Circuit Court for Montgomery County
Case Nos. 6-Z-17-33, 6-I-16-56, & 6-I-18-136
Argued: July 15, 2020
Emailed: September 10, 2020

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2372

September Term, 2019

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IN RE: J.T. AND G.N.

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Arthur,
[**]Meredith,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Adkins, Sally D., J.

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Filed: September 11, 2020

*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.

**Meredith, J., now retired, participated in the argument and conference of this case while an active member of the Court; after being recalled pursuant to Maryland Constitution, Article IV, Section 3A, he also participated in the decision and adoption of this Opinion.

Appellants J.N.T. ("Mother"), and I.B. ("Father") are the biological parents of four-year-old J.T. Both parents are natives of Cameroon, but Mother is now a United States citizen, while Father resides in Cameroon, and has been unable to obtain a visa to come to the United States. Thus, he has never met his daughter in person. Mother is also the biological parent of three-year-old G.N. Both girls, within weeks of being born in this country, were sheltered by their respective Departments of Social Services due to Mother's mental health issues, and each was eventually adjudicated as a child in need of assistance ("CINA"),[1] and committed to the care and custody of Appellee Montgomery County Department of Health and Human Services ("DHHS" or "the Department").[2] They have remained in foster care ever since.

For all children committed to a local social services department, the department must develop and implement a permanency plan that is in the child's best interests. Md. Code (2005, 2019 Repl. Vol.), § 5-525(c)(2) of the Family Law Article ("FL"). A permanency plan "sets the tone for the parties and the court" and "provides the goal toward which [they] are committed to work." *In re Damon M.*, 362 Md. 429, 436 (2001). The

[1] A child in need of assistance, or "CINA," is one 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." Md. Code (2006, 2013 Repl. Vol., 2017 Supp.), § 3-801(f) of the Courts & Judicial Proceedings Article ("CJP").

[2] G.N. was sheltered by Baltimore County, and, after being found CINA, placed in the custody of Baltimore County Department of Social Services ("BCDSS") for placement in foster care. BCDSS transferred her case to the Department in April 2019 at Mother's request.

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." *In re Adoption of Jayden G.*, 433 Md. 50, 55 (2009) (cleaned up). There are five permanency plans to choose from "in descending order of priority": (1) reunification with the parent or guardian; (2) placement with a relative for adoption, custody, or guardianship; (3) adoption by a nonrelative; (4) custody and guardianship by a nonrelative; or (5) another planned permanent living arrangement. Md. Code (2006, 2013 Repl. Vol.), § 3-823(e)(1)(i) of the Courts & Judicial Proceedings Article ("CJP"). After an initial permanency planning hearing, the juvenile court is required to review the permanency plan at least every six months. CJP § 3-823(h)(1).

In November 2018, the Circuit Court for Montgomery County terminated Mother and Father's parental rights regarding J.T. This Court subsequently reversed that order in a reported opinion, *In re: Adoption/Guardianship of J.T.*, 242 Md. App. 43 (2019) ("*JT-I*"). We held that the court erred in terminating the rights of Mother and Father, and directed that Mother's visitation schedule return to the frequency she enjoyed pre-termination. *Id.* at 47. That reversal also reinstated reunification as J.T.'s current permanency plan. That mandate went into effect on August 16, 2019.

A little over two months after that mandate took effect, the Department filed a motion with the juvenile court on October 24 seeking to reduce Mother's visitation schedule with her daughters to bi-monthly after J.T.'s escalating behavioral issues during visitations. *See In re: J.T.*, No. 2069, Sept. Term, 2019, 2020 WL 4219567 (Md. Ct. Spec.

App. July 23, 2020) ("*J.T. Visitation*"). Without a hearing, the court granted the Department's motion on November 21. Less than one month later, J.T.'s and G.N.'s most recent permanency plan review convened. At the end of four non-consecutive hearing days in December 2019 and January 2020, the court ordered, on January 23, 2020, that J.T.'s and G.N.'s permanency plans be changed to adoption by a non-relative. Both Mother and Father appeal J.T.'s change in permanency plan, and Mother also appeals the change to G.N.'s plan. Mother's timely appeal presents us with one question:

> Did the trial court err when it changed the permanency plans for J.T. and G.N. away from reunification with a parent and to adoption by a nonrelative?

We shall hold that the court did not err in changing J.T.'s and G.N.'s permanency plans away from reunification, and we affirm the decision of the juvenile court.

Father argues that the court violated his fundamental right to parent by determining that he was "unavailable" to care for J.T., when he asserts that he is a willing and able parent. Because he is willing, able, and available, he reasons that J.T. can no longer be a

CINA.[3] Throughout most of this process, Father supported Mother's right to the care and custody of J.T. His final word to date is that he supports Mother's reunification efforts as his primary goal, and if that cannot be achieved, he asks that J.T. come to live with him in Cameroon. Because of that deferral, and because we agree with the juvenile court that Father and J.T. have an attenuated relationship at best, we affirm the juvenile court's judgments for him as well.

## FACTS AND LEGAL PROCEEDINGS

### *The Events Preceding In re Adoption/Guardianship of J.T.*

Mother has a history of mental health problems, dating back to at least 2013, including auditory hallucinations, anxiety, depression, and a suicide attempt in 2014, and we refer to our opinion in *JT-I* for a more detailed statement of this history. She conceived J.T. with Father in 2015 while on an extended visit to her family in Cameroon, and both

[3] Father presented three questions in his appeal:

1. Whether the juvenile court erred when it declared J.T. to be a CINA under a "best interest" or "reasonable efforts" analysis, where it did not (and could not) make the required statutory findings that Father, as the nonoffending parent, was unwilling or unable to care for the child?

2. Whether the juvenile court erred when it found the Department made reasonable efforts to avoid a CINA finding and an out-of-home placement for J.T., where the Department refused to consider Father's ability and willingness to care for J.T. unless he was physically present in Maryland?

3. Whether the juvenile court's interference with Father's fundamental right to raise J.T. violated basic notions of fundamental fairness and procedural due process protections?

Mother and Father agreed that she should return to the United States to give birth to their daughter.[4] Shortly after J.T.'s birth, Mother experienced a mental health crisis, predicating the Department's removal of J.T. *JT-I* at 48. J.T. was subsequently adjudicated a CINA in May 2016. At that time, the Department had no solid contact information for Father, who lived (and still does) in Douala, Cameroon.[5] Father did, however, send an email stating that he wanted J.T. reunified with Mother. *Id.*

In 2016, Mother was diagnosed with post-traumatic stress disorder and recurrent major depressive disorder with psychotic features that cause her to experience insomnia, psychomotor agitation, fatigue, mood instability, and auditory hallucinations during depressive episodes. *Id.* Social workers involved in Mother's case had faith in her ability to successfully manage with therapy and medication but cautioned that symptoms would return without medication. *Id.* With a more consistent approach to her mental health, Mother improved in stability; on September 14, 2016, the Department reported that Mother had "shown significant progress in maintaining her mental health and working toward reunification with her daughter." *Id.* at 50.

Unfortunately, Mother had to discontinue using her medications when she became pregnant again in December 2016. Her sudden lack of medication led to a severe panic attack, as well as multiple hospitalizations throughout December and January. In mid-

[4] At that time, Mother had a Green Card allowing her to live and work in the United States.

[5] Father has unsuccessfully applied for a visa to come to the United States twice.

January, Mother gradually began responding to treatment, and was released with a new diagnosis of Bipolar I with psychotic features. *Id.* at 51. The rest of Mother's pregnancy can be characterized as turbulent, as she experienced multiple depressive episodes while bouncing from shelter to shelter. *Id.* at 51–52.

As further treatment for her mental health, Mother began electroconvulsive therapy ("ECT") while hospitalized at the University of Maryland Medical Center in March 2017. After starting the ECT, her physician reported on discharge that her mood had improved, that she was more responsive, and that the treatment resolved her suicidal ideation.

Despite her progress, in August 2017, the Department noted that Mother still exhibited symptoms of anxiety and depression. During her stay in an assisted living facility in Baltimore, the psychiatric nurse practitioner reported that Mother was "in compliance with treatment and appears to be doing well psychiatrically and mentally." *Id.* at 53 (cleaned up). The Department expressed its concern regarding Mother's ability to demonstrate independent living skills and her connection with J.T. *Id.* at 54. The court found that Mother "had made minimal progress toward alleviating or mitigating the causes necessitating the commitment," and that J.T. was "safe in meeting her developmental milestones in her foster care placement." *Id.* Shortly after, DHHS filed a guardian petition, seeking to terminate parental rights.

In the midst of the battle for parental rights over J.T., Mother gave birth to G.N. in September 2017. The two moved into an apartment managed by a mental health care organization, but a few weeks later, Mother suffered a mental health relapse, and was

hospitalized after being found in a catatonic state. G.N. subsequently entered shelter care and was placed with the P. family in Baltimore County. In January 2018, the court declared G.N. a CINA. Two months later, in March 2018, the juvenile court vacated J.T.'s permanency plan of adoption, reinstated reunification, and stayed the guardianship proceeding for 90 days.

Mother worked hard on her mental health after the hospitalizations following G.N.'s birth, and the Department noted in May 2018 that she had "maintain[ed] her stability by attending regular therapy," and had "no psychiatric hospitalizations." Even Mother's outlook improved: "[h]er social worker for [the Dorothy Day Transitional Housing Program] . . . reported that [Mother] is motivated to better herself, is currently medication compliant and will be working with [the Division of Rehabilitation Services] to explore obtaining part-time work." Still, the Department maintained its preference for adoption, citing, among other things, the lack of bond between the two, and J.T.'s integration into her foster home.

In August 2018, following the juvenile court's stay, the termination of parental rights ("TPR") hearing proceeded. After the close of evidence, but before the court issued its order, J.T.'s long-term foster placement—the family that the Department presumed would adopt her—requested that J.T. be removed from their house. Despite this disruption, the court terminated Mother and Father's parental rights, and entered an order to that effect in November 2018. Mother and Father appealed.

*J.T. and G.N.*

After J.T.'s first foster resource family requested her removal, she was temporarily placed with another foster family. In March 2019, she met her biological sister for the first time, and a few months later, J.T. joined G.N. in the P. family household.

On April 15, 2019, the Department received G.N.'s case from BCDSS. Before that, Mother had no arranged visits with G.N. in a year. Mrs. P. testified that, around April or May 2018, BCDSS stopped picking up G.N. for her weekly visits with Mother. In response, Mrs. P. reached out, got Mother's contact information, and started daily video visits for Mother and G.N. Mrs. P. arranged for two in person visits between G.N. and Mother between September and December 2018. A permanency plan review for G.N. was held on June 14, 2019, and the result was maintaining the plan for reunification. Visitation between Mother and G.N. included a bilingual parent educator to assist Mother with visits. The Department offered reports about G.N. and Mother's interactions during these visits, saying that she "does not appear to be bonded" to Mother.

A month later, the Department created a new Service Agreement for J.T., including several tasks for Mother, such as receiving parenting services during their weekly visits, signing necessary releases for communication between the Department and her health care providers, participating in therapy and medication management, maintaining employment, and maintaining housing. DHHS reasoned that continued placement was necessary because Mother "needs to continue to stabilize her mental health and maintain appropriate housing and employment." While this plan had no expected completion date, the

Department included its primary plan of reunification of Mother and secondary plan of reunification with Father.

In September, DHHS created a new agreement for G.N. as well. The Department added in their statement for continued placement: "[M]other continues to have mental health issues," and that she "does not have monetary funds to provide for the child despite her part-time position at a local grocery store." While the primary tasks remained similar to J.T.'s service agreement, Mother handwrote in places that she wants guidance for how to have visits at her house, and asked why she has no unsupervised visits despite the service agreement's inclusion of one. G.N.'s primary permanency plan was to remain with Mother, with a secondary plan of an appropriate adoptive family. Unlike J.T.'s service agreement, DHHS provided an expected completion date of September 30, 2020.

*After In re Adoption/Guardianship of J.T.*

Between August 16, 2019, when the mandate for *J.T.* was issued, and December 10, the first day of J.T.'s and G.N.'s next periodic permanency plan review hearing (held jointly), reunification was not achieved. Initially, in accordance with this Court's order, Mother enjoyed weekly, supervised two-hour visits with J.T. Father joined in via the WhatsApp video messaging service for the last fifteen to thirty minutes.

Mother's visits were not without problems. In late September, the parenting coach "provided her clinical recommendation not to begin visit at home since [Mother] has not made enough progress." In October, J.T.'s behavior began to change, "as evidenced in her frequent tantrums and regressed behaviors such as making whining sounds instead of using

words, throwing utensils, and falling and bumping into walls and furniture on purpose during visitation." On October 2, 2019, Mother showed J.T. a picture of a toddler bed in Mother's home, and Mother told her that she could have the bed if she came to live with her. Mother also told J.T. that she would be her only mommy someday. This resulted in a "quite bad" tantrum that J.T. had in front of the visitation house upon departure. On the drive home, J.T. said, "I want my bed. I said, I want my bed to mama [J.]!"[6] multiple times before falling asleep. After that incident, J.T. was so stressed that she soiled her clothes at the end of the night. J.T. even tried to exit the visitation house on at least one occasion, and a representative from the Department stopped her. On October 16, 2019, J.T. and G.N. arrived at the visitation house before Mother, and J.T. stated: "I don't want to go to mama [J.'s] house 'cause you are going to leave me there."

On October 24, the Department filed a motion to "clarify" visitation, which, in reality, was a request to reduce visitation to twice monthly. The reason for this request, according to DHHS, was that J.T. "decompensated" due to the more frequent visits with Mother. In its memorandum supporting the motion, the Department described tantrums J.T. threw while visiting Mother, including, at the end of the visit, yelling "I want to stay with mama [J.] . . . ." At other times, she yelled "Mommy, mommy" in Mrs. P.'s direction while Mother held her. J.T. began to excessively cry and cling to her foster mother following her visits with Mother. The Department noted that the weekly visits apparently interfered with J.T.'s weekly Y Head Start program because she had to miss one day every

[6] J.T. uses commonly uses "mama [J.]" to refer to Mother.

week. Mother, Father, and J.T. (through counsel) objected to this visitation reduction request. Without a hearing, the juvenile court issued an order approving the motion on November 21, 2019. We vacated that order in July 2020 due to the lack of a hearing, and ordered visitation to return to once weekly. *See J.T. Visitation* at *2.

Shortly after moving to reduce visitation, DHHS received a report from Dr. Samantha T. Bender, the same clinical psychologist who conducted a psychological evaluation on Mother's in 2016. This report summed up a psychological evaluation Bender conducted over the course of five sessions in September 2019. After recalling details of the 2016 evaluation, Bender noted that Mother "presented with none of the warmth or openness she had demonstrated in the earlier evaluation." Bender still found Mother to be polite, but guarded, formal, and brief in response. Mother did not engage in informal conversation between tasks, and although Bender found that her "affect was flat," Mother's thought process was still coherent. When asked if she had anything important to tell Bender, Mother said that she was "really motivated to have [her] children back." Bender described Mother's overall IQ results as falling in the "[b]orderline range of intellectual functioning." Bender also analyzed Mother's social and emotional functioning, which she did not find overall inconsistent with her 2016 evaluation and diagnoses.

In summarizing her report, Bender diagnosed Mother with a mild neurocognitive disorder. When looking at Mother's IQ results, Bender expressed skepticism at Mother's report of a bachelor's degree from Cameroon, believing that it suggests "a history of a higher level of intellectual functioning than currently indicated . . . ." She expressed her

concerns over this being a decline, but did not have a prior baseline to compare with Mother's 2019 results. Bender noticed that Mother could not explain the difference between her self-reported history of no manic or hypomanic symptoms with her actual history of Bipolar Disorder and relevant treatments. Overall, Bender found:

> [B]oth [Mother's] history and the results of her current testing indicate significant vulnerability to becoming overwhelmed in the face of increasing environmental demands, impaired problem-solving skills that include impairment in her ability to utilize environmental feedback to guide her problem-solving or shift her approach as needed and impairment in her ability to transfer knowledge or insight gained in one situation or aspect of problem-solving to a subsequent similar situation.

To counteract these concerns, Bender highly recommended continued oversight for Mother's daily life to "ensure that she does not face greater environmental demands than she is able to manage successfully." Bender also requested that Mother share this report with her health care providers to potentially incorporate into her treatment.

After receiving the psychological evaluation from Bender, DHHS wrote a report for each daughter recommending changing the permanency plan to adoption by a non-relative for the next hearing. G.N.'s report noted that Mother is not compliant with services, and that "[i]t is hard to assess her capacity to parent when she is not consistent with . . . mental health services or when she will not provide access to her providers for the Department to consult and gather information about her progress or lack thereof." DHHS's specific contention was that Mother is "not compliant with recommended weekly therapy," because she unilaterally decreased to monthly therapy sessions. Mother has a history of paying

more attention to J.T. during visits, and only recently began to pay as much attention to G.N.

In J.T.'s report, the Department noted that Mother "is compliant with the service plan." It again raised its previous concerns about Mother not updating the appropriate contacts when her psychotherapist and psychiatrist changed back in August 2019, although Mother did provide full access to her records within a month. The Department cited a "concerning" lack of "obvious observation to be seen regarding [Mother's] ability to show a transfer of learning when interacting with the children."

**The Permanency Plan Review Hearing**

The permanency plan review hearing was held on December 10 and 18, 2019, and January 7 and 10, 2020. Father moved to dismiss J.T.'s CINA case for lack of personal jurisdiction and subject matter jurisdiction, but the court denied his motion.

Mrs. P. testified about how J.T. initially threw tantrums when she first arrived in the P. household, sometimes even two to three times a day. These continued from her arrival in June 2019 until early September 2019, when the P. family developed a solid routine for her. At the time of the December hearing, J.T.'s tantrums were about once or twice a month. Mrs. P. stated that they developed many tactics to help J.T. through her tantrums. In discussing J.T.'s visits with Mother, Mrs. P. noted that "[i]t just seems like after every visit she would wet herself or have a tantrum. So it's one of [sic] the other. It may be one or the other or she might come home talking like a baby." After visits, sometimes J.T. "shuts down and won't say anything."

J.T. and G.N. melded into the P. family, and even grew close with extended family. Mrs. P. noted that she welcomes G.N. and J.T.'s interactions with their biological parents, and keeps in touch with Mother. When asked how her outlook would change if the Department's plan became adoption, Mrs. P. mentioned how she mediated visitation with the parents of her recently adopted daughter, K., and would do the same, especially because J.T. does have a connection with Mother and knows that she is her biological mother. She emphatically stated that if J.T. and G.N. became available for adoption, she and Mr. P. "would love to have them." If allowed to adopt, the P. family talked about "buying a bigger house so that [J.T. and G.N.] can have their own room."

Mrs. P. had not observed a close connection with Mother and G.N. like the one J.T. has with her. While J.T. knows that Mother is her biological mother, Mrs. P. is not sure if G.N. does. J.T.'s primary discussion of Mother pertains to her asking if it is "time to go see Mama [J.]," but she does not bring up Mother much otherwise.

After Mrs. P., the court heard from Shiho Murakami, the Department social worker assigned to J.T. and G.N. Murakami—who authored the memorandum supporting the Department's bid to reduce Mother's visitation time—expressed that neither J.T. nor G.N. could be safely returned to Mother. She asserted that J.T. is finally thriving after multiple foster placements, would not be "emotionally safe" with Mother, and has a very important relationship with G.N. Discussing G.N., she stated that "ripping [G.N.] off—removing her from [the P. family] will be detrimental to her safety and well-being," and that to go against G.N.'s "will" to be with the P. family would make her doubt her abilities. G.N. "considers

her current caregivers as parents. She calls them mommy and daddy." Murakami supported adoption of both girls by the P. family.

Murakami noted that the children were not always safe with Mother, even during visitation. She recounted that on "one occasion [J.T.] started banging herself on the floor so hard that she left a mark on her forehead." Murakami discussed the rules Mother has for visits, such as no cell phone use, no remarks saying that "I'm the only mommy for you," and no false promises about coming to live with her or giving her things in exchange for behaviors. These rules came about after the unicorn bed incident, in which J.T. had a particularly bad tantrum. The unicorn bed incident affected Murakami's outlook on J.T.'s ability to be safe with mother. She "was disappointed by the fact that [Mother] appeared to be putting her best interest ahead of the child's best interests by telling the child that of course you're going to come live with me" and get the unicorn bed.

The court next heard testimony about Mother's present mental health from two clinical psychologists: Dr. Samantha Bender for the Department, and Dr. Beverli Mormile on behalf of Mother. The court found Bender's testimony and accompanying report to be

thorough, and credible, while Mormile's testimony "lacked the professional rigor necessary for the court to give it any weight whatsoever."[7]

Bender testified about her September 2019 psychological evaluation of Mother, and compared it to her 2016 evaluation of Mother. After interviewing Mother over five days and performing various tests, Bender found that Mother had "borderline intellectual functioning with significant impairment in memory . . . ." She also diagnosed her with depression, and an "unspecified neurocognitive disorder." Bender opined about Mother's "deterioration" since 2016. She described Mother in 2016 as "open, there was warmth, she was actively engaged in the conversation. She was thoughtful about the questions that I asked . . . and insightful in her responses." In contrast, Bender described Mother in 2019 as "more guarded," and "less engaged in the interaction. Her affect was completely flat. . . ."

Discussing Mother's insight, Bender testified that Mother showed insight into concrete factors of her own functioning, but not more abstract factors; she "demonstrated very little insight and very little capacity for self-reflection." Her overall impression of Mother was someone "who is doing the best she can to take care of herself and get through

[7] Mormile did not submit an accompanying report to the court. She based her testimony on two three-hour clinical interviews with Mother—which did not include objective testing—and her review of the results of Bender's evaluation. Mormile opined that Mother's auditory hallucinations were not from psychosis, but instead Mother hearing her own voice manifesting as self-doubt. She also disputed that Mother suffered from borderline intellectual functioning, instead classifying Mother's intellectual functioning as low average. Mormile went so far as to doubt Mother having Bipolar Disorder, in saying that a psychiatrist "may be doing that for billing issues . . . ."

each day but is not independently able to navigate the world and maintain emotional stability and navigate the complexities and speed of the world."

In Mother's own testimony, she told the court that—more than anything—she wanted to be reunited with her children. She discussed how she believes that she is able to take care of them and should be allowed to as she is their mother. She also suggested that Murakami is the reason why J.T. has tantrums at visits. In her opinion, her mental health was not an obstacle to taking care of J.T.: "It's a rather difficult question but I can say that even though I was a [sic] mentally affected by certain things it would have never stopped me from taking care of [J.T.]." As for G.N., Mother said: "[t]here was no obstacles until my surprise of the social worker called and told me I was sick and when I actually didn't see a psychiatrist at that time . . . . They took the kids away and they took me in an ambulance." Yet, she later acknowledged that her psychiatrist filed an emergency petition with the hospital.

Mother has not been hospitalized for a psychiatric crisis since March of 2018, almost eight months before the juvenile court terminated her parental rights over J.T. Since then, she obtained both a driver's license and United States citizenship. She has also maintained her own apartment through the Rapid Re-Housing Independent Living Program since 2019, where she has the support of a case manager. Mother has worked as a part-time cashier at a Harris Teeter grocery store for over a year, and testified that she has a significant amount of money saved up—almost $10,000. In discussing her budget, Mother explained that she pays for rent, and a gym membership to improve her physical and mental

health. She also sends money to family in Cameroon and has begun the process of filing paperwork for her own mother to visit from Cameroon.

Mother participates in mental health services at Vesta, Inc., an outpatient behavioral health clinic. At the time of the hearing, she still had prescription medication to help manage her mental health issues, which included a medication for mood stabilization and an antipsychotic. She was also seeing a psychiatrist bi-monthly. In October, before the hearing, the Department expressed concerns that Mother unilaterally decreased her medication and therapy frequency. Mother told the court that she was attending monthly psychotherapy sessions but would return to bi-weekly sessions. She stated that her primary goal was reunification, but, if that cannot be achieved, she wanted J.T. be with Father in Cameroon, or alternatively with Mother's family in Hawaii. She wished for G.N. to be with family in Hawaii as an alternative to reunification as well.

Finally, Father testified via video conference. He told the court about his life in Cameroon as an actor and licensed musician. After becoming more involved in J.T.'s case two years ago, Father has attended all hearings and visits. Before *JT-I*, Father fully supported Mother raising J.T. Father still supported Mother's reunification efforts as his primary goal, and if that cannot be achieved, he asked that J.T. come to live with him and his family in Cameroon.

*The Juvenile Court's Decision*

On January 23, 2020, the juvenile court issued individual Orders determining that it was in J.T.'s and G.N.'s best interests to change their permanency plans from reunification to adoption by a non-relative, specifically the P. family. In J.T.'s Order, the court found:

> [Mother's] challenges are real and on-going, and the Court cannot reasonably predict a time when [J.T.] might return to her care. Neither can the court find that it is in the child's best interest to be removed overseas to live with her father and his extended family. Circumstances have proved this to be fraught with insurmountable obstacles to date. To remain in state custody for an indeterminate length of time is not in any child's best interest. Mr. and Ms. P. have stated their desire to adopt [J.T.] should she become eligible and the Court accepts that representation.

Similarly, in G.N.'s Order, the court commended Mother's consistency, but found:

> [I]t is in [G.N.'s] best interest that her plan be changed from reunification to adoption by a non-relative. She is well-established in Mr. and Ms. P's home, where she has lived since the age of 2 weeks. The Court is convinced that the foster parents are providing for her health, education and emotional growth in an appropriate and consistent manner. She regards them as her "mommy" and "daddy" and has formed ties within the nuclear family and beyond. She has shown a marked attachment to her sister, [J.T.], and the Court considers this sibling relationship to be critical for both girls.

In both Orders, the court noted that Mother's last hospitalization was in March 2018, she has "maintained a level of stability in employment and housing," and—in regard to compliance with her psychiatric treatment and visitation—"Mother has shown a consistency that is commendable." But the court, relying on Bender's testimony and report, expressed significant concern—at various points in both Orders—about Mother's

"deterioration," her perceived lack of insight into her mental health challenges, and what that could mean for the future.

The court discussed that "[t]he main components of [Mother's] Department case plan include compliance with psychiatric and psychotherapy treatment and visitation with [J.T.]," and expressed concern that "Mother has decreased the frequency of sessions" from weekly therapy to monthly. While Mother pointed to the weekly co-pay for one of the reasons she decreased her therapy frequency, the court found that "her budget showed expenditures in other areas far less central to her mental health status . . . ." The court required Mother to "participate in weekly therapy" and "take her psychotropic medication as prescribed" it its order.

After evaluating the various services that the Department provided for J.T. and Mother, the court agreed that the Department fulfilled its duty by making reasonable efforts to achieve reunification, as well as meeting J.T.'s needs over the years. While admitting that Mother was not "experiencing the level of mental health crises that she has suffered since 2013," the juvenile court remained apprehensive about Mother's progress and current state. Mother "consistently maintained that her inability to care for her children was based on lack of stable housing, and not her mental health." The court found that she was "dismissive of [her prior psychiatric hospitalizations'] importance" by stating that only one of them helped her. Overall, the juvenile court found:

> [The] level of discrepancy between adjudicative facts, medical reports and other credible evidence juxtaposed against Mother's testimony was characteristic of her testimony as

> whole. She steadfastly maintained that her mental health has not been an obstacle to caring for her children at any time.

At the same time, the court considered how J.T. was thriving in the care of the P. family—"the foster parents are providing for [J.T.'s] health, education and emotional growth in an appropriate and consistent manner. She has shown marked improvement in her social and emotional growth, after surviving years of loss." In supporting the push towards adoption, the court "conclude[d] that Mr. and Ms. P. are invested in maintaining a safe and secure home for [J.T.], and that they have provided her with stability, consistency, and predictability as to her social, educational, medical and emotional needs." It agreed with the Department that "[t]he risks to [J.T.'s] physical and emotional welfare are too great" to reunite J.T. with Mother, and that "Mother's mental health status remains tenuous . . . ." By noting the attachment J.T. and G.N. have to each other and the P. family, the court found that adoption—specifically by the P. family—was in J.T. and G.N.'s best interest.

## DISCUSSION

Mother argues that, given her progress in managing her mental health, as well as her stability, the juvenile court erred because there was insufficient evidence to change the girls' permanency plans. She concedes that the court did not ignore the positive aspects of her current circumstances—stability in employment and housing, and consistent mental health treatment—but asserts that the court treated those factors as outliers, rather than weighing them in favor of reunification, as they should have been. *See In re Ashley S.*, 431 Md. 678, 713 (2013) ("The purpose of the CINA law is to 'hold parents of children found

to be in need of assistance responsible for remedying the circumstances that required the court's intervention.'" (quoting CJP § 3-802(a)(4) (cleaned up)). Moreover, she claims that the Department, rather than working towards reunification when that was the plan, actively worked against her once it had placed J.T. with her sister and the P. family by reducing visitation. Such a damaging action, according to Mother, cannot constitute a reasonable effort to promote reunification, as it only attenuated the bond between Mother and the children. Mother urges us to give her more time to succeed at reunification, with the Department's active assistance in supporting this goal.

The Department responds first by reminding us that the reviewing court must consider the evidence presented in the light most favorable to the prevailing party, the Department. *See In re Adoption of Jayden G.*, 433 Md. at 88. It maintains that the juvenile court properly exercised its broad discretion in changing the permanency plans, as the court properly considered the statutory factors set out in FL § 5-525(f)(1). J.T. and G.N., through counsel, echo the Department's arguments, noting that—at the time of the review hearing—J.T. had been in foster care for forty-five months, and G.N. for twenty-eight months.

**Standard of Review**

In child custody disputes, three different standards of review are applicable:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard applies. Secondly, if it appears that the juvenile court erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the juvenile

> court founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the juvenile court's decision should be disturbed only if there has been a clear abuse of discretion.

*In re Shirley B.*, 419 Md. 1, 18 (2011) (cleaned up). Here, we apply the clearly erroneous standard when reviewing the juvenile court's factual findings that the Department made reasonable efforts to finalize the plan that was in effect, reunification. CJP § 3-823(h)(2)(ii). Regarding the ultimate decision to modify those permanency plans, we are mindful that:

> Questions 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 the court deems minimally acceptable.

*In re Yve S.*, 373 Md. 551, 583–84 (2003) (cleaned up).

**The Juvenile Court's Role In Reviewing Permanency Plans**

In CINA cases where a child has been removed from the family home, and once a child's permanency plan is established, the juvenile court is required to review that plan periodically, at least every six months. CJP § 3-823(h)(1)(i). At the hearing, the court must consider:

> (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.

FL § 5-525(f)(1). Moreover, at the hearing the court must also:

(i) Determine the continuing necessity for and appropriateness of the commitment;

(ii) Determine and document in its order *whether reasonable efforts have been made to finalize the permanency plan that is in effect;*

(iii) Determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating commitment;

(iv) Project a reasonable date by which a child in placement may be returned home, placed in a preadoptive home, or placed under a legal guardianship;

(v) Evaluate the safety of the child and take necessary measures to protect the child; [and]

(vi) Change the permanency plan if a change in the permanency plan would be in the child's best interest . . . .

CJP § 3-823(h)(2) (emphasis added). Family Law § 5-525(e) also requires the Department to make "reasonable efforts" to support reunification when that is the established permanency plan:

**§ 5-525. Reasonable efforts to keep families together**

(e)(1) Unless a court orders that reasonable efforts are not required under § 3-812 of the Courts Article or § 5-323 of this title, *reasonable efforts shall be made to preserve and reunify families*:

> (i) prior to the placement of a child in an out-of-home placement, to prevent or eliminate the need for removing the child from the child's home; and
>
> (ii) *to make it possible for a child to safely return to the child's home*.
>
> (2) In determining the reasonable efforts to be made and in making the reasonable efforts described under paragraph (1) of this subsection, the child's safety and health shall be the primary concern.
>
> (3) Reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with the reasonable efforts described under paragraph (1) of this subsection.
>
> (4) If continuation of reasonable efforts to reunify the child with the child's parents or guardian is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, including consideration of both in-State and out-of-state placements, and to complete the steps to finalize the permanent placement of the child.

(emphasis added).

While doing all of this, the court must also keep in mind the "transcendent standard" in any custody review—the best interests of the child—and its interplay with the fundamental right to parent. *See In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 116 (2010). The Due Process Clause of the Fourteenth Amendment guarantees parents the fundamental right to "make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66 (2000). As we explained in *JT-I*, the "fundamental interests are no less involved in mental-illness-based severances than in others . . . ." *JT-I*, 242 Md. App. at 62 (quoting *Mary Ellen C. v. Ariz. Dept. of Econ. Sec.*, 971 P.2d 1046, 1053 (Ariz. Ct. App. 1999)).

This fundamental right is intertwined with the best interests of the child, as Judge Wilner explains:

> [W]e have not discarded the best interest of the child standard, but rather have harmonized it with that fundamental right.
>
> We have created that harmony by recognizing a substantive presumption—a presumption of law and fact—that it is in the best interest of children to remain in the care and custody of their parents. The parental right is not absolute, however. The presumption that protects it may be rebutted upon a showing either that the parent is "unfit" or that "exceptional circumstances" exist which would make continued custody with the parent detrimental to the best interest of the child. In *McDermott*, the Court made clear that, in a parent-third party custody dispute, the initial focus must be on whether the parent is unfit or such exceptional circumstances exist, for, if one or the other is not shown, the presumption applies and there is no need to inquire further as to where the best interest of the child lies. In *Koshko*, we extended that approach to parent-third party visitation disputes as well.
>
> ***
>
> [O]ur case law has been clear and consistent, that, even in contested adoption and TPR cases (*and in permanency plan proceedings that may inevitably lead to a TPR case*), where the fundamental right of parents to raise their children stands in the starkest contrast to the State's effort to protect those children from unacceptable neglect or abuse, the best interest of the child remains the ultimate governing standard.

*In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 495–96 (2007) (emphasis added).

**Reasonable Efforts**

Mother takes issue with the court's finding that the Department made reasonable efforts to finalize reunification. She asserts that the court ignored that, after we vacated the

previous order terminating her rights, "the [D]epartment itself obstructed Mother's reunification with J.T. just three months after it was required to facilitate increased parenting time and active reunification efforts." She contends that by attempting and succeeding in restricting Mother's already limited time with J.T. during reunification, the Department actively worked against her. Countering, the Department briefly explained that it moved to reduce visitation "because of J.T.'s decompensation following" visits.

To interpret CJP § 3-823(h)(2)(ii)'s "reasonable efforts," we look to its genesis, as explained by Judge Hollander in this Court's opinion *In re James G.*, 178 Md. App. 543 (2008). The requirement followed the federal enaction of the Adoption Assistance and Child Welfare Act of 1980 ("AACWA"), which "was designed with a focus on family preservation and reunification. [It] sought to end the stagnation [of] keeping children in foster homes by requiring states to make reasonable efforts to reunite families."[8] *Id.* at 573. (quoting Kathleen S. Bean, *Reasonable Efforts: What State Courts Think*, 36 U. Tol. L. Rev. 321, 325 (2005)). In 1997, due to concerns that children were still in foster homes too long, Congress amended the AACWA by enacting the Adoption and Safe Families Act ("ASFA"). *See* Bean, at 325–26. The ASFA revised the "reasonable efforts" standard, making the health and safety of the child paramount when determining what efforts are reasonable. *Id.*

[8] The AACWA was enacted in response to "foster care drift," a concern in the 1970's that many American children were being moved from foster resource to foster resource, and thus reaching the age of majority without ever being part of a family. *See In re Adoption/Guardianship No. 10941*, 335 Md. 99, 104–05 (1994).

Neither the AACWA nor the ASFA defined "reasonable efforts." *See James G.*, 178 Md. App. at 578. A Maryland statute, however, defines reasonable efforts as "efforts that are reasonably likely to achieve the objective set forth in § 3-816.1(b)(1) and (2) of this subtitle."[9] CJP § 3-801(w). Due to this "amorphous" definition, "reasonable efforts" are determined on a case-by-case basis. *See In re Shirley B.*, 419 Md. at 24–25. We look to previous cases interpreting reasonable efforts for some guideposts.

In *Yve S.*, the Court instructed:

> [O]nce determined, because the permanency plan sets out the anticipated permanent placement, to the achievement of which the "reasonable efforts," . . . must and will be directed, it cannot be totally divorced from the issue and, in point of fact and in a real sense, actually is a part of it. Moreover and in fact, when the plan is reunification, there necessarily is, on the part of the court and, certainly, the parent, an expectation—more than a hope—that the parent will regain custody. That is, after all, the point of the plan and the reasonable efforts, including the provision of services to the family, so necessary to achieving compliance.

*In re Yve S.*, 373 Md. at 582 (quoting *In re Damon M.*, 362 Md. at 437).

Mother's visitation allowance has varied over the years. It began, in 2016, at two weekly, supervised visits. After four months, that was upgraded to unsupervised visits. Before any overnight visits could happen, Mother became pregnant and was advised by her doctor to go off her medications, which caused a mental health relapse in December 2016. This caused the court to reduce visitation to supervised weekly visits of two hours.

[9] The objective relevant here would be to "[f]inalize the permanency plan in effect for the child." CJP § 3-816.1(b)(2)(i).

Then it was reduced again, to weekly for one hour in September 2017. After the first TPR hearing in 2018, it was further reduced.

Visitation remained at that level until *JT-I* was released as a reported opinion on July 31, 2019, and its mandate reversing the termination of parental rights took effect on August 16. Visitation returned to weekly, supervised visits of two hours. She was no longer pregnant, and back on medication. She had maintained consistent part-time employment and housing, attended regular therapy session, and avoided mental health hospitalization. Her legal relationship with J.T.—after a roller coaster three-year period—was back on track with reunification as the plan. Even still, despite efforts of both Mother and the Department, in October 2019, J.T.'s behavior began to decompensate during and following visits, which led to the Department asking for a clarification—and reduction—in visitation.

Murakami, who authored the memorandum in support of the Department's motion to "clarify" visitation, testified at the review hearing that J.T.'s response to Mother was varied, with J.T. sometimes saying she did not want to leave Mother, and other times saying she never wanted to see Mother again and banging her head. The juvenile court's opinion stated that Department personnel noted a deterioration in J.T.'s behavior during visits, with frequent tantrums, soiling herself, talking like a baby, and excessive crying after the visits.

Under its findings pursuant to CJP § 3-823(h)(2)(iii), the extent of progress that has been made toward alleviating or mitigating the causes necessitating commitment, the court recounted the unicorn bed incident, when Mother told J.T. that she was her only "mommy,"

and promised her a unicorn-themed toddler bed once she returned to Mother's care. It described this as a decision that could only cause confusion for J.T. It also noted that Mother's visitation was reduced after this incident. This section of the order concludes with the comment, "[t]he Court has no hesitation in concluding that both parents can, at times, interact with [J.T.] with warmth and interest, but that her connection to them is attenuated and more realistically viewed as that of visiting resources."

In J.T.'s and G.N.'s orders, the court found that "the Department has made reasonable efforts to achieve the permanency plan of reunification, and to meet the needs of the child." It supported this finding with bulleted lists of the Department's actions. For J.T., the court found that the Department:

> a. maintained a minimum of monthly personal contact with [J.T.], to monitor her safety and well-being;
>
> b. Ms. Murakami, the social worker assigned to this case, provided case management services, including contact with and coordination of tasks and events among Mother, Father, visitation personnel, RRILP case manager, Vesta health care providers, [J.T.'s] therapist and foster parents;
>
> c. participated in [J.T.'s] medical, dental and vision appointments and provided a second pair of eyeglasses to her;
>
> d. Ms. Murakami referred [J.T.] to mental health therapy; and referred the child to Baltimore City Head Start;
>
> e. The Department participates in and oversees visits between [J.T.] and her parents, (Father participating through internet video), at the Visitation House, minimum weekly since the CINA case reopened and, since the end of November 2019, minimum twice monthly, per Order of the CINA court;

f. in terms of providing transportation to [Mother], the social worker, in conjunction with other Department personnel, transported Mother to/from:

* * *

g. completed safety and home inspections at both Mother's home and foster parent's home;

h. the Department attended [J.T.'s] IEP Meetings, and communicated with MCPS as to [J.T.'s] IEP development;

i. arranged French interpreters for [Father];

j. communicated with ICPC coordinator regarding the progress of the home study of [Mother's] cousin;

k. requested a written translation of Father's service plan, as well as [J.T.'s] IEP;

l. requested payment from the Department for [Father's] English classes;

m. developed service plans for both [Mother] and [Father];

n. referred [Mother] for a full psychological evaluation by Dr. Bender;

o. provided a French-speaking parent educator for [Mother];

p. provided Mother with a toddler bed for her home;

q. maintained communication with Mother regarding [J.T.'s] health and well-being;

r. provided pictures and video of [J.T.], from Ms. P to Mother and Father;

s. send pictures and video taken during visitation to [Mother] and [Father];

t. requested a home worker from Mr. and Ms. P.[;]

> u. wrote a letter to the American Consulate General at the US Embassy in Cameroon requesting that they issue [Father] a visa to travel to the United States.

G.N.'s Order has a similar list through 'l'. Regarding visitation with Mother, the court noted that the Department "transported [G.N.] from Baltimore to the Visitation House in Rockville, and back to Baltimore, a minimum of twice monthly, and supervised visitation between [Mother] and [G.N.]." The considerable efforts by the Department detailed in these lists required considerable use of Department staff, a limited resource.

In its own report, after discussing its reasonable efforts, the Department raised concerns about J.T.'s safety in Mother's care because J.T. attempted to leave the building through a "not-to-be-locked kitchen door" at the visitation house on two separate occasions. Both times this happened, Department staff had to catch J.T. because Mother did not. J.T. merely sees Mother as someone who just comes and goes in her life, and Mother's inability to stop her from leaving does not bolster her position as an authority figure.

Importantly, the Department's efforts to assist Mother with her parenting skills were extensive. In (o), the court mentions that the Department provided Mother with a parenting educator who also spoke her native language of French. While the educator, Sophia Coudenhove, saw progress, she summarized that Mother "still relies heavily on parent educator, social worker and CSA" during visits. When J.T.—a 4-year-old—sits on Mother's lap to be fed during lunch, Mother "sometimes needs to be reminded that [J.T.] is able to use her words and feed herself . . . ." Coudenhove maintained in September 2019

that Mother had yet to make enough progress to clinically recommend visitation at Mother's home.

In October 2019, Coudenhove noted that Mother continued to pay more attention to J.T. than to G.N. The Department's November 2019 reports noted that Mother "only recently began making conscious efforts to pay as much attention to [G.N.] as she does to [J.T.]." In the same report, it mentioned its "concern that [Mother] is not able to show a transfer of knowledge as a result of services she has received" and that "[h]er ability to use parenting techniques and skills" learned from the Department's services is "not apparent." The Department made efforts to provide Mother with the parenting skills and techniques she lacked, and even still, she could not follow through with the instruction.

In analyzing reasonable efforts, the Department's job is not to:

> [A]meliorate any disability that prevents the parent from being able to care for the child. It must provide reasonable assistance in helping the parent to achieve this goal 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.

*In re Shirley B.*, 419 Md. at 26 (citing *In re Adoption/Guardianship of Rashawn H. and Tyrese H.*, 402 Md. 477, 500–01 (2007)). Reasonableness is considered "in light of the availability of services," which the Department did its best to get Mother to be a part of and take advantage of. *Id.* at 32.

**Mother's Mental Health & Extent of Progress**

Mother argues that the juvenile court erred in its analysis of the necessity for and appropriateness of out of home placement, as well as the extent of progress in alleviating

or mitigating the causes of state involvement. In its November 2019 reports, the Department did not see a reasonably safe future for J.T. and G.N. based on Mother's "history of instability and non-compliance with mental health treatment." Mother made the decision by herself to decrease her therapy frequency back in April 2019 to bi-weekly sessions because her commute was long. Then, in August, Mother switched mental health care locations to the Vesta, Inc. in Germantown. Mother further decreased her therapy sessions to monthly upon this change, despite the Department's recommendations of weekly therapy.

When asked about why she only attended monthly sessions, Mother told Bender that she could not afford any more sessions because of problems with her insurance. Bender followed up with Mother's housing advocate in the Rapid Re-Housing Program, who offered to work with Mother to incorporate weekly psychotherapy into her budget. In her testimony, Mother mentioned that she would go back to bi-weekly sessions because Bender and Murakami requested that but did not state if she was willing to attend weekly sessions as recommended.

The juvenile court was seriously concerned by Mother's actions, which it thought showed "a lack of insight into the essential need for consistent therapy." Mother denied that her mental health prevented her from taking care of her children, and instead repeatedly asserted that her lack of housing stability was the real problem. Additionally, the juvenile court found that although Mother "did not deny that she had a history of psychiatric hospitalizations, she was dismissive of their importance . . . ." The juvenile court's factual

finding on this point is well-supported. Mother asserted at trial that, even during the two-year low point in her mental health between 2016–2018, she still could have taken care of her children. Clearly, at the time, Mother was in no condition to do so. Recognizing that Mother has made a significant amount of progress, the juvenile court found that Mother's attitude about her mental health and present status made J.T.'s "out-of-home placement . . . both necessary and appropriate." Neither Mother's dismissive attitude about the impact of her past mental health on care of the children, nor her reduction in therapy was part of the evidence in *JT-I*.

In sum, the Department assisted Mother with extensive measures designed to improve her mental health and supported her in developing stability and proper parenting skills. Yet Mother did not show adequate progress—over a four-year period—in developing parenting skills that would make it safe for her to be in charge of her two children. Most importantly, Mother continued to minimize her mental health issues to a degree that is quite troubling and could prove dangerous if she received custody and no longer had the Department's oversight. She did not accept the Department's recommendation of weekly therapy, and unilaterally decreased her sessions twice in 2019. The decrease of her sessions, which were such a crucial part of her ability to maintain mental stability, showed that she was unwilling to take care of herself enough to regain her children, and was attending the minimum amount of therapy only because it was ordered. Although she had yet to encounter another episode, there is little to say what would happen if she had another mental health crisis.

The juvenile court acted within its discretion in concluding that J.T. and G.N. deserve more permanency and stability, and it is not in their best interests to wait indefinitely until Mother is able to be in charge of them. While we applaud the progress Mother made, we conclude that the juvenile court made no clearly erroneous findings and acted within its discretion in deciding that the Department made reasonable efforts to achieve the plan of reunification, and that out of home placement was necessary and appropriate.

We are not persuaded otherwise by *Yve S.*, a case heavily relied upon by mother. In *Yve S.*, the Court of Appeals reversed a permanency plan modification away from reunification because, *inter alia*, the record did not support findings that the mother's issues rose to the level of, or somehow indicated a future likelihood of neglect or abuse. *Id.* at 594. The mother of Yve S., Yvonne S., had been "diagnosed with bipolar disorder and schizo-affective disorder, dating back to her teens." *Id.* at 561. The 11-year-old child, Yve, also had a mental health diagnosis—"'acute stress reaction,' chronic post-traumatic stress disorder, and dissociative disorder" with signs of possible physical and sexual abuse. *Id.*

Yvonne's history as a parent was unreliable and lacked stability for several years. Yve was placed in foster care in 1997, at age six, after the Department received reports that she was not being fed adequately and that she and her mother were homeless. *Id.* at 561–62. They had led a "nomadic lifestyle," living in Florida, Maryland, then West Virginia, then back to Maryland, then to North Carolina and finally back to Maryland. *Id.* Yvonne

had been employed intermittently, and she and Yve had been evicted from their North Carolina trailer home in 1998. *Id.* After this eviction, Yvonne left Yve with a "known sex offender," although there was no record that she knew about his status as such." *Id.* at 562. Yvonne became more stable in 1999 after mental health treatment in Maryland, and secured employment as an activities coordinator at a nursing home for about a year. *Id.*

In discussing the burden of proof placed upon a parent who has previously been found to have neglected a child, the Court of Appeals explained that the trial court must find that "there is no likelihood abuse or neglect is likely to reoccur." *Id.* at 588. The *Yve S.* hearing judge found that the mother adored her daughter and vice versa. *Id.* at 590. But he determined that "for . . . a good portion of the case, even if mom were capable, at certain times, Yve's had some real severe problems . . . acting-out problems . . . acting out in school." *Id.* The hearing judge believed that Yve, who was eleven years old during the hearing:

> [I]s a child who requires constant, vigilant attention, and she needs clear guidelines, structure . . . . And the progress that she's made in the [current foster parent's] home . . . has been . . . because of the structure that they've been able to provide for her. I have extreme concerns about the mom ever being able to provide the structure that Yve needs.

*Id.* at 592. The court concluded that its decision was not going to be that "we'll work towards getting her home with her mom because I don't see the realistic expectation of that." *Id.* at 591. The court changed the permanency plan from reunification to long-term foster care, with visitation once per week. *Id.* at 593.

The Court of Appeals first observed that "[t]he fact that [a parent] has a mental or emotional problem and is less than a perfect parent or that the children may be happier with their foster parents is not a legitimate reason to remove them from a natural parent competent to care for them in favor of a stranger." *Id*. at 594. It concluded that the hearing court "misapplied the best interest of the child standard . . . . The fear of harm to the child or to society must be a real one predicated on hard evidence; it may not be simply a gut reaction or even a decision to err-if-at-all on the side of caution." *Id.* at 618 (cleaned up).

There are crucial differences between *Yve S.* and the present case. Importantly, Yve S. was a much older child than either J.T. or G.N. and had a significantly stronger bond with her mother, with the court describing their relationship as mutual adoration. Although Mother in this case has consistently shown her strong desire to be with these children, and at least J.T. is aware of Mother's status as her biological parent, neither child has ever lived with her—both have been in foster care almost since birth—over four years for J.T. and almost three for G.N. For this reason, the juvenile court referred to Mother as a "visiting resource" for the children. Of equal importance, *Yve S.* did not involve a mother who had changed from fully acknowledging her mental illness, as in *JT-I*, to one who refused to acknowledge that her illness had, in the past, necessitated foster care for her children, attributing that instead to her homelessness. This was of grave concern to the juvenile court for good reason—if a person fails to recognize the potential for illness to place the children at risk, then she has less reason to follow her medicine and therapy routines.

Falsely recalling or minimizing past medical history similarly reduces the incentive to abide by one's medical and therapeutic regime.

Finally, distinguishing *Yve S.*, there was no suggestion that Yve's mother had cognitive limitations, whereas Mother's limitations and apparent inability to develop necessary parenting skills, even 15 months after she achieved stability, is a material fact in this case. Although the specific examples of Mother's demonstrated poor parenting are limited, they should not be ignored because the Department social workers will not be around to, *e.g.*, catch J.T. from running out the door, if the children reside solely, or even primarily, with Mother.

The Department's and juvenile court's decision that these children, bonded with each other, should not be in the custody of Mother was not just based on her mental health. It was closely tied to her ability to parent these children, as well as her ability to take care of herself without an extended support system. The Department's November 2019 Reports cite Mother's inability to safely supervise the children, inability to adapt to changing environments, and Mother's inability to commit to fully taking care of her mental well-being. Mother argues that the juvenile court expected her to be a perfect parent and cites *Yve S.* for the proposition that being less than perfect is not a reason to remove a child. We disagree with Mother's assessment of the juvenile court's decision. The juvenile court never expected Mother to be perfect; it expressed its serious concerns about "Mother's ability to attend to both girls consistently," and even "basic safety concerns" because Mother could not stop J.T. from running out of the visitation house. We hold that the

juvenile court was not clearly erroneous in its finding that Mother is "easily distracted and challenged by the management skills required in addressing routine childcare issues."

As the Court of Appeals said in *Ashley S.*, "the task of the juvenile court is not to remedy unfairness to the mother, but to weigh any unfairness in the light of the best interests of her children." *In re Ashley S.*, 431 Md. at 712. For permanency plans, "the best interests of the child are to prevail." *Id.* The juvenile court did not base its decision just on Mother's mental illness, but appropriately considered the statutory factors in considering the best interests of both J.T. and G.N. These included, among other things, the extensive time the children were in foster care, the children's attachment to their foster parents and to each other, Mother's difficulties in learning parenting skills, and an indefinite prognosis as to when she might be capable of full-time parenting them. We see no abuse of discretion in the juvenile court's discretionary determination that the best interests of the child call for a change in the permanency plan from reunification to adoption by a third party. *See also In re Shirley B.*, 419 Md. at 7 (holding that, although the mother "had been largely cooperative with the Department," it was necessary to "balance [the mother's] interests with the Children's health and safety").

**Father's Parental Rights**

Father attacks the juvenile court's declaration of J.T. as a CINA, arguing that the Department did not make reasonable efforts to reunify J.T. with Father instead of declaring her a CINA, and that J.T. cannot be a CINA when Father is willing and able to care for

her.[10] Father also argues that the juvenile court violated his fundamental right to parent when it determined that he was unavailable to parent her. We address these contentions below as we consider them in light of Father's history with J.T. In doing so, we recognize Father's constitution-based right to parent his child, but, again, that must be evaluated in light of the best interests of the child. *See In re Adoption/Guardianship of Rashawn H.*, 402 Md. at 495–96.

When Father found out about Mother's pregnancy, he agreed that their child would be born in the U.S. Father mentioned that Mother "would come back maybe for some holidays with" J.T. He was under the impression that Mother would bring J.T. to him "maybe at one year, maybe at two years. So, she decide [sic] when she come with the child."

Other than this vague and uncorroborated discussion about a plan for J.T. to return to Cameroon, Father has entirely deferred to Mother to raise their child, and he fully supports reunification with Mother. J.T. and Father hardly have a relationship, and J.T. "showed little interest in communicating" with him during their video chats. Although Father has tried to come to the U.S., it remains that Father and J.T. "have never met in

[10] As for Father's challenge to the court finding J.T. to still be a CINA, as well as J.T.'s initial CINA declaration, we conclude that the juvenile court's finding that J.T. was still a CINA was well within its discretion. What is before us is the question of whether the permanency plan change was appropriate, not whether it was appropriate to initially declare J.T. a CINA in 2016. We do not see error in the juvenile court's factual findings as to J.T.'s CINA status, and see no abuse of discretion in continuing to hold her as such because the juvenile court was "unable to project a reasonable date to safely return [J.T.] to [Mother] or for her to live with [Father]."

person, nor has [J.T.] met any of his family members." Father does not speak English, and J.T. does not speak French.

The Department's responsibility was to "put forth reasonable efforts given its available staff and financial resources to maintain the legal bond between parent and child." *In re Shirley B.*, 419 Md. at 26 (cleaned up). The Department arranged interpreters for him and included communications in French. It wrote to the American Consulate General at the U.S. Embassy in Cameroon in a plea to get Father a visa to come to the U.S. Although it had not yet been achieved, the Department was working to obtain funding for English classes for Father. The juvenile court found that the Department made reasonable efforts towards reunification with Father, and we will not disturb that finding. Obviously, there were geographical and political barriers for reunification with Father that limited what the Department could do. We hold that the juvenile court did not err in finding that the Department made reasonable efforts to support reunification with Father under these circumstances.

We defer to the juvenile court's skepticism about Father's claims of ignorance about Mother's mental health. Father was advised in 2016 to get involved in the case, but did not enter with an attorney until either the end of 2016 or 2017, and even then, primarily deferred to Mother's arguments. We appreciate the efforts Father made over the years to increase his involvement, but conclude that the juvenile court's determination that Father's awareness of Mother's mental health history "calls into question his willingness to assign

[J.T.'s] care to [Mother], without a real inquiry on his part as to whether this would be in [J.T.'s] best interest" is supported by the evidence and not clearly erroneous.

While Father took several steps towards bringing J.T. to Cameroon, such as a home study and providing other information to the Department, "[n]one of this alters the fact that he and [J.T.] are virtual strangers." The juvenile court found that it "does not believe it is in [J.T.'s] best interest to displace her from all nurturing relationships here, and essentially remove her to live among strangers in unknown surroundings." The geographical and political obstacles to reunification present a difficult situation for Father and the Department. Yet the situation was one Father readily agreed to. Father made a decision before J.T. was born to agree or acquiesce in the plan, made possible by Mother's Green Card, that she should be born in this country. There is no evidence that he regretted this decision. After J.T.'s birth, Father maintained only the loosest connection with Mother and J.T. until the CINA proceedings were well beyond their initial stages, and even then, advocated for custody in Mother, not for himself.

The juvenile court was skeptical of Father's claim that he did not know of Mother's mental health condition. It also cited the practical difficulties of his getting a visa, and being able to pay for travel to the U.S. The unfortunate situation of Father living in Cameroon without the means to travel here, while his daughter was spending her fourth, now fifth, year in foster care in this country, stemmed from Father's voluntary decision that she should be born here and, after that, his long acquiescence in Mother's custody despite her mental health crises. This is a sad situation for both parents, but as to Father,

we think his actions showed a willingness to abandon his parental right to raise J.T. long before this permanency plan was in play. He evidently was acting with good intentions in agreeing that J.T. and Mother would reside in the United States, but the juvenile court rightfully could take into account that decision and what followed, in ruling that it is not in J.T.'s "best interest to be removed overseas to live with her father and his extended family. Circumstances have proved this to be fraught with insurmountable obstacles to date." The juvenile court acted within its discretion in drawing this conclusion, and Father's fundamental rights were not violated by the best interests analysis.

**CONCLUSION**

We are not blind to the significant progress Mother has made towards stability and her strong desire to reunite with her children. For this reason, we make our decision about the permanency plan with a heavy heart. Nevertheless, we decide this case in accordance with established standards of review and in accordance with statutory and decisional law—which ultimately requires a decision in the best interests of the children. The factual findings of the juvenile court are all well-supported by the evidence before it. Unlike Mother's position when her case was before us in 2019, Mother does not "readily concede that she suffers from mental illness" and that her mental illness made it difficult for her to maintain housing and employment, and to provide her children with the care and stability that they desperately need. *JT-I* at 58. We hold that the juvenile court did not abuse its discretion and affirm its decision.

In making our decision, it is our hope that the P. family will continue to facilitate visitation with Mother, so she can maintain her relationships with her daughters, regardless of custody.[11] We note that open adoption can occur when it is the "explicit intent of all parties to the adoption that the child maintain contact, including the possibility of visitation, with the birth parents . . . ." *In re Shirley B.*, 419 Md. at 34; COMAR 07.02.12.02(B)(26) (2016) ("'Open adoption' means an adoption in which it is the expressed intent of all parties to the adoption that the child maintains contact, including the possibility of visitation, with the birth parent or other birth relatives.").

Open adoption can provide Mother with a steady relationship with J.T. and G.N.:

> The Department is directed to explore open adoption when older children who are placed in out-of-home care know who their birth parents are and have already formed significant emotional attachments to them; and it is otherwise appropriate and in the child's best interest not to sever all ties with the child's birth parents.

*In re Shirley B.*, 419 Md. at 34 (cleaned up); COMAR 07.02.12.03(F)(2) (2016) ("A local department may explore an open adoption when: (a) Older children in out-of-home care have formed significant emotional attachments to their birth parent . . . ; or (b) It is otherwise appropriate and in the child's best interests to maintain contact with the child's birth parent . . . ."). In its order, the juvenile court still provided Mother with visitation, and we hope that Mother continues to maintain relationships with her daughters as the years go by through various forms of visitation.

[11] With Father, the visitation may potentially be limited to video conversations unless he is able to obtain a visa.

**JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANTS.**