both children "came to school with dried feces from bowel movements left in their diapers from the night before."

On December 13, 2012, [the Department] received a complaint of neglect of one of Mother's older children, who had reportedly been sexually abused by Mother's boyfriend. "The home was reported to be 'unliveable [sic] due to an excessive amount of trash, dirty dishes, holes in the wall, and a terrible

> smell.'"
>
> On January 25, 2013, T.G.'s school reported that she weighed over 250 pounds. She "suddenly did not want anyone to touch her when she was being bathed or changed." "She was regularly falling asleep in class and her hair was regularly unwashed." When T.G.'s teacher tried to discuss the child's condition with Mother, Mother became hostile and defensive. On numerous occasions, the children's [the Department] case worker was unable to gain access to Mother's residence. On one visit, the case worker observed many empty beer cans and beer bottles and other debris outside the home.

Id. at *4-5 (quoting *In re: K.G. & T.G.*, Nos. 2408 & 2409, Sept. Term 2014, 2015 WL 7301343, at *3-5) (alterations added) (emphasis added).

The juvenile court again removed the Children from Mother's home on February 8, 2013. Less than three weeks after this latest phase in the cycle of transfers, on February 27, 2013,

> when the children returned to the foster home from a two-hour, unsupervised visit to Mother's residence, the foster mother found feces smeared on T.G.'s sweat pants and thigh. T.G. was wearing three urine-soaked diapers that contained no feces; she was crying and acting abnormally; her pubic hair had been trimmed; and she had pubic hair all over her chest. K.G. had a laceration inside his buttocks that "extended from his tailbone to his anus that appeared to be 'new and raw.'"
>
> The foster mother notified [CPS], which opened a sexual abuse and neglect investigation. On March 18, 2013, the juvenile court ordered that family visits be supervised pending the completion of the investigation.
>
> On May 16, 2013, DSS concluded that it could not rule out neglect. *Both Mother and Father were found to be responsible, as they had been present during the children's visit, but could not explain how the events occurred when the children were in their care. In fact, "Father declined to be interviewed."*
>
> Less than three months later, on August 5, 2013, the court reinstated unsupervised visits, but required Mother to enter into a service agreement and to allow DSS to have access to her home. Mother continued to reject the

> services offered by DSS for specialized classes for parenting children with autism.
>
> At a review hearing on September 12, 2013, the juvenile court reaffirmed that the children were CINA and continued their placement in the care and custody of DSS. It also ordered Mother to undergo a psychological evaluation to determine whether she was able to parent her autistic children. The court observed that both children had "regressed substantially between the time they were last returned home and February of [2013] in terms of autistic developmental needs." The court added: "This is a case in which we have two children who have dramatic and extensive special needs, and parents who have been unable or unwilling to accept the services that they would need in order to safely maintain their children in the home."
>
> Mother appealed the juvenile court's order to this Court. We affirmed the order in an unpublished opinion. *In re T.A. and K.A.*, No. 1598, Sept. Term 2013 (filed Aug. 20, 2014).[4]

Id. at *5-6 (quoting *In re: K.G. & T.G.*, Nos. 2408 & 2409, Sept. Term 2014, 2015 WL 7301343, at *5) (certain alterations added) (emphasis added).

On October 3, 2013, the juvenile court suspended Mother's and Father's unsupervised visits with the Children, and Judge Arthur quoted that court's description of Father's involvement in the Children's cases:

> *[T]he natural father continues to have only a periphery [sic] involvement . . . . [He] does not reside in the family home and maintains a separate residence from the natural mother. At no time during the history of the CINA matter, including today's hearing, has [he] volunteered to be a placement resource for the . . . children separate and apart from the natural mother.*

[4] In upholding the juvenile court's order requiring Mother to have a psychological exam, Judge Zarnoch stated, "In our view, the court clearly focused on the necessity that [T.G.] and [K.G.]'s parents understand the very serious special needs of their children." *In re: T.A. & K.A.*, slip op. at 10. Judge Zarnoch continued, "Given that [Mother] did not appear to acknowledge her children's developmental regression when in her care or recognize how properly fostering their development was particularly critical to their health and safety, we are not persuaded that the court erred by ordering a new psychological examination[.]" *Id.*

> *[He] has even less training regarding parenting special needs children than the natural mother.*

Id. at *6 (alterations in original) (emphasis added). The juvenile court ordered Mother once again to participate in services and to allow access to her home for inspection. *Id.* But the following day, Mother refused to give the Department access to her home. *Id.* Then, in November 2013,

> K.G. required dental surgery, but was unable to undergo it because Mother refused to consent. Father, who had initially given his consent, withdrew it when he learned Mother had not consented. On January 16, 2014, the juvenile court ordered that Mother immediately sign the necessary consent forms. At a meeting between the court and K.G. in April 2014, the court discovered that K.G. was in pain because of his still-untreated dental condition. [The Department] reported that K.G. "needed emergency dental surgery because the Mother had failed to attend the previously scheduled dental appointments." The court granted [the Department] limited guardianship of K.G. so that it could consent to emergency surgery on his behalf.
>
> *Meanwhile, on December 9, 2013, [the Department] had referred both Mother and Father to training provided by the Center for Autism and Related Disorders at Kennedy Krieger. "The Department offered to transport both parents to the training, but both declined to participate because of the weather."*
>
> On March 4, 2014, the juvenile court again continued the permanency plan of reunification with Mother. In addition, the court allowed the resumption of unsupervised visits with Mother and Father, but directed that they could not occur in either parent's home until an inspection was done of each. Mother, however, refused to schedule a time for DSS to come to her residence. *Father did not respond to DSS's requests for access to his.*

Id. (quoting *In re: K.G. & T.G.*, Nos. 2408 & 2409, Sept. Term 2014, 2015 WL 7301343, at *9) (alterations added) (emphasis added).

Changes to the Children's Permanency Plans

Permanency Plan Change: November 2014

Since the court first declared the Children as CINA in January 2009, their permanency plan was reunification with Mother, and throughout that time, "the Department made[] . . . a Herculean effort to provide services to the Mother, to assist the Mother, and to train the Mother so that she, with such assistance, could provide adequate parenting for two severely handicapped autistic children." *In re: K.G. & T.G.*, Nos. 2408 & 2409, Sept. Term 2014, 2015 WL 7301343, at *10. On November 24, 2014, however, the juvenile court changed the permanency plan from reunification with Mother to custody or guardianship to a relative or non-relative. *Id.* The juvenile court's order related that the change was partly because of Mother's and Father's continued refusal to allow the Department access to their respective residences. *In re: T.G. & K.G.*, No. 2429, Sept. Term 2016, 2017 WL 3446470, at *7. Additionally, the juvenile court noted that Father only periodically took advantage of the Department's training opportunities for parents of children with autism. Moreover, Father still lived with his mother, whose house could not accommodate the Children, despite his reassurances that he would obtain his own housing. *Id.*

Both Mother and Father appealed from that adverse order. *In re: K.G. & T.G.*, Nos. 2408 & 2409, Sept. Term 2014, 2015 WL 7301343, at *10. We dismissed Father's appeal, as Judge Moylan writing for this Court noted, "[f]or either non-appealability or mootness

or both[.]”[5] *Id.* at *14. “[B]y way of back-up,” Judge Moylan explained that even if Father’s appeal was proper, his constitutional claims would still fail because the order was not based on Father’s sex, as he argued, but because he had not previously presented himself as a reunification resource and had formerly supported sole reunification with Mother. *Id.* at *13-14. As to Mother’s appeal, we held that she could appeal from both orders, although we ultimately affirmed both. *Id.* at *15.

Permanency Plan Change: January 2015

When the juvenile court altered the permanency plan in November 2014, it noted that Father assented to having his residence deemed a placement resource. *In re: T.G. & K.G.*, No. 2429, Sept. Term 2016, 2017 WL 3446470, at *7 n.5. Father did not, however, formally present himself as a placement resource until January 15, 2015. *Id.* at *7. Judge Arthur described the ensuing efforts following Father’s offer:

> In an order dated January 15, 2015, but not docketed until April 16, 2015, the juvenile court changed the children’s permanency plans from a singular plan of custody or guardianship by a relative or non-relative to a concurrent plan of custody or guardianship and reunification with either Mother or Father. In changing the permanency plans to include the potential for reunification with Mother or Father, the court cited the “incremental progress by the parents in their demonstrated efforts towards reunification.” The court granted Mother and Father unsupervised visitation in the community, but refused to permit unsupervised visitation in either of their residences until [the Department] had “unrestricted and unfettered” access to the homes to conduct home safety assessments.

[5] Even if Father’s interlocutory appeal was allowed, the juvenile court had issued a new permanency plan in January 2015, re-adding both Mother and Father as reunification resources, which was exactly what Father sought. *In re: K.G. & T.G.*, Nos. 2408 & 2409, Sept. Term 2014, 2015 WL 7301343, at *10-12, 14. *See also In re: T.G. & K.G.*, No. 2429, Sept. Term 2016, 2017 WL 3446470, at *7 n.4.

[The Department] attempted to schedule home visits in March 2015, but Mother refused to open the door and yelled out the window that she had nothing to say to the [Department] worker. *At that time, [the Department] reported no contact with Father, other than his participation in visits with the children. The [Department] workers were unaware of any housing that Father had to accommodate the children. Furthermore, Father had not participated in services.*

Nonetheless, after a review hearing on April 16, 2015, the court maintained the concurrent permanency plans of custody and guardianship by a relative or non-relative and reunification with either Mother or Father.

* * *

In September 2015, [the Department] reported that Mother and Father had been visiting with the children regularly, on a bi-weekly basis. . . .

Following a review hearing on September 29, 2015, the juvenile court found that Mother and Father's progress had been "limited to maintaining consistent visitation" with the children. The court also found it to be "[c]ritical" to a plan of reunification that a home safety assessment be conducted; that Mother submit to a psychological evaluation to assess and offer conclusions or recommendations concerning her ability to care for the children, considering their special needs; and that Mother provide [the Department] with evidence of her compliance with individual therapy. The court maintained the concurrent permanency plans and permitted unsupervised visitation with Mother and Father.

* * *

On December 7, 2015, the Children's case worker made the following report about Father:

> *There has been no progress in regards to reunification with [Father] despite the Department attempting to reach [him] on several occasions. The Department has also sent a letter to [Father] asking him to contact the Department. Additionally, [Father] has not reached out to the Department to provide any information about his current employment, or changes in living arrangements which would support any efforts towards reunification.*

In advance of a review hearing on March 16, 2016, [the Department] again

> *reported Father had made "no progress in regards to reunification," despite [the Department]'s attempts to reach him. For example, he had not provided any information about current employment or changes in living arrangements that would support any efforts toward reunification.*

Id. at *7-8 (alterations added) (emphasis added).

The parties met before the juvenile court for a review hearing on March 16, 2016, when the following occurred:

> . . . *T.G.'s therapeutic foster mother, Ms. B., stated that, although she had once been in communication with Father, she had had no interactions with him for approximately a year and was not "sure what happened."* She said that she had maintained good phone communication with Mother until a year earlier, in March 2015, when Mother incorrectly asserted that T.G. was pregnant and initiated a police investigation.
>
> . . . [T.G.] was up to date with her medical visits, was toilet-trained, and was down to 151 pounds from a high of 286 pounds. . . .
>
> T.G. had been visiting her parents every other week, and the visits were going "pretty well." Ms. B. was willing to maintain T.G. in her home, and [the Department] acknowledged that it had no problem with Ms. B. continuing as T.G.'s foster mother.
>
> K.G.'s foster mother, who is specially trained to work with medically fragile children, was unable to attend the hearing. At an earlier hearing, however, she reported that after K.G. came into her care he stopped wetting the bed at night, was able to wear underwear instead of a diaper, and had learned to communicate about when he needed to go to the bathroom. By contrast, K.G. regresses with Mother and Father: he does not use his sign-language skills to communicate his toileting needs, and he soils himself during visits.
>
> In closing, [the Department]'s attorney explained that nothing had changed since the last hearing—Father still had no adequate housing for the children, and Mother would not engage with T.G.'s medical concerns and continued to refuse to obey court orders, including the one requiring her to submit to a psychological evaluation. [The Department] requested a permanency plan of custody and guardianship by a non-relative, but said that reunification was "plausible."

> Father advocated a permanency plan of reunification with himself, but said that he was open to reunification with either parent. Mother agreed that reunification with either parent would be acceptable.
>
> * * *
>
> The juvenile court continued the concurrent permanency plans of custody and guardianship with a non-relative and reunification "with a parent." The court specified, however, that if Mother had not permitted a home assessment or obtained a psychological evaluation by the time of the next permanency-plan review hearing, reunification with Mother would no longer be part of the plan, because the children had been in care too long (seven years) for those things not to have been accomplished.

Id. at *8-9 (alterations added) (emphasis added).

Permanency Plan Change: December 2016

After a continuation of the permanency plan hearing due to Mother's illness, the parties reconvened before the juvenile court for a hearing on December 8, 2016. *Id.* at *9. Judge Arthur summarized the buildup to the hearing, the proceeding, and its aftermath:

> In advance of the hearing, on November 21, 2016, [the Department] reported that it had had "minimal contact with [Father]." To [the Department]'s knowledge, he did not have housing that would accommodate the children were they to be placed with him. It recommended that both of the children's permanency plans be changed to custody and guardianship by a non-relative.
>
> At the hearing on December 8, 2016, Father announced that he and Mother were "engaged," but it was unclear whether they were living together. . . . [The Department] was considering home visits for the children, but wanted to ensure that Mother's residence had adequate heat. Although Mother had submitted to the court-ordered psychological evaluation, [the Department] had not yet received the report.
>
> [The Department] requested that visitation once again be supervised and asked the court to consider Another Planned Permanent Living Arrangement ("APPLA") for T.G. and to discontinue the plan of reunification with either parent in her case on the ground that it was unrealistic. . . . [The Department] cited the "glacial pace" of Mother's progress, as well as Father's lack of

activity toward reunification since the last review hearing. [The Department] requested no change in K.G.'s permanency plan.

Mother asked that T.G.'s permanency plan remain one of reunification, and she requested in-home visits. Father opposed any change to T.G.'s permanency plan, but he neither pointed to any efforts on his part to prepare for the care of the children nor explained why he had failed to communicate with [the Department].

The children's attorney did not oppose an APPLA placement for T.G., but disapproved of a plan of custody and guardianship for K.G. because she wanted him to remain in his current placement. She declined to take a position on reunification with either parent. She maintained that the children's current placements met their best interest.

The juvenile court did not believe it to be appropriate to change T.G.'s plan to APPLA, because Mother's home assessment had not been completed. Nor did the court believe custody and guardianship to be in the children's best interest. In the court's view, the best interest of the children would be met by maintaining their current placements. Agreeing that the likelihood of reunification was not strong at that time, the court reluctantly ruled that reunification continued to be an appropriate plan. *The court, however, ruled out the exploration of reunification with Father, because nothing suggested that Father, "standing alone, is a reasonable placement resource."* Although the court did not consider Mother and Father as a couple (despite the representation that they were now "engaged"), the court explained that excluding Father would not preclude him from benefitting from Mother's availability as a placement resource if they were living together.

In its written order regarding T.G., the court stated that it did "not consider Reunification to be an achievable plan." In its written order regarding K.G., the court found that custody and guardianship was "not realistic" and "not likely," because his current caregiver had not agreed to be an "adoptive resource," and that K.G. was "well-maintained in his present placement."

The court changed K.G.'s permanency plan from (1) a concurrent plan of custody and guardianship by a non-relative and reunification with Father and Mother to (2) a singular plan of reunification with Mother. The court changed T.G.'s permanency plan from (1) a concurrent plan of custody and guardianship by a non-relative and reunification with Father and Mother to (2) a concurrent plan of custody and guardianship by a non-relative and reunification with Mother. In both cases, the court eliminated Father, but not

Mother, as a placement resource.

Id. at *9-10 (footnote omitted) (emphasis added).

Mother and Father both appealed the juvenile court's decision and contended that it was an abuse of discretion to remove Father from the Children's permanency plans. *Id*. at *11. Noting that its decision would be unaffected by a determination of whether Mother had the right and standing to appeal, this Court affirmed the juvenile court on August 10, 2017. *Id.* at *11-13. We expressed that "[t]he history of this case is one of Father's near-total failure to perform his obligations as a parent[,]" considering that Father was never in custody of the Children, did not present himself as a placement resource for nearly six years, and had no communication with the Department in roughly 30 months. *Id.* at *12. Additionally, we determined that there was a complete lack of evidence that Father could provide adequate care or accommodations for the Children. *Id.*

Permanency Plan Change: June 2017

While that appeal pended before this Court, the juvenile court monitored developments in the Children's cases. It convened for a permanency plan hearing on May 10, 2017, which Father did not attend. So that the Department could comply with subpoena requests, the court rescheduled the hearing to June 2 and stated that "short of an Act of God, there would be no further continuances, in light of the history of continuances in this matter." Father, again, was absent from the rescheduled hearing.

The juvenile court issued its findings and orders on June 7, 2017, determining that reunification with Mother or Father was in each child's best interest. The court did not

"foresee a plan to terminate the legal relationship of parent and child" though it acknowledged that it did "not see a reasonable period of time within which there can be Reunification[.]" According to the court, the Children's best interests would be served by exploring reunification with Father in addition to pursuing reunification with Mother.

Permanency Plan Change: October 2017

The juvenile court reconvened for another permanency plan hearing on September 27, 2017. Father's counsel informed the court that Father had terminated her representation and that she was unauthorized to speak on his behalf apart from stating that he would not be present at the hearing, though Father did not inform her why he would be absent. She orally moved to strike her appearance and that of the Office of the Public Defender; however, the court held the motion in abeyance. The court wanted to ensure that Father understood the implications of discharging counsel, which was frustrated that day by Father's unexcused failure to attend. Mother's counsel requested a continuance because Mother was in the hospital and because Mother had "a serious conflict" with counsel such that Mother "does not want [counsel] to go forward." The court continued the hearing to October 30. As to Father, it repeated the need to speak with him; however, the court did not issue a writ of body attachment, instead saying, "Sometimes actions speak louder than words. And silence can be golden." The court sent Father a notice of the continued hearing, which instructed that his presence was required.

On October 11, 2017, Father's counsel filed a written motion to strike her appearance, contending that pursuant to Father's "direct request[,]" he did not want her "or

any member of the Office of the Public Defender to represent him, effectively immediately." Her motion reiterated that she had moved in court to strike her appearance, and she appended the notice of her motion that she sent to Father, which advised him to either obtain additional counsel or inform the court that he would proceed *pro se*. On October 19, the juvenile court struck the appearances of Father's counsel and of the Office of the Public Defender in an order that directed Father "to employ new counsel or to conduct his case in proper person."

The hearing occurred as scheduled on October 30, 2017, but neither parent attended nor informed the court of their whereabouts.[6] Father's former counsel informed the court that Father recently left a message declaring that he did not want any representation but failed to say if he would attend the hearing. Ms. Susan Gilhooly, present on behalf of the Office of the Public Defender, stated that she also spoke with Father by phone and that he was "adamant" that "nobody else be[] appointed from the Office of the Public Defender and nobody even appear[] in court." The court granted Father's counsel's motion to strike, observing that Father again failed to appear, and wrote in its subsequent order "that Father had waived the right to representation by counsel and had prevented the Court from performing its obligation to examine him as [to] the possible implications of his election to forego representation by counsel."[7] The court noted in its order that the motion had

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[6] Mother was hospitalized from October 28, 2017 to November 2, 2017. Father asserts that he was with Mother due to her hospitalization. Father failed to proffer a reason as to why he did not inform the court of his whereabouts.

[7] The court also granted Mother's counsel's motion to strike her appearance, filed

previously been granted on October 19, 2017; however, it found that the record from both September 27 and October 30 were relevant to its consideration of the motion.

The juvenile court admitted the Department's reports concerning the Children from September 14, 2017 and the addenda to those reports created on October 20. According to the reports, Department workers frequently saw Father's vehicle in Mother's driveway and heard him in the background when speaking with her on the phone. The Department had only spoken with Father on one occasion since the hearing, however, and he had failed to follow-up with his current address; as a result, the Department had not performed a home assessment nor completed a service agreement with Father. The addenda noted that the Department's sole method of contact with Father is to leave messages with his mother but that Father has never returned a phone call. The Department had received a new address for Father, though it still did not know if Father lived there.

The reports and addenda also indicated the Children's progress and Mother's behavior. K.G., according to the reports, continued to thrive in his placement and at school, and his aggressive behavior had significantly decreased. T.G. was "adjusting fairly well in her new foster home[,]" and "[t]here have been no reported concerns since [her] placement in the new home." Mother continued her normal pattern; she had yet to allow the Department to perform a home health assessment and failed to notify the Department of her new address after her most recent move in January 2017.

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on October 30, because counsel had received a new position outside the Office of the Public Defender. Mother expressed her desire to have the Public Defender continue its attempts to locate new counsel for her.

At the hearing, the Department requested that each child's permanency plan be changed from reunification to the termination of parental rights and adoption. The Department stated that despite its continued efforts over the years, neither Mother nor Father had made significant effort toward reunification and that the Children regressed when not in the Department's care.

The Children's attorney expressed aversion to changing their plans because there was no potential adoptive resource. However, given the circumstances of this case, she would agree with the Department's proposed plan for T.G., who had entered a new foster placement. But, the Children's attorney could not fully agree with the plan for K.G. because, although he thrived in his placement, that individual could not be a potential adoptive resource. She opined on Father's and Mother's progress toward reunification: "I feel that the family has put forth – I almost want to say no effort. If we want to say minimal effort, we can. I don't see any valid or real effort towards working towards reunification."

The juvenile court issued its decision on November 1, 2017, wherein it concluded that the Children's permanency plan would change to "Termination of Parental Rights and Adoption by a Non-Relative" with a goal achievement date of December 31, 2018. It found that the Children developed well in foster care—where they had "been in [for] far too long"—and that neither parent has shown an ability to offer the level of care that the Children require due to their special needs. The court noted that Mother and Father failed to enter into, or even negotiate, service agreements with the Department and that Mother continually blocked the Department from completing a home visit. It concluded that the

Department had "exhausted all tools available to it" that would aid in reunification with either parent and further determined, that "[t]here has been no meaningful progress by either Mother or Father that can reasonably be accepted as positioning either parent for reunification with [the Children] in the foreseeable future."

On November 29, 2017, Father timely appealed.[8]

DISCUSSION

I.

FATHER'S REPRESENTATION

A. Waiver of Counsel

Father first contends on appeal that the juvenile court committed reversible error when it granted his counsel's motion to strike her appearance. He argues that the court was required to investigate further and follow up on its prior requests from the hearing in September to ensure that Father understood the implications of proceeding without counsel. Father avers that the court violated his due process rights, and that prejudice ensued, because the court considered hearsay evidence from his assigned attorney and another attorney from the Office of the Public Defender, made no effort to ascertain his whereabouts, and failed to inquire about counsel's efforts to contact him during the preceding month. As a result, Father asserts the record is inadequate to establish waiver of his statutory right to counsel.

[8] On November 17, 2017, Mother noted her appeal. According to Father, and as noted above, *supra*, after Mother filed her appeal, sadly, she passed away.

The Department responds that the court acted within its discretion to grant counsel's motion to strike appearance. It maintains that the court endeavored to ensure that Father understood the implications of proceeding *pro se*, but Father never responded to counsel's motion nor was he excused from the hearing on October 30 after being notified that his attendance was necessary.

To qualify for procedural due process protections under the Fourteenth Amendment, "an individual must have a property or liberty interest" at stake that warrants such protection. *Wagner v. Wagner*, 109 Md. App. 1, 25 (1996) (citing *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 569-70 (1972)) (additional citation omitted). CINA proceedings implicate a qualifying liberty interest—a parent's fundamental right to raise a child. *In re Maria P.*, 393 Md. 661, 675-76 (2006) (citations omitted). Because of this liberty interest and because a CINA proceeding can adversely affect it, "when . . . a state seeks to change the parent-child relationship, 'the due process clause is implicated.'" *Id.* at 176 (quoting *Wagner*, 109 Md. App. at 12-13) (additional citation omitted)).

To that end, Maryland Code (1973, 2013 Repl. Vol., 2017 Supp.), Courts and Judicial Proceedings Article ("CJP"), § 3-813 provides a party with the right to counsel in certain proceedings at the State's expense if the party is (1) indigent or (2) otherwise unrepresented and either under 18 years of age or incompetent due to mental disability. CJP § 3-813(a)-(b). For a CINA proceeding, a party must meet additional conditions to receive counsel:

> (c) *Representation by Office of the Public Defender.* – The Office of the Public Defender may not represent a party in a CINA proceeding unless the party:
> (1) Is the parent or guardian of the alleged CINA;
> (2) Applies to the Office of the Public Defender requesting legal representation by the Public Defender in the proceeding; and
> (3) Is financially eligible for the services of the Public Defender.

CJP § 3-813(c).

The waiver process for such counsel—and likewise for privately retained representation—is delineated in Maryland Rule 11-106(b). That Rule governs a myriad of juvenile cases in which representation can be waived:

> **b. Waiver of Representation—Indigent Cases—Non-Indigent Cases.**
> 1. Waiver Procedure. If, after the filing of a juvenile petition, a respondent or his parent indicates a desire or inclination to waive representation for himself, before permitting the waiver the court shall determine, after appropriate questioning in open court and on the record, that the party fully comprehends[] . . .
> 2. Representation of Indigents in Delinquency, Child in Need of Supervision, and Contributing Cases. (a) Unless knowingly and intelligently waived**,** and unless counsel is otherwise provided, an indigent party, or an indigent child whose parents are either indigent or unwilling to employ counsel, shall be entitled to be represented by the Office of the Public Defender in a delinquency case, a child in need of supervision case, or a case in which an adult is charged with a violation of Section 3-831 of the Courts Article, at any stage in a waiver, adjudicatory or disposition hearing, or hearing under Rule 11-116 (Modification or Vacation of Order).
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> 3. Child in Need of Assistance Cases. A party in a child in need of assistance proceeding is entitled to the assistance of counsel as provided in Section 3-821 of the Courts Article.
> 4. Non-Indigent Cases. Upon motion of any party or upon the court's motion, the court may appoint an attorney to represent a child. Compensation for the services of the attorney may be assessed against any party.

Md. Rule 11-106(b).[9]

We analyzed the Rule in *In re Alijah Q.* and concluded that the waiver procedures differ between CINA cases and delinquency cases. 195 Md. App. 491, 514 (2010). Looking at the Rule in its entirety, this Court determined that its plain meaning demonstrated that "the rule does not establish the requirement of a voluntary and knowing waiver of counsel in CINA cases." *Id.* at 515. As a result, "the strict waiver of counsel requirements embodied in Rule 11-106(b) do not apply to a parent's waiver of his or her statutory right to counsel in a CINA case." *Id.* at 518. We explained that a statutory right "while deserving of protection, is not necessarily the equivalent of a constitutional right." *Id.* at 519 (citation omitted).

Despite this lesser standard, this Court noted, "Nevertheless, in order to effectuate and safeguard the statutory right to counsel in CINA cases, certain minimal protections must govern the waiver of counsel, even if the waiver need not satisfy Rule 11-106(b)(1) or constitutional standards of a voluntary, knowing, and intelligent waiver." *Id.* at 519 (citations omitted). Without an affirmative indication from the party agreeing to the discharge of counsel, we held that the trial court must "make *some attempt* to verify" that the party seeks to proceed without counsel. *Id.* at 522 (emphasis added) (citations omitted). Likewise, this Court noted the relevance of Maryland Rule 2-132(b), which allows a court

[9] As noted in *In re Alijah Q.*, CJP § 3-821 is now codified at CJP § 3-813. 195 Md. App. 491, 509 n.15 (2010). Maryland Rule 11-106 has not yet been updated to reflect this change. *See* Md. Rule 11-106(b)(3).

to deny a motion to strike an attorney's appearance upon a finding that "withdrawal would cause undue delay, prejudice, or injustice." *Id.* at 523 (quoting Md. Rule 2-132(b)).

We understand that Father did not himself tell the court that he elected to waive counsel; however, waiver of the statutory right to counsel in CINA cases does not require that it be voluntary and knowing. Instead, the juvenile court must "make some attempt" to ensure that such a party seeks to waive counsel—and here, the court provided Father with several opportunities to inform the court directly of his decision. *See id.* at 522. Father's counsel first informed the court that Father fired her on September 27, 2017 and moved to strike her appearance. The court did not rule on that motion, stating that it wanted to discuss with Father the import of such a choice. The court continued the hearing to October 30 and issued a notice to Father of the new hearing date. Father's counsel filed her written motion to strike on October 11, two weeks after her oral motion at the September 27 hearing and almost three weeks before the reset hearing. But Father failed to respond to any of these efforts and failed to attend the October 30 hearing at which the court granted counsel's motion.

Based on the record, we cannot say that the court did not make sufficient attempts to ensure that Father wanted to proceed without an attorney because he refused to appear or respond to the court's attempts to communicate with him. Allowing Father to continue his pattern of disregard for the functions of the court system would prevent the State from performing its duty to protect the Children's safety and well-being. *See In re Yve S.*, 373

Md. 551, 568-71 (2003). Accordingly, we discern no error in the juvenile court's decision to strike Father's counsel.

B. Ineffective Assistance of Counsel

Father also maintains that there was ineffective assistance of counsel, pursuant to *Strickland v. Washington*, 466 U.S. 668 (1984), because counsel did not attempt to ascertain his whereabouts or request a continuance. Citing to *In re McNeil*, 21 Md. App. 484 (1974), he contends that the court abused its discretion when it failed to continue the proceeding (an additional time) in light of his and Mother's absence.

The Department asserts that counsel's assistance was not ineffective since the court had already terminated the attorney-client relationship prior to the hearing. Further, the Department maintains that even if Father's counsel was required by law to represent him after being discharged, any alleged ineffective assistance—the failure to request a continuance—did not satisfy the *Strickland* analysis. Therefore, the Department argues, the court was within its discretion to hold the hearing on October 30 given Father's history of unexcused absences, thereby distinguishing this case from *McNeil*.[10]

[10] This Court's decision, *In re McNeil*, reversed the juvenile court's "arbitrary refusal to grant a continuance to permit the mother to be present." 21 Md. App. 484, 500 (1974). In that case, the mother had been active throughout the proceedings and was the first to request assistance for her children. *Id.* at 498. She was absent from the custody hearing because she was caring for her sick child, one of the children for whom she sought to regain custody. *Id.* Counsel requested a continuance at the beginning of the hearing and also made numerous requests for postponements. *Id.* at 496. This Court held that this was "one of those exceptional instances" where the denial of a motion to continue constituted a denial of due process. *Id.* at 499. And, this Court stated, the failure to "mak[e] a realistic inquiry into the circumstances of [the mother's] absence, or ascertain[] whether she had been guilty of a pattern of unconcern[]" before denying the requests for postponement was

We agree with the Department's contention that there cannot be ineffective assistance of counsel if there is no counsel. The Court of Appeals' decision in *In re Adoption/Guardianship of Chaden M.*, 422 Md. 498 (2011), provides a corollary to the present case. There, counsel for a mother in a CINA matter failed to timely object to a show cause order regarding mother's potential disability. 422 Md. at 503-04. Examining the record, this Court held that, when the mother's counsel entered her appearance, the mother "was entitled to effective assistance of counsel." *Id.* at 512. *A fortiori*, the following is true—from the moment the court grants counsel's motion to withdraw her appearance, counsel can no longer obligated to represent the litigant. *Cf. id.*; *see also Parren v. State*, 309 Md. 260, 264 (1987) (noting that, in the criminal context, "the right to counsel and the right to defend *pro se* cannot be asserted simultaneously. . . . There can be but one captain of the ship[.]"). Thus, a litigant's counsel cannot act with authority when no such authority exists. Restatement (Third) of Law Governing Lawyers § 31(2)(c) (2000) ("[A] lawyer's actual authority to represent a client ends when[] . . . the lawyer withdraws[.]"); *see also* Restatement (Third) of Agency § 3.10(1) (2006) ("[A]n agent's actual authority terminates if the agent renounces it by a manifestation to the principal[.] . . . A revocation or a renunciation is effective when the other party has notice of it.").

We note that a different judge on the juvenile court granted counsel's motion on

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error. *Id.* at 498-99. We believe *In re McNeil* is easily distinguished from the current case, as the juvenile court had ample evidence of Father's longstanding disregard for the judicial system, including his non-compliance with court-ordered services and frequent absences from hearings.

October 19, 2017, 11 days before the hearing on October 30. Regardless, on October 30, the judge assigned to this matter again struck the appearance of Father's counsel at the beginning of the hearing. Although these procedural steps are irregular, both of these judicial acts occurred before the court turned to the merits of the hearing on October 30. Therefore, as logic implies, there can be no ineffective assistance of *counsel* in a situation where the litigant *no longer has counsel*.

II.

CHANGE IN PERMANENCY PLAN

Father's second assignment of error is to the juvenile court's decision to alter the permanency plans from reunification to the termination of parental rights. He contends that there is an insufficient record to upend the presumption that reunification with Father is in the Children's best interests, asserting that the court "principally" relied upon their length of time in foster care though also noting the court's consideration of the failure to adopt a service agreement, allow for a home assessment, or attend hearings. Father maintains that he consistently visited the Children and attended their medical appointments, as noted in the juvenile court's decision in June 2017 that considered Father for reunification. Absent the demonstrated showing that a continued parental relationship would be harmful to the Children's interests, Father avers that the juvenile court's decision must be reversed.

The Department questions Father's preservation of this issue because he was absent, without consent of the court, from the hearing on October 30 at which he could have

opposed the proposed change. Alternatively, the Department argues that the juvenile court acted within its discretion to change the permanency plan via adequate application of each statutory factor in FL § 5-525(f)(1) and did not solely rely on the time that T.G. and K.G. have been in foster care. Because the court merely changed the permanency plan to reflect adoption by a non-relative and termination of parental rights—but did not enter an order terminating those rights—the Department maintains that the court is not required to find a detrimental impact resulting from a continued parental relationship. In addition, the Department reiterated that Father has never been the Children's custodian, has consistently rebuffed the Department's services, and has not made an effort to become a viable resource for the Children.

A. Preservation

Maryland Rule 8-131(a) governs the scope of an appellate court's review, a scope ordinarily limited to resolving issues "raised in or decided by the trial court[.]" Md. Rule 8-131(a). At the outset, we note that this issue was not preserved for our review. Father did not object—because he failed to attend without telling the court—to the alteration to the Children's permanency plans at the October 30 hearing. Rule 8-131(a) further mandates, however, that an appellate court has the discretion to decide an unpreserved issue if such a decision is "necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." As the Court of Appeals recently reiterated, "time and again [] Rule 8-131(a) grants an appellate court discretion to consider issues deemed to have been waived for failure to make a contemporaneous objection." *In re: J.J. & T.S.*,

456 Md. 428, 447 (2017) (internal quotation marks and citation omitted). The exercise of such discretion is permissible if "doing so will promote the orderly administration of justice." *Id.* at 447-48 (internal quotation marks and citation omitted). Additionally, we can resolve an unpreserved issue when the decision "will provide guidance to trial courts[] . . . as well as to lawyers and the public generally." *Bible v. State*, 411 Md. 138, 152 (2009). The preservation rule's essence, however, is to avoid "sandbagging" a trial court—we seek to afford a trial court the opportunity to decide an issue; however, when the trial court would not be 'sandbagged' by appellate consideration of the issue, the purpose is not frustrated. *See id.* at 149-50.

Given the longstanding procedural history of this case, including the nearly decade-long litigation and multiple appeals, we conclude that by addressing the issue raised on appeal, we "will promote the orderly administration of justice." *In re: J.J. & T.S,* 456 Md. at 447-48. Clearly, the usual preservation considerations are not present here because it is also not the case that the juvenile court could not foresee that Father would be opposed to the adoption of a plan to terminate his parental rights.

B. Change in Permanency Plan

We apply a tripartite standard of review in child access cases. *In re Adoption/Guardianship of Jayden G.*, 433 Md. 50, 96 (2013). First, we apply the clearly erroneous standard to determinations of fact. *In re A.N., B.N. & V.N.*, 226 Md. App. 283, 306 (2015) (citation omitted). Second, in scrutinizing whether the juvenile court committed an error of law, additional proceedings will be necessary unless such error is

harmless. *Id.* (citations omitted). Third, we utilize the abuse of discretion standard in analyzing a juvenile court's modification of the permanency plan for a child declared CINA. *Id.* (citation omitted).

Here, the challenge is to "the juvenile court's ultimate decision rather than any findings of fact. Thus, we must determine whether that court abused its discretion." *In re Adoption of Cadence B.*, 417 Md. 146, 155 (2010). If no reasonable person would adopt the view accepted by the court or if the court acts without regard for established principles and rules, the court has abused its discretion. *In re Yve S.*, 373 Md. at 583-84. Therefore, the juvenile court's ultimate 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 Adoption of Cadence B.*, 417 Md. at 155-56 (quoting *In re Yve S.*, 373 Md. at 583-84).

In CINA cases, the court's foremost concern is the best interest of the child. *In re Caya B.*, 153 Md. App. 63, 76 (2003). As a result, the juvenile court must delineate which permanency plan will be in a child's best interest. CJP § 3-823(e)(1)(i) lists the possible permanency plans in order of descending 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; or
5. For a child at least 16 years old, 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[.]

As the Court of Appeals stated in its oft-cited opinion, *In re Yve S.*, "[t]he permanency plan is an integral part of the statutory scheme designed" to find permanent homes for children and includes "[s]ervices to be provided by the local social service department and commitments that must be made by the parents[.]" 373 Md. at 581. In performing its duty to select the permanency plan, the court must "justify[] the placement of children in out of home places for a specified period or on a long-term or permanent basis . . . ." *Id.* at 577. To determine which permanency plan accords with a child's best interest, the juvenile court is obligated to "consider the factors specified in § 5-525(f)(1) of the Family Law Article." CJP § 3-823(e)(2). Those six factors are listed as follows:

(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.

Maryland Code (1984, 2012 Repl. Vol., 2017 Supp.), Family Law Article ("FL") § 5-525(f)(1).

The juvenile court is statutorily obligated to hold a hearing to review the

permanency plan at least every six months. CJP § 3-823(h)(1). Reunification with a parent is generally assumed to be the permanency plan that is in the child's best interest. *In re Adoption of Cadence B.*, 417 Md. at 157. However, if "weighty circumstances indicat[e] 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.* (citation omitted). If it is in the child's best interest, the court must change the permanency plan. CJP § 3-823(h)(2)(vi).

We hold that the juvenile court did not abuse its discretion in changing the Children's permanency plans from reunification to termination of parental rights and adoption by a non-relative. We find no merit in Father's contention that the juvenile court relied "principally" on the length of the Children's commitment to foster care, as the juvenile court satisfactorily considered all of the requisite factors delineated in FL § 5-525(f)(1), even if its decision did not explicitly list the provisions. *See In re Adoption/Guardianship of Darjal C.*, 191 Md. App. 505, 531-32 (2010) (holding that, in a decision that terminated a parent's rights, "[t]he court [] is not required to recite the magic words of a legal test[]" but must sufficiently articulate its reasoning).

Here, in considering "the child's ability to be safe and healthy in the home of the child's parent[,]" FL § 5-525(f)(1)(i), the juvenile court accepted the Department's numerous attempts to locate Father's actual residence and conduct a home health assessment, specifically noting "Father's failure to cooperate in this regard[.]" The court also considered each child's attachment to the natural parents and siblings and to the current caregiver, satisfying the second and third factors of FL § 5-525(f)(1). Furthermore,

in regard to FL § 5-525(f)(1)(ii) specifically, the juvenile court accepted reports from the Department and testimony that the Children, especially K.G., enjoyed visits with biological family members but would regress in Mother's care. Likewise, regarding FL § 5-525(f)(1)(iii), the record demonstrated that K.G. had developed a bond with his caregiver and others in the home, and T.G., though her previous caregiver had recently moved, was adjusting to her new placement.

Stemming from its consideration of FL § 5-525(f)(1)(iii), the court clearly contemplated "the length of time the child has resided with the current caregiver[]" under FL § 5-525(f)(1)(iv)—for T.G., in that she had a relatively new placement and for K.G., who had been with his placement for several years. Aware of the potential harm that could occur if removed from their respective placements, FL § 5-525(f)(1)(v), the court noted that that the Children are special needs and that "neither [parent] has demonstrated any ability to provide [] care that would be safe or consistent with meeting [their] therapeutic needs." Ample evidence in the record supported the court's determination that the Children, "over the last few years[,] ha[ve] progressed in placements."

Finally, the court undoubtedly considered FL § 5-525(f)(1)(vi) when it found that each child "has been in care far too long." With the then-nearly-nine-year record before it, the court considered the effect of the long-term Department custody, as well as how a lack of permanency had affected their well-being. It further noted Father's failure to make any "meaningful progress . . . that can reasonably be accepted as positioning either parent for reunification . . . in the foreseeable future." Thus, without changing the permanency plan

to adoption by a non-relative, the Children would remain in the foster care system for the conceivable future.

Keeping the Children's best interests at the forefront of our consideration, we hold that the juvenile court did not abuse its discretion when it changed the Children's permanency plans from reunification to termination of parental rights and adoption by a non-relative.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, SITTING AS A JUVENILE COURT, AFFIRMED AS TO FATHER. APPEAL BY MOTHER DISMISSED FOR WANT OF PROSECUTION. COSTS TO BE PAID BY FATHER.