UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2463

September Term, 2015

IN RE: D.L.

Eyler, Deborah S.,
Woodward,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: December 8, 2016

D.L., a juvenile, pled involved in the Circuit Court for Prince George's County (sitting as a juvenile court) to a set of charges arising from acts he committed against his younger brother. He ultimately was placed in a staff-secure residential facility. He contends on appeal that the circuit court misunderstood the law, then abused its discretion, in declining to hear testimony from or place him with a biological aunt. But although there may have been some confusion during the hearing about the aunt's threshold qualification to serve as a possible placement, we see no abuse of discretion in the court's placement decision and affirm.

I. BACKGROUND

As a young boy, D was sexually abused by his maternal grandmother's boyfriend. He was adopted at age nine by Ms. L-W, who also adopted his then-three-year-old brother.

This case arises after it was discovered that D had sexually abused his younger brother on at least three instances in their adoptive home. On September 24, 2015, the circuit court, sitting as a juvenile court, accepted a plea of involved from D for acts that would, were he an adult, constitute second-degree sexual offense, third-degree sexual offense, fourth-degree sexual offense, sexual abuse of minor-continuing course of conduct, and sexual abuse of a minor.

D's disposition hearing occurred over two days and had its contentious moments. Three Department of Juvenile Services ("the Department") employees (Ms. Capps, Ms. Clark, and Ms. Ball) and two experts licensed to perform psychosexual analyses (Mr. Deem and Mr. Stone) testified in support of the Department's position that D be placed in a secure

residential facility. Ms. Capps, Ms. Clark, Mr. Deem, Mr. Stone, and another Department social worker, Ms. Chou, also submitted reports. D's counsel argued that he should be placed instead with his biological aunt, B.M., but the court did not allow Ms. M. to testify (the court did accept a proffer from D's counsel). As we will explain in the Discussion, there was some dispute over whether Ms. M could serve as a potential placement, whether D's adoption meant that Ms. M no longer qualified as family and, if so, whether the court could consider her as a "fit person." At the end of the hearing, the court placed D in a secure residential facility, as the State recommended. This timely appeal followed.

II. DISCUSSION

D raises one issue on appeal[1] that encompasses two contentions. He argues *first* that the juvenile court abused its discretion by committing him to a secure residential treatment facility and by failing to consider adequately the possibility of placing him with an "other fit person." *Second*, he argues that the court erred when it prevented Ms. M from testifying.

The legal backdrop for this case comes from § 3-8A-19[2] of the Courts and Judicial Proceedings Article ("CJ") of the Maryland Code, which grants juvenile courts wide

[1] D phrased the issue as follows in his brief: Did the juvenile court both err and abuse its discretion in committing Appellant for placement in a secure residential treatment facility?

[2] CJ § 3-8A-19 provides in relevant part:

> (d)(1) In making a disposition on a petition under this subtitle, the court may:
>
> (continued…)

discretion to determine the best placement option for juveniles who are adjudicated delinquent. The placement options range from placing the child back in his home to placement in a residential facility that monitors him twenty-four hours a day. The Maryland Courts have consistently construed the laws governing juvenile causes to reflect the principle that juvenile proceedings are special in nature and are not criminal proceedings. *In re Hamill*, 10 Md. App. 586, 590 (1970); *see also* CJ §3-8A-02(b) (stating that the Juvenile Causes subtitle of the Maryland Code "shall be liberally construed to effectuate [its] purposes."). As such, a court evaluating disposition possibilities must consider the purposes and factors set forth in CJ § 3-8A-02,[3] which requires the court to

> (i) Place the child on probation or under supervision in his own home or in the custody or under the guardianship of *a relative or other fit person*, upon terms the court deems appropriate, including community detention;
>
> (ii) Subject to the provisions of paragraphs (2) and (3) of this subsection, commit the child to the custody or under the guardianship of the Department of Juvenile Services, the Department of Health and Mental Hygiene, or a public or licensed private agency on terms that the court considers appropriate to meet the priorities set forth in § 3-8A-02 of this subtitle, including designation of the type of facility where the child is to be accommodated, until custody or guardianship is terminated with approval of the court or as required under § 3-8A-24 of this subtitle; or
>
> (iii) Order the child, parents, guardian, or custodian of the child to participate in rehabilitative services that are in the best interest of the child and the family.

(Emphasis added).

[3] CJ § 3-8A-02 provides in relevant part: (continued…)

balance public safety and personal accountability with the rehabilitative interests of the child offender.

We review the disposition decision in a juvenile case for abuse of discretion, and intervene "only upon a finding that such discretion has been abused." *In re Hamill*, 10 Md.

(a) The purposes of this subtitle are:

(1) To ensure that the Juvenile Justice System balances the following objectives for children who have committed delinquent acts:

(i) Public safety and the protection of the community;

(ii) Accountability of the child to the victim and the community for offenses committed; and

(iii) Competency and character development to assist children in becoming responsible and productive members of society;

. . . .

(4) To provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this subtitle; and to provide for a program of treatment, training, and rehabilitation consistent with the child's best interests and the protection of the public interest;

(5) To conserve and strengthen the child's family ties and to separate a child from his parents only when necessary for his welfare or in the interest of public safety;

(6) If necessary to remove a child from his home, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents;

App. at 592; *accord In re Julianna B.*, 179 Md. App. 512, 575 (2008), *vacated on other grounds*, 407 Md. 657 (2009). In addition, "judges are presumed to know the law and apply it correctly." *Abdul-Maleek v. State*, 426 Md. 59, 74 (2012) (citation omitted). A court abuses its discretion when its ruling stands "well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable." *Gray v. State*, 388 Md. 366, 383 (2005) (quoting *Dehn v. Edgecombe*, 384 Md. 606, 628 (2005)). And a court's failure to exercise the discretion accorded to it may itself be an abuse of discretion. *Maus v. State*, 311 Md. 85, 108 (1987).

A. The Juvenile Court Did Not Conclude That Placement With An "Other Fit Person" Is Legally Impermissible.

D alleges that the juvenile court erroneously concluded that Ms. M could not serve as an "other fit person," an alternative to family placement that § 3-8A-19(d)(1)(i) permits. He characterizes the court's refusal to exercise its discretion to place him with his biological aunt as an abuse of its discretion to make placement decisions. His arguments flow from comments the court made during the second day of the disposition hearing—most notably that "[y]ou know that it's not legally possible for me to do what you're asking [place D with Ms. M.] in this recommendation, right?"—as well as comments questioning whether Ms. M (his biological aunt) was still his relative after he was adopted. He argues from these statements that the court disqualified Ms. M as a placement source because she no longer qualified as a "relative," and that the court erred in failing to evaluate whether she might be an "other fit person."

It's true that there was some discussion of whether D's adoption bore on Ms. M's eligibility to house him, and the court expressed some frustration at counsel's arguments regarding the scope of the term "relative." At the same time, the court did express awareness of its authority to place D with an "other fit person":

> [DEFENSE COUNSEL]: . . . . We're going to present evidence and we are asking that you place him in essentially the custody of his biological aunt, [Ms. M].
>
> THE COURT: Whoa, whoa, whoa. But he is now the child--he's adopted?
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> [DEFENSE COUNSEL]: He is adopted.
>
> . . . .
>
> [DEFENSE COUNSEL]: It says permitted dispositions. The Court may place the child on probation or under supervision, in the custody or under the guardianship of a relative or other fit person upon terms the Court deems appropriate, including community detention….
>
> THE COURT: But you know what? Let me say this. You say that this is the aunt, that's the sister of the biological mother or the --
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> [DEFENSE COUNSEL]: That's my understanding. That's my understanding.
>
> THE COURT: -- or the adoptive mother?
>
> [DEFENSE COUNSEL]: No, of the biological mother.
>
> THE COURT: And so any – if he was still under the custody, in some respect, of the biological mother, then that is another relative. She is not related to the adoptive mother, is she?

> [DEFENSE COUNSEL]: Well, but it says "or other fit person."
>
> THE COURT: Yeah, don't use that other part, because she is not related to the adoptive mother and once you adopt, that child is part of your family and not the family of the biological parent. You do understand that?

At the end of the hearing, the court seemed concerned that by pressing the biological relationship between D and Ms. M, counsel was seeking to undermine his adoptive parents' status as parents:

> THE COURT: [The adoptive mother, Ms. L-W,] just stood up there and called him her son. Not my adopted son, my son. Which is what I was trying to emphasize to you, [defense counsel]. You keep putting that label in front of it and that's not how an adoptive parent feels. This is their child.

After reading the entire hearing transcript, though, we conclude that the court understood the statute and ultimately was more concerned about the absence of evidence to support a decision to place D with Ms. M. This concern emerged, for example, during the first day of the hearing, when D's counsel attempted to put Ms. M on the stand:

> THE COURT: So then how is [Ms. M.] even an option?
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> [DEFENSE COUNSEL]: Because the court has the power --
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> THE COURT: How do I go against what the mother wants?
>
> [DEFENSE COUNSEL]: -- given by the Legislature --
>
> THE COURT: Really? And I can just choose someone, without assessing them? And I mean even when we do family cases in guardianships, in CINA cases and everything, we do full investigations of another family before we ever place a

> child with another family. Not simply because -- and the only thing you have -- is biological aunt from a mother, who is not the mother.
>
> That's why I'm not really sure why am I hearing from her. Why are you going to even have her as a witness in this?

As we read it, the court pushed back against what it perceived as D's counsel's effort to shoehorn Ms. M. into the "relative" category rather than demonstrating Ms. M's fitness. Although "relatives" and "other fit persons" stand on the same footing in the text of CJ § 3-8A-19, a relative with whom the child has an existing familial relationship might seem to offer advantages over an outsider when considering placement options.

But as even our generalized description of his actions indicates, D's placement raised complicated issues and challenges. And in addition to the excerpts above, the court had before it the testimony of Ms. Capps, Ms. Clark, and had received reports from Ms. Capps and Ms. Clark, all of which provided support for the State's recommendation to place D in a secure facility. The evidence wasn't unanimous—Dr. Deem, D's witness, opined that D could receive treatment on an outpatient basis. But the serious nature of the allegations and the serious questions about whether D could receive the services and supervision he needed in any non-residential setting gave the court ample reason to place him as it did.

The record also supports the court's decision not to consider placement with Ms. M on her own terms. The court found as a matter of fact that the report by D's witness on this issue, Ms. Chou, lacked affirmative, independent evidence of Ms. M's fitness (as well as details about the circumstances into which D would be entering) and had given undue

consideration to an otherwise unsupported accusation by D that his adoptive family had been abusive. We agree with the Department that the court's statement that placement with Ms. M "was not legally possible" reflected a judgment about the absence of evidence to support that decision, not a failure to evaluate the possibility that she could qualify as an "other fit person."

Again, we presume that judges understand the law and apply it correctly. *See State v. Adams-Bey*, 449 Md. 690, 702 (2016). But we don't need to fall back onto that presumption—viewed as a whole, the record supports the court's placement decision which, under the circumstances, falls well within "the fringe of what [this] court deems minimally acceptable" for a young man who committed gravely serious acts that require intensive services and attention. *Gray*, 388 Md. at 383 (quoting *Dehn*, 384 Md. at 628).

B. The Court Did Not Abuse Its Discretion Or Infringe On D's Right To Try His Case.

Second, D argues that the court either abused its discretion or infringed his right to establish his case when it declined to allow Ms. M. to testify. We discern neither form of error. The court's decision not to allow Ms. M. to testify flowed from its conclusion that she could not establish her own fitness. The court explained that "[w]e don't do assessments based on the testimony of a person who you're trying to place this child with," and that if the court opted for placement other than a secure facility, "[we would choose] another fit person. . .determined by the Department, not determined by you. Not determined by someone who takes the stand." Put another way, and even assuming the strongest possible testimony in her favor, Ms. M still could not have closed the evidentiary gap

between her home as a placement option and the State's recommendation for a staff-secured facility. The decision not to allow her to testify fell well within the court's discretion and authority to manage the proceedings. *See Kelly v. State*, 392 Md. 511, 543 (2006) ("The conduct of the trial must of necessity rest largely in the control and discretion of the presiding judge." (quoting *Kelly v. State*, 162 Md. App. 122, 141 (2005))).

Nor did the court infringe D's right to present his case. A juvenile indeed has the right to present evidence and call witnesses in his disposition hearing, CJ § 3-8A-20, but that right is not unlimited, and does not include a superseding right to call witnesses whose testimony will not aid the trier of fact. *See Kelly*, 392 Md. at 543.

JUDGMENT OF THE JUVENILE COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.