Circuit Court for Washington County
Case No. 21-I-15-52304

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2848

September Term, 2015

IN RE: J.B.

Woodward,
Berger,
Shaw Geter,

JJ.

Opinion by Berger, J.

Filed: December 2, 2016

*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.

On February 3, 2016, following a hearing, the Circuit Court for Washington County, sitting as a juvenile court, entered an order awarding custody and guardianship of minor child J.B. to the paternal grandmother – Kimberly A. Magdalena B. ("Mother" or "Ms. B.") noted a timely appeal from that decision and raises one question:

> Did the Court err in awarding custody and guardianship of J.B. to the paternal grandparents?

For the reasons stated below, we answer that question in the negative and affirm the judgment of the juvenile court.

BACKGROUND

J.B. was born on February 26, 2013. Jonathan A. ("Father"), the child's father, was incarcerated at the time of J.B.'s birth and remained so throughout the time of the proceedings in this case.

The Washington County Department of Social Services ("the Department" or "appellee") became involved with J.B. and Ms. B. in January 2015, when police responded to a call of an unattended child at Ms. B.'s home. Ms. B. told officers that she thought her friend "Daemon" was watching the child while she went to visit a methadone clinic. She was unable, however, to tell the officers Daemon's last name or his address. The Department indicated Ms. B. for neglect, and she was also charged criminally.

As the Department worked with Ms. B. through the early months of 2015, "Ms. B[.'s] appearance and the state of her home began to deteriorate." Ms. B. slept for "excessive" periods of time and sometimes dozed during home visits. Because of concerns of substance abuse, the Department asked Ms. B. to undergo a screen for substance abuse.

Ms. B. completed this screen on April 9, 2015, and she tested positive for cocaine, marijuana, and benzodiazepines (for which she did not have a prescription). Ms. B. also stated that she purchased Xanax and Klonipin from a neighbor. Ms. B. admitted that she smoked marijuana laced with cocaine, referred to as a "coolie." Ms. B. signed a safety plan requiring her to take J.B. to a friend's house if she planned on using intoxicating substances.

Ms. B. underwent another substance abuse screen on April 27th. Prior to the test, Ms. B. told the examiner that she would probably test positive for marijuana. Ms. B. also admitted that she had not taken J.B. to the friend's house as required by the safety plan. Indeed, the screen revealed Ms. B. had used marijuana and cocaine. The Department asked Ms. B. to place J.B. with a cousin until a family involvement meeting could be held. At that meeting, J.B. was returned to Ms. B.'s custody with a plan that she would attend substance abuse therapy twice weekly at Turning Point and would be subject to random drug testing.[1]

On June 1, 2015, the Department asked Ms. B. to complete a drug test. Ms. B. stated that she would test positive for marijuana and cocaine, which the test did, in fact, indicate. Ms. B. said that she had taken J.B. to her former therapist while she smoked, and she also admitted that she had missed several substance abuse treatment meetings. Ms. B. also

[1] Turning Point is affiliated with the Sheppard and Enoch Pratt Health Foundation and "provid[es] high quality mental health services . . . to help[] individual[s] with mental illness improve their health, attain skills, and gain access to the supports necessary to lead independent and meaningful lives in the community." TURNING POINT OF WASHINGTON COUNTY http://www.waystationinc.org/washington-county/ (last visited Oct. 19, 2016).

advised the Department that she was facing eviction. The Department again placed J.B. with Ms. B.'s cousin.

On June 15, 2015, the Department filed a petition with the juvenile court, asking the court to find J.B. a child in need of assistance ("CINA").[2] The Department recommended placing the child in the care of the paternal grandmother, Ms. A. The Department also recommended that Ms. B. abstain from using alcohol and drugs, complete an addictions assessment at the Washington County Health Department, provide the Department with a list of prescribed medications and releases from prescribers, undergo random drug testing, complete mental health treatment, obtain stable housing, follow through with treatment recommendations, resolve her outstanding criminal warrants and cooperate with the Department.

At a hearing held on July 30th, Father admitted he had no knowledge of the allegations against Mother in the CINA petition, but he agreed with the recommendations of the Department. Counsel for the child also agreed, noting that Ms. A. has custody of two other children of Ms. B. Mother did not attend this proceeding.[3] The juvenile court found that J.B. was a CINA, awarded custody to the Department, and placed J.B. with

[2] A CINA is a child who "requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Maryland Code (1973, 2013 Repl. Vol., 2014 Suppl.), Courts & Judicial Proceedings Article ("CJP"), § 3-801(f).

[3] The court remarked that Ms. B. had outstanding warrants for her arrest and surmised that she was not present for that reason.

Ms. A. Furthermore, the court adopted the recommendations of the Department and ordered that Ms. B. be allowed weekly supervised visitation with J.B.

Following the entry of this order on August 5, 2015, Ms. B. did not contact the Department until September 16th, at which time she stated that she was aware that she could visit with J.B., but she did not want to avail herself of visits until she could stop using methadone and address her warrants. The Department was unable to contact Ms. B. again until December 18th, when she advised the Department that she wanted to start visits with J.B. Visits occurred at the Harford Mall and were supervised by the paternal great-grandmother. At the first visit on December 22, J.B. slept through the hour-long visit. Ms. B. complained to the Department that Ms. A. had kept the child up late the night before so that he would sleep through the visit. Ms. A. informed the Department that when she told J.B. about the visit, he threw himself out of the car, screamed and cried. J.B. also told Ms. A. that he had only pretended to sleep during the visit.

The next week, J.B. turned his head and began screaming and crying when he saw his mother. Ms. B. tried to soothe him with no effect, but he calmed down when the great-grandmother picked him up and placed him on her lap. Ms. B. stated that J.B.'s crying was "all Kim's fault" and that when Mr. A. got out of prison, they would raise their children together.

At the visit on January 5, 2016, Ms. B. arrived approximately twenty minutes late, and she stated that it was due to traffic and construction. Ms. A. reported, however, that she had seen Ms. B. in a taxi in the parking lot five minutes prior to the visit's scheduled start time. Again, when J.B. saw Ms. B., he became upset and started crying. According

to the great-grandmother, Ms. B. spent most of this visit complaining about personal issues concerning Ms. A. and her custody of Ms. B.'s daughters. When the great-grandmother reminded Ms. B. that she should spend her time visiting with J.B., Ms. B. "raised her hand as if to hit the great grandmother and said 'If I wasn't visiting . . . .'"

Ms. B. also had not followed through with the Department's recommendations. When Ms. B. met with the Department on December 18, 2015, she stated that she had not completed the substance abuse evaluation. The Department arranged transportation and an appointment for Ms. B. on December 23 to complete this test, but she failed to attend. Ms. B. admitted that she continued to use methadone, but she indicated that she was using a lower dosage than previously. Ms. B. also stated that she continued to smoke marijuana, and she also used "spice," which led to medical problems.[4]

The Department also contacted Turning Point to assess Ms. B.'s progress. Turning Point advised the Department that Ms. B. was involved in the Assertive Community Treatment ("ACT") Team. Ms. B. received individual substance abuse treatment, but she failed to attend group meetings. The Turning Point employee stated that Ms. B. admitted use of marijuana and spice. The employee also agreed to send the Department a list of medications Ms. B. was currently taking and stated that Turning Point recommended that Ms. B. undergo mental health treatment. At that time, however, Turning Point did not have

[4] Spice is a synthetic cannabinoid, which is related to the chemical found in marijuana. NATIONAL INSTITUTE ON DRUG ABUSE, *Drug Facts: Synthetic Cannabinoids* https://www.drugabuse.gov/publications/drugfacts/synthetic-cannabinoids (last visited Oct. 19, 2016). These substances "may affect the brain much more powerfully than marijuana; their actual effects can be unpredictable and, in some cases, severe or even life-threatening." *Id.*

a therapist on staff. In a subsequent communication with Turning Point, the Department learned that Ms. B. received therapy in brief sessions with a nurse practitioner and in "crisis sessions," but Turning Point still lacked a full-time therapist.

Further, regarding other requirements of the August 2015 court order, Ms. B. failed to provide a current phone number or address to the Department. Indeed, from September 2015-January 2016, Ms. B. had provided four phone numbers and three addresses, but the Department was unable to contact Ms. B. The Department learned in early 2016 that Ms. B. was homeless after going through a period of transiency. Staff at Turning Point reported that they were assisting Ms. B. to secure housing. Ms. B. had resolved her warrant status, but she had a court date in February 2016 stemming from the criminal neglect of J.B. Turning Point also informed the Department that Ms. B. was unemployed, and she was working with them to secure Social Security benefits.

On January 7, 2016, the Department prepared a report for a hearing on January 21. The Department recommended that legal and physical custody of J.B. be given to Ms. A., and that the case be terminated. At the ensuing hearing, Ms. B. did not appear, despite telling her counsel that she would attend. Counsel for Father and J.B. agreed with the recommendations of the Department. Ms. B.'s counsel argued that the court lacked the authority at the initial six-month review hearing to set the permanency plan and that she was not informed of this possibility.

Following the hearing, on February 3, the court entered an order awarding custody and guardianship to Ms. A.[5] The court concluded that "extraordinary causes" existed such that it was in J.B.'s best interests to be in Ms. A's custody. Furthermore, the court noted that the Department had made reasonable efforts toward achieving reunification. Additionally, the court ordered supervised visitation to Mother and Father and closed the case. Mother noted this appeal.

STANDARD OF REVIEW

The Court of Appeals remarked on the appropriate standard of review in CINA cases as follows:

> In CINA cases, factual findings by the juvenile court are reviewed for clear error. An erroneous legal determination by the juvenile court will require further proceedings in the trial court unless the error is deemed to be harmless. The final conclusion of the juvenile court, when based on proper factual findings and correct legal principles, will stand unless the decision is a clear abuse of discretion.

In re Ashley S., 431 Md. 678, 704 (2013) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). The Court has also noted:

> "[Q]uestions within the discretion of the trial court are much better decided by the trial judges than by appellate courts, and the decisions of such judges should only be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred. In sum, to be reversed the decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable."

[5] This order essentially removed the first option in the concurrent permanency plan. When a child is removed from the home, the Department is required to develop a "case plan" for the child, which includes concurrent permanency plans. COMAR 07.02.11.03(B)(9)(c). In this case, J.B.'s primary plan was reunification, and the secondary plan was guardianship by a relative.

In re Adoption of Cadence B., 417 Md. 146, 155-56 (2010) (quoting *Yve S.*, 373 Md. at 583-84).

The court's ultimate decision as to the permanency plan is reviewed for an abuse of discretion. *See Ashley S.*, 431 Md. at 704 (citing *In re Shirley B.*, 419 Md. 1, 18-19 (2011)). The Court of Appeals has held that appellate review of a juvenile court's determination concerning a permanency plan is "limited. Because the overarching consideration in approving a permanency plan is the best interests of the child, we examine the juvenile court's decision to see whether its determination of the child's best interests was 'beyond the fringe' of what is 'minimally acceptable.'" *Id.* at 715 (quoting *Yve S.*, 373 Md. at 584).

DISCUSSION

Mother contends that the court erred in setting J.B.'s permanency plan at the six-month review hearing for any one of three reasons. First, she argues that the court lacked the authority to alter the permanency plan at the initial six-month review hearing, citing CJP § 3-816.2. Essentially, Mother asserts that the court was premature in choosing J.B.'s permanency plan. Second, Ms. B. contends that the court erred in finding parental unfitness and/or exceptional circumstances such that ordering custody to Ms. A. was in the child's best interests. Finally, Mother argues that the court erred in finding that the Department had made reasonable efforts toward reunification.

The Department responds that the court acted within its authority when it set J.B.'s permanency plan at the six-month review hearing. The Department contends that Mother's reading of CJP § 3-816.2 is too "narrow" and also does not take into account the court's authority pursuant to CJP § 3-823. Furthermore, the Department argues that Ms. B.

received adequate notice of the possibility that the court would review J.B.'s permanency plan and that the court properly considered the best interests of the child in rendering its decision. As to the court's finding of parental unfitness and/or exceptional circumstances, the Department contends that such a finding was superfluous in this case. Rather, the court considered the proper statutory factors in awarding custody and guardianship to Ms. A. without terminating Ms. B.'s parental rights. Finally, the Department asserts that it made reasonable efforts toward reunification, but Ms. B. failed to utilize the resources available to her.

I. Authority to Set a Permanency Plan

Mother first contends that the court lacked the authority to set the child's permanency plan at the initial six-month review hearing. The Court of Appeals has remarked that once a child is declared a CINA, "the court must hold, within 11 months, a hearing to determine a 'permanency plan' for the child. This establishes 'the direction in which the parent, agencies, and the court will work in terms of a reaching a satisfactory conclusion to the situation.'" *Ashley S.*, 431 Md. at 686 (quoting *Yve S.*, 373 Md. at 582) (internal citation omitted). The Court explained that the permanency plan "is an integral part of 'the statutory scheme designed to expedite the movement of Maryland's children from foster care to a permanent living, and hopefully, family arrangement.'" *Id.* (quoting *In re Damon M.*, 362 Md. 429, 436 (2001)).

CJP § 3-816.2 proscribes the requirements of a review hearing conducted after a child is found CINA.[6] Notably, subsection (a)(2)(v) of that statute provides that at a review hearing, the court shall "[p]roject a reasonable date by which the child may be returned to and safely maintained in the home or placed for adoption or under a legal guardianship." Mother contends that pursuant to this statute, a court may *only* project "a reasonable date [by which] permanency can be accomplished" at the six-month review hearing. Essentially, Mother argues that the court legally erred in choosing the child's permanency plan at this proceeding.

Mother overlooks, however, the broad discretion afforded to juvenile courts in their capacity as *parens patriae*, that is, jurisdiction over minors: "'It is a fundamental common law concept that the jurisdiction of courts of equity over such persons [minors] is plenary so as to afford whatever relief may be necessary to protect the individual's best interests.'" *In re Danielle B.*, 78 Md. App. 41, 69 (1989) (quoting *Wentzel v. Montgomery Gen. Hosp., Inc.*, 293 Md. 685, 702 (1982)). Indeed, this Court has noted that "juvenile court judges are given broad statutory authority and the 'mandate to act in the best interest of the child provides a broad philosophical scheme for the judge[.]'" *Id.* at 68 (quoting BEYER & URBINA, ABA PRACTICE PAPER SERIES, *An Emerging Judicial Role in Family Court* 39

---

[6] The statute provides that at such a proceeding, the court shall: "[e]valuate the safety of the child; [d]etermine the continuing necessity for and appropriateness of any out-of-home placement; [d]etermine the appropriateness of and extent of compliance with the case plan for the child; [d]etermine the extent of progress that has been made toward alleviating or mitigating the causes necessitating the court's jurisdiction; and [p]roject a reasonable date by which the child may be returned to and safely maintained in the home or placed for adoption or under a legal guardianship." CJP § 3-816.2(a)(2).

(August 1986)). Furthermore, although permanency plan hearings are ordinarily scheduled eleven months after a CINA finding, *see* CJP § 3-823(b)(1)(i), CJP § 3-823(c) permits a juvenile court, *sua sponte* or by motion of a party, to schedule a permanency plan hearing "at any earlier time" for a child declared a CINA. Accordingly, the juvenile court in this case certainly had the statutory authority to make the January 21, 2016 hearing a permanency plan hearing.

On January 7, 2016, the Department filed a report with the court recommending awarding custody and guardianship of J.B. to Ms. A. As such, the Department put Ms. B. on notice of the possibility that the court may decide J.B.'s permanency plan at the January 21st hearing. *See also* CJP § 3-823(d) (requiring that the local department provide all parties and the court with a copy of the proposed permanency plan at least ten days prior to the permanency plan hearing). We are not persuaded, therefore, that the court lacked the authority to decide J.B.'s permanency plan at the January 2016 hearing, or that the court was limited to merely projecting dates by which permanency may be achieved pursuant to CJP § 3-816.2. We find no legal error in the court's action.

II. The Circuit Court's Guardianship Order

Ms. B. next maintains that the court erred in finding parental unfitness and/or exceptional circumstances sufficient to award custody and guardianship of J.B. to Ms. A. At the hearing, the court stated, "But I find [] unfitness in the fact that Ms. B. wasn't around until just recently. And beyond that I find, in the alternative, extraordinary circumstances because she wasn't around. This child is virtually a stranger to her now." The court's written order, however, made no such findings.

Assuming *arguendo* that the court erred in making such a finding on the record, it is superfluous in this case and, therefore, harmless. Awarding custody and guardianship to a relative does not require the termination of parental rights, which would require that the court make such a finding. *See In re Adoption/Guardianship of Darjal C.*, 191 Md. App. 505, 530 (2010). Indeed, this Court has recognized that "[i]f the permanency plan calls for custody and guardianship by a relative but does not contemplate adoption, the court may issue a decree of guardianship and may close the case." *In re Caya B.*, 153 Md. App. 63, 78 (2003). We continued: "Parental rights are not terminated in such a situation: the parents are free at any time to petition an appropriate court of equity for a change in custody, guardianship, or visitation." *Id.*

Maryland Code (1984, 2012 Repl. Vol.), Family Law Article ("F.L."), § 5-525(f)(1) addresses the factors a court must consider in determining a permanency plan.[7] Courts are

[7] This statute provides:

> 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, including consideration of both in-State and out-of-state placements. The local department shall consider the following factors in determining the permanency plan that is in the best interests of the child:
>
> (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;

(continued…)

also required to consider a hierarchy of permanency plans, with reunification with the natural parent(s) receiving top priority. *See* CJP § 3-823(e)(1)(i); F.L. § 5-525(f)(2). Additionally, CJP § 3-819.2(f)(1) provides that prior to awarding custody of a child found CINA to a relative, the court should consider:

> (i) Any assurance by the local department that it will provide funds for necessary support and maintenance for the child;
>
> (ii) All factors necessary to determine the best interests of the child; and
>
> (iii) A report by a local department or a licensed child placement agency, completed in compliance with regulations adopted by the Department of Human Resources, on the suitability of the individual to be the guardian of the child.[8]

To the extent that Mother alleges that the juvenile court failed to consider the "strong presumption" that a child's best interests are best served in the care of the natural parent(s), we disagree. Ms. B. is correct that Maryland recognizes this presumption. *See In re*

> (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.

[8] This report must include a home study, criminal history check, child protective services history, and a review of the potential guardian's physical and mental health history. *See* CJP § 3-819.2(f)(2).

Adoption/Guardianship of Victor A., 386 Md. 288, 300 (2005). In this case, however, we fail to perceive the court's inattention to the presumption or the court's failure to consider the proper statutory factors.

At the January 2016 proceeding, after hearing argument from counsel, the court found as follows:[9]

> Okay. Having had [the bailiff] check one more time, and this is a nine-thirty case and it is now maybe eleven minutes after ten o'clock in the morning, and I'm not sure why [] after having obtained excellent counsel [] Ms. B. decided not to show up [] but this is a case – I think [Father's counsel] is right that when I said she hadn't been particularly involved, she wasn't involved at all until just recently.
>
> There are some things that I really don't think are as significant as maybe the Department [] does [] for example [] she has continued to test positive for illegal substances. My understanding is that she has tested positive for methadone. Honestly, that is an illegal substance [sic]. It scares me. I really think that Ms. B. and other people in these long long-term methadone maintenance programs ought to be making better efforts and the doctors at those programs ought to be making better efforts to wean the people who are addicted off of the methadone. But that's not an illegal substance.
>
> And the other one is marijuana. She's tested positive for marijuana every other time. Maybe other judges disagree, I don't think that's a big deal. That is a civil infraction. It may very well be the legislature eventually is going to do a lot of what the States are doing and just tax the stuff and not worry about it. Because it doesn't kill anybody. Doesn't hurt anybody. [] doesn't kill anyone like alcohol and methadone and cocaine and other [] more powerful drugs do. So I'm not worried about that.
>
> She's homeless [] that's not a reason to [] ding her. She's supposed to be getting a home. I realize she doesn't have

[9] We have added paragraph breaks for the sake of clarity.

a home now, but that is something that can be fixed. And ultimately there is public housing that can be assessed to her. There's also unemployment. Again, that's not an unsolvable problem. She might be able to get a job.

What bothers me is that while [] Mr. A. is not available for whatever reason that got him locked up – he's going to be getting out in three months [] so that's good. He wasn't in a position to do anything and Ms. B. was for all the way back to the adjudication at which she didn't show up. And it is probably because I saw in the case that there was [sic] warrants for her. But [] going back to September of 2015, she declines to meet with her worker or even discuss visitation. She declines visitation. She hasn't completed an addictions assessment which was ordered at the adjudication and disposition hearing. She did not release her information from the Hagerstown Treatment Center, the methadone clinic, until just December 31st. Five months after she was ordered to do so. Those factors are compelling.

If she lost custody – and I'll accept [J.B.'s counsel] as an officer of the Court – that even though we don't have a certified record [] she lost custody of other children that has to have been either by consent or because of finding of unfitness or by finding of extraordinary circumstances. And my reading of [a]ppellate case law is that just doesn't mean the kid is better off with grandma. It mean[s] extraordinary. Something way beyond the normal helm of things. So [] whether the Department is recommending it or not – they happen to be recommending it – I think independently that closing this case is in this three year old, or almost three year old child's best interest. [H]e's in a home with stability.

* * *

He's in a home with stability. He's in a home with siblings. I apologize. There is no services [sic] that the child needs. If Ms. B. wants to get a lawyer, or without a lawyer, and file for custody she is entitled to do so. But I find [] unfitness in the fact that Ms. B. wasn't around until just recently. And beyond that I find, in the alternative, extraordinary circumstances because she wasn't around. This child is virtually a stranger to her now. [] I think his best interest is suited by the legal and

> physical custody to his paternal grandmother, Kimberly A. The Department of Social Services'[s] involvement is terminated. This Court's jurisdiction is ended. I think reasonable efforts were extended to try to do reunification. But they were dismally ignored by the child's mother. I think compelling reasons exist to make adoption and guardianship by somebody else not in this child's best interest and I think compelling reasons exist at this point to leave the reunification track that we would ordinarily be on at a six month review.

Moreover, the Department commented extensively on the F.L. § 5-525 factors in its January 7th report, which the court considered in its decision. As to "the child's ability to be safe and healthy in the home of the child's parent[,]" the Department reported that Ms. B. was currently homeless. *See* F.L. § 5-525(f)(1)(i). The Department recounted Ms. B's transiency, including a period where she resided in a bedbug-infested room. The Department noted: "Ms. B. has been unable to secure stable housing since her eviction from [a prior residence]." The juvenile court noted that homelessness was not a reason to "ding" Ms. B. because it is a solvable problem, but it certainly factors into the court's consideration of J.B.'s best interests.

Furthermore, the Department reported that Ms. B. had failed to abstain from using intoxicating substances, to complete an addictions assessment at the Washington County Health Department, or to undergo substance abuse therapy. The court also commented on Ms. B.'s use of methadone and marijuana, stating that the former "scares me." The Department also indicated that Ms. B. had reported using spice (although a screen in December 2015 was negative for this substance), and she had previously tested positive for cocaine. Additionally, Ms. B. had failed to seek out mental health treatment, but at the time of the report, she had recently begun receiving brief therapy sessions at Turning Point.

Concerning "the child's attachment and emotional ties to the child's natural parents and siblings[,]" the court remarked that "[t]his child is virtually a stranger to her now." *See* F.L. § 5-525(f)(1)(ii). Indeed, despite being permitted visitation in the August 2015 order, Mother declined visitation in September and did not contact the Department again until December, when she requested visitation. The visits did not go well, with J.B. play-sleeping through one and crying for most of the other two. The court also noted that Ms. A. has custody of two of J.B.'s sisters.

Remarking upon "the child's emotional attachment to the child's current caregiver and the caregiver's family[,]" *see* F.L. § 5-525(f)(1)(iii), the Department noted that "J[.B.] continues to do well and adjust in the home of his paternal grandmother, Kimberly A[.] J[.B.] also resides in the home with his two older sisters[.]" The Department also noted that J.B. had been in out-of-home placement with Ms. A. for six months. *See* F.L. § 5-525(f)(1)(iv). The juvenile court also commented upon the remaining F.L. § 5-525(f)(1) factors and concluded that it was in J.B.'s best interests to be placed in the custody of Ms.A.

Accordingly, we are not persuaded that the court abused its discretion in awarding custody to Ms. A. The court considered the proper statutory factors -- including the report compiled pursuant to CJP § 3-819.2(f) -- before determining that J.B.'s best interests would best be served by being in the custody of his grandmother.

III. Reasonable Efforts

Finally, Mother contends that the court erred in finding that the Department had made reasonable efforts toward reunification. Specifically, she alleges that the Department

failed to assist her with mental health therapy, to make reasonable efforts in scheduling visitation, and/or to obtain housing.

This Court has held that whether the Department has made reasonable efforts toward reunification "is a factual finding that [we] review[] pursuant to the clearly erroneous standard." *In re Shirley B.*, 191 Md. App. 678, 708 (2010), *aff'd*, 419 Md. 1 (2011). "'If there is any competent and material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous.'" *L.W. Wolfe Enters., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 343 (2005) (quoting *Yivo Inst. For Jewish Research v. Zaleski*, 386 Md. 654, 663 (2005)). We have further explained that reasonable efforts "'means efforts that are reasonably likely to achieve the objectives set forth in [CJP] § 3-816.1(b)(1) and (2) of this subtitle.'[10] This definition is amorphous. Thus, it is clear

[10] C.J.P. [§] 3-816.1(b) provides, in part, as follows:

> (b) Findings required –
>
> (1) In a hearing conducted in accordance with § 3-815, § 3-817, § 3-819, or § 3-823 of this subtitle, the court shall make a finding whether the local department made reasonable efforts to prevent placement of the child into the local department's custody.
>
> (2) In a review hearing conducted in accordance with § 3-823 of this subtitle or § 5-326 of the Family Law Article, the court shall make a finding whether a local department made reasonable efforts to:
>
> (i) Finalize the permanency plan in effect for the child; and
>
> (ii) Meet the needs of the child, including the child's health, education, safety, and preparation for independence.

that there is no bright line rule to apply to the 'reasonable efforts' determination; each case must be decided based on its unique circumstances." *Shirley B.*, 191 Md. App. at 710-11 (footnote in original).

The Court of Appeals has explained that

> "[t]he State [may not] leave parents in need adrift and then take away their children. The court is required to consider the timeliness, nature, and extent of the services offered by [the Department] or other support agencies, the social services agreements between [the Department] and the parents, the extent to which both parties have fulfilled their obligations under those agreements, and whether additional services would be likely to bring about a sufficient and lasting parental adjustment that would allow the child to be returned to the parent. Implicit in that requirement is that a reasonable level of those services, designed to both address the root causes and the effect of the problem, must be offered[.]"

Id. at 711 (quoting *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 500 (2007)). There are, however, limits on the "reasonable efforts" requirement: "'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.'" *Id.* at 711-12 (quoting *Rashawn H.*, 402 Md. at 500). The Department "'must provide reasonable assistance in helping the parent to achieve those goals, but its duty to protect the health and safety of the children is not lessened and cannot be cast aside if the parent, despite that assistance, remains unable or unwilling to provide appropriate care.'" *Id.* at 712 (quoting *Rashawn H.* 402 Md. at 500-01).

The juvenile court found that the Department had made reasonable efforts toward reunification. We conclude that there is competent and material evidence in the record to support this finding. The Department had referred Ms. B. to Turning Point for substance abuse therapy and mental health treatment. She, however, failed to attend several substance abuse therapy sessions, failed to complete the substance abuse evaluation at the Washington County Health Department (despite the Department arranging the appointment and transportation), and failed to attend regular mental health therapy. Furthermore, Turning Point was assisting Ms. B. in locating housing and to apply for Social Security benefits. The Department may refer a parent to another agency for services. *See In re James G.*, 178 Md. App. 543, 581-82 (2008).

To the extent that Mother contends that the Department failed to assist her find housing or mental health treatment, the Court of Appeals has noted that local departments may be constrained by a lack of resources. *See Shirley B.*, 419 Md. at 26. In those situations, "'the State must put forth reasonable efforts given its available staff and financial resources to maintain the legal bond between parent and child.'" *Id.* (emphasis omitted) (quoting *In re Jonathan T.*, 808 A.2d 82, 88 (N.H. 2002)). Accordingly, the Department's reliance on Turning Point to provide certain services to Ms. B. comported with reasonable efforts to provide her with recommended treatments.

Lastly, there was evidence in the record to support the court's finding as to reasonable efforts made to assist Ms. B. in visitation. Notably, Ms. B. voluntarily rejected visitation for four months. When she requested visitation, the Department arranged transportation for her. Ms. B. contends that the Department's efforts at visitation were

inadequate because the visits were supervised by someone with whom Ms. B. had a combative relationship. This overlooks the fact, however, that Ms. B. refused to visit with J.B. for four months after the CINA proceeding and that J.B. resided in Harford County with Ms. A. Moreover, the great-grandmother supervised the visits, not Ms. A. The juvenile court's finding that the Department had made reasonable efforts to reunite J.B. and Ms. B. was not clearly erroneous.

JUDGMENTS OF THE CIRCUIT COURT FOR WASHINGTON COUNTY, SITTING AS A JUVENILE COURT, AFFIRMED. COSTS TO BE PAID BY APPELLANT.