UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED CASES

Nos. 2408 & 2409

September Term, 2014

IN RE: KENT G. & TIFFANY G.

Woodward,
Leahy,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: November 18, 2015

The literal decision of the Circuit Court for Prince George's County that is the subject of the two separate appeals in this case, which have now been consolidated, is the November 24, 2014 Permanency Planning and Review Hearing Order of Judge Sherrie L. Krauser to change the permanency plan for two minor children. The children, sister and brother, are Tiffany G., who was 13 years old at the time of the change in the permanency plan, and Kent G., who was 9 years old at the time. The separate appellants are 1) Kent G., Sr., the biological father of the two minor children ("Father"), and 2) Deborah A., the biological mother ("Mother"). The Father and the Mother have never been married to each other and do not live together. The appellee is the Prince George's County Department of Social Services ("Department").

The Initial Shelter Order

This case has a long history of being before the court. Both Tiffany and Kent are autistic children. On January 29, 2009, the Department filed a petition for shelter care on behalf of four of the Mother's children. Only the two youngest, Tiffany and Kent, are involved in this appeal. On February 10, 2009, Tiffany and Kent were found to be Children In Need of Assistance (CINA) and were removed from the Mother's home. At the time of the removal, the Father was present but gave a different address as that of his separate residence.

The trigger for the January 29, 2009 action by the Department was a report received by it that all four children, including Tiffany and Kent, were living in "deplorable" and unsanitary living conditions. The social workers sent to the home by the Department found

the smell of urine and of feces to be so strong as to be detectible even from outside the home. Inside the residence, there was urine, feces, and dried food on the floor. Kent had feces running down his leg and caked on the bottom of his feet. He was eating insects off the floor. The back door was blocked by a refrigerator. A gas water heater was described as a fire hazard by an investigator from Child Protective Services ("CPS") because it was surrounded by an unidentified substance, which the investigator described as "filth." The mattresses in the home were soiled and black mold was growing in the carpet. Four broken washing machines in a back room were deemed to be safety hazards for unsupervised children. The only heat source was a space heater. On that day, the home was declared to be unfit for human habitation and was boarded up.

Tiffany was in school at the time of the Department's safety check of the house. The school authorities, however, reported that she was dirty and had a strong odor. They further stated that she regularly arrives at school dirty and smells strongly of urine. One of her upper front teeth, moreover, was twisted and embedded in her gums. Tiffany and Kent were placed in St. Anne's Infant Home in Hyattsville, where the staff spent three days cleaning the children's hair. They also referred them for follow-up dental care because of their "brown" teeth.

At the family facilitation meeting held on January 30, 2009, the Mother did not attend but the Father was present. The two minor children could not be placed with him, however, because he lived at home with his mother who was unable to have young children in her

home. The Father, significantly, supported the Department's plan to work toward reunification of the children with the Mother. The Father did not request any consideration of himself as a possible placement source. After the January 30, 2009 facilitation meeting, the Mother's adult children cleaned the house. On February 5, 2009, a team of inspectors found the home to be fit for human occupancy.

The two minor children still could not live in the Mother's residence, however, because it still needed a new carpet, furniture, and additional cleaning. Because the beds had to be thrown out, the Department offered to supply clean beds for both the children and other furniture. The mother refused their assistance. As of February 11, 2009, however, she agreed to a safety plan with the Department and agreed to participate in services and to provide a safe and sanitary home for the children.

The Mother's Home Under OPS: March 2009 to September 2010

What followed for Tiffany and Kent for the next six years was a repetitive cycle of transfers from the Mother's home under an Order of Protective Supervision ("OPS") to foster care and back to the Mother's under OPS and back again to foster care. On March 5, 2009, the court, sitting as a juvenile court, placed the children in the Mother's custody but under supervision by the Department. The Mother was required to participate in parenting classes, to undergo a psychological evaluation, individual and family therapy, and any recommended substance abuse treatment including random and frequent urinalysis.

The psychological evaluation of the Mother revealed her to be a person with "perception-organizational weaknesses" and a person of "seriously poor insight," who could not acknowledge any problems with her home situation. Testing showed that she failed to understand the need to plan for parenting two children with special needs and that she does not grasp the significance of her own obesity.

On February 25 and 26, 2010, the Mother denied the Department's request to enter her home for a safety assessment. The Department then arranged to visit the children at school. The school reported that they often arrive in an unsatisfactory condition and with a foul odor. They also have an excessive number of school absences. As the school authorities attempted to discuss these matters with the Mother, she was uncooperative. She told the staff, moreover, that they were not allowed to bathe the children or to change them into clean clothing.

On March 11, 2010, the Department, with the aid of a Community Response Team, gained access to the Mother's home. It smelled of urine and there was both a sticky substance and brown and black spots on the carpet. Tiffany's room had only a bicycle and a television set in it. The bathtub had brown grime around the edges. Two rooms were closed off, preventing inspection. The Mother refused to enter into a safety plan, but she did agree to clean the house.

The Mother refused to work with professionals who offered to provide educational and behavioral support in caring for the unique needs of Tiffany and Kent. She declined

numerous offers of in-home support services, stating that "she did not want anyone in her home."

The Department regularly got reports from the school that the children invariably arrived in school smelling of urine and with unbrushed teeth and uncombed hair. They required daily bathing at school. Kent's clothing was dirty, smelly, and torn. On July 27, 2010, the juvenile court nonetheless continued custody with the Mother, but ordered her to cooperate with the Family Preservation Unit and to attend individual therapy.

Foster Care: September 2010 to November 2011

On September 20, 2010, the court finally removed the children from the Mother's custody after a hearing on the Department's emergency petition to change custody. The "emergency" was that on September 15, 2010, the home had again been declared "unfit for human habitation." The Mother had, in addition, persistently refused to meet with the Department's social worker for three weeks and had steadfastly refused to develop a safety plan for the children. On December 1, 2010, the court continued the out-of-home placement, citing the Mother's stubborn denial of any need for in-home services despite the obvious evidence that she could not care for the children on her own, refused to disclose the status of the children's medical care, and failed to accept court-mandated oversight.

Following the removal from the Mother's home, the children thrived in foster care. Tiffany, who was suffering a serious obesity problem, lost weight because her foster mother

provided well-balanced meals. Kent learned some sign language and enjoyed taking baths. He interacted well with the other children in the foster home. His foster parents even began to toilet train him. Kent's therapist at the Kennedy Krieger Center reported that Kent would benefit from receiving "individual attention with a strong emphasis on communication skills" to support his development.

On May 15, 2011, however, the Mother refused to cooperate in providing the needed documentation for Kent to receive the recommended services. She refused to attend a facilitation meeting at the Department and she refused to sign a service plan.

When Kent was allowed to visit his Mother, moreover, the Mother fed him large amounts of food. After such visits, he would return to the foster home with stomach aches. He also exhibited regressive behavior and toileting issues after visits with his Mother. When the problem of excessive feeding was brought to the Mother's attention, she refused to discuss the subject. Both the Department and the attorneys appointed for the children requested that the Department should supervise future family visits.

The Mother's Home Again: November 2011 to February 2013

The roller coaster ride continued. On November 7, 2011, the juvenile court returned Tiffany and Kent to their Mother's care, under an Order of Protective Supervision. The Mother, however, continued her pattern of non-cooperation. She failed to follow up on a referral to Kennedy Krieger for one-on-one supportive services for Kent. She missed many

of her own therapy appointments. She again refused to enter into a service agreement. The Department had difficulty in contacting the Mother and in accessing her home. Although Tiffany had been toilet trained while in foster care, she showed up to school in pull-ups. The school reported that Kent "was not being cared for properly in the home."

On July 19, 2012, the Department attempted to do a safety check on the Mother's home. It learned that there had been a fire at the home and that the family no longer lived there. The Department had not been notified. The juvenile court issued body attachment writs for the children on June 22, 2012. The children were finally located on August 2, 2012. As the juvenile court recalled the body attachment writs, it expressed its concern about the Mother's continued resistance to court-ordered services designed to help her parent children who have "tremendous" special needs.

With respect to the Mother's own obesity problem, the Department reported to the court on September 4, 2012, that the Mother had difficulty in walking, in climbing stairs, and in getting into the Department's van on occasions when the Department was providing transportation for appointments. The Mother, moreover, could not manage the children, who on visits to Kennedy Krieger would tear up stacks of brochures, enter private offices, yell, and slam doors while the Mother did nothing. The Mother regularly relied upon the children's older sibling, Kendra, to take care of the children. The Department also reported that the Mother continued to provide unhealthy food for the children. Tiffany, who was also

overweight, was allowed to eat multiple Pop-Tarts and bags of potato chips in one sitting. Communication was difficult because the Mother did not have a working telephone.

When social workers gained access to the Mother's temporary apartment, following the fire, they "gagged" because of the "unpleasant smell" from soiled clothing and numerous bags of trash. The school reported that Tiffany and Kent needed new clothing. The school had also supplied diapers, a bathing suit, and new shoes for Kent. Although the school was desirous of purchasing new clothing for the children, they could not do so without the permission of either the Mother or the Father. The attempts of the social workers to contact them were to no avail. On October 18, 2012, the juvenile court ordered the Mother to be at home for a scheduled visit by the Department and to inform the Department if she relocated her residence.

On November 13, 2012, the Department received a report that the Mother had neglected Tiffany. The Mother had taken Tiffany to the emergency room for a diaper rash. She told the personnel at the emergency room that nobody wipes Tiffany after she goes to the bathroom. On the occasion of that visit to the emergency room, the Mother complained about being kept waiting and abruptly left without picking up a prescription that was being filled for Tiffany.

During this period, the school reported numerous unexplained absences by both children. The school was unable to provide transportation for the children because the mother did not inform the school of her new address. The school persisted in its efforts to

provide transportation by repeatedly making phone calls to her and by leaving notes at her residence. She did not return the phone calls and did not respond to the notes. The school also sent notes to the Mother through the children. Unopened notes were discovered in Kent's backpack. Teacher aides also reported that both Tiffany and Kent came to school with dried feces from bowel movements left in their diapers from the night before.

On December 13, 2012, the Department received a report of neglect of the children's older sibling, Kendra. The home was reported to be "unliveable due to an excessive amount of trash, dirty dishes, holes in the wall, and a terrible smell." The report also alleged that Kendra had been sexually abused by the Mother's boyfriend.

Steven Watson was Tiffany's case manager. He noted that both children had gained a significant amount of weight since being back in the Mother's care. On January 25, 2013, the school reported that Tiffany weighed over 250 pounds. Tiffany suddenly did not want anyone to touch her when she was being bathed or changed. She was regularly falling asleep in class and her hair was regularly unwashed. The staff had to bathe her at school. When her teacher attempted to discuss Tiffany's condition with the Mother, the Mother was hostile and defensive. Mr. Watson attempted to visit the home on numerous occasions but was not able to enter. Even when he was there to transport the children to scheduled appointments, he was unable to do so and simply left his business card at the address. On a December 14, 2012 visit, he observed numerous empty beer cans, beer bottles, and other debris outside the home.

Foster Care Again:
February 2013 to the Present

Fortune's wheel turned again on February 8, 2013, when the juvenile court again removed the children from the Mother's custody and placed them in therapeutic foster care. We are not given the catalytic factors that caused the court to take action on that occasion. Several weeks later, however, on February 27, 2013, the foster mother was surprised when the children were returned to her after a two-hour unsupervised visit to the Mother's home. Feces was smeared on Tiffany's sweat pants and thigh. Tiffany was wearing three diapers that were soaked with urine but contained no feces. The foster mother also noticed that Tiffany's pubic hair had been trimmed. Tiffany was crying and acting "unusual" and she had pubic hair all over her chest area. The foster mother also noticed a laceration inside Kent's buttocks that extended from his tailbone to his anus that appeared to be "new and raw." Child Protective Services was notified and it initiated a sexual abuse and neglect investigation. On March 18, 2013, the juvenile court ordered that any further visitation between the children and the Mother or the Father be supervised. The allegation of neglect could not be ruled out and both the Mother and the Father were found to be responsible for the unsubstantiated neglect. At the time of the visit, the children had been in the presence of the Mother, the Father, and the older sibling Kendra. The Mother could not explain how these events could have occurred while the children were in her care. The Father declined to be interviewed.

On August 5, 2013, however, the juvenile court reinstated unsupervised visits. In its order of that date, the court also ordered the Mother to allow the Department access to her home. The court also required that the Mother enter into a service agreement with the Department. On August 26, 2013, the juvenile court continued the terms of the August 5, 2013 order with respect to visitation, pending a further review on September 12, 2013.

On August 21, 2013, the Mother visited the children. On that occasion, she gave them food from McDonald's. Tiffany, notwithstanding her obesity, ate two cheeseburgers, an order of fries, and chicken nuggets. Kent ate five chicken nuggets, two orders of fries, and two cheeseburgers. Kent became agitated during the visit and had two bowel movements that required bathing him and changing his clothes. The Mother did nothing to assist in this, leaving it entirely to her daughter Kendra and the Department staff. The social workers reported that Kendra is always the person who provides assistance to Tiffany and Kent during family visits.

From February 8, 2013, through September 12, 2013, the Mother consistently rejected services offered to her by the Department for specialized classes for parenting children with autism. The Department also referred the Mother to a professional organizer who specializes in working with vulnerable families. Neither the Mother nor her attorney ever reported to the Department as to whether the Mother participated in any of these programs.

The First Appeal to This Court

At the scheduled review of September 12, 2013, the court reaffirmed that both Tiffany and Kent were CINA and that they would be placed in the care and custody of the Department. The court also ordered the Mother to submit to a comprehensive psychological evaluation assessing her ability to parent her autistic children. The Mother appealed that order of the circuit court sitting as a juvenile court to this Court. The Father did not join in the appeal. On August 20, 2014, we issued an unpublished opinion, affirming the action of the court below. In re: Tiffany A. and Kent A., No. 1598, September Term 2013 (August 20, 2014). Specifically, the Mother contended that 1) the juvenile court abused its discretion in ordering her to undergo a second psychological evaluation and 2) she had been denied her right to appeal the initial and the continuing removal of the children from her custody because of the ineffective assistance of counsel.

The opinion by Judge Zarnoch included a very thorough analysis of the case since its beginning in 2009. It not only rejected the specific contentions of the Mother, but also placed its imprimatur on the actions of the juvenile court broadly. Our opinion quoted the recommendations to the juvenile court made by counsel for the two children:

> They [the Mother and Father] have not participated in any developmental educational parts of their children's lives since they've been placed with the Department. They haven't opened up their home. They haven't allowed anyone to even assist them in getting to the transportation that they need to be able to partake in their lives. They won't sign the consent forms.

> Tiffany has some medical issues that they need to address to find out why she may be behaving in a particular way. But the parents won't even sign the consent forms for them to be medically checked out. And that is just not in the best interest of Tiffany and Kent at this time. And in their own way they have communicated to me, as their counsel, where they'd like to be. Because they are doing diagrams now and they can point to things.
>
> And not only am I standing in for their best interest, because they cannot directly speak to me, but they can communicate to me in their own way. And they want to remain where they are.
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> ... [The children] regress each time that they go back [to their parents' home]. And I think that we have to – not that anyone wants to keep the children away from [their parents]. I'm in agreement with continued visits. That they have that communication. ...
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> And so I do believe that it is in the best interest of Tiffany and Kent to be found children in need of assistance. To remain in the care of the Department of Social Services. To remain in their placements. And to give the Department limited guardianship so that the medical services can be provided to the children as they need it.

Our opinion also quoted, at length and with approval, from the opinion of the juvenile court at the September 12, 2013 hearing. That opinion by the juvenile court noted that when the children had been returned from foster care to their Mother's home, their progress made in foster care had regressed noticeably:

> They had both regressed substantially between the time they were last returned home and February of this year in terms of autistic developmental needs. Specifically the ability to toilet themselves, which is a fundamental health concern. That in February 2013 the home was found not to be a healthy, well maintained environment for them. And all of those are the basis upon which

> I find that neither parent was able to provide adequate care and meet the children's needs in February of 2013. And that holds true today simply because we have not seen any evidence to support a finding that those conditions no longer exist.
>
> The reason for that is that we don't know what or if the parents can be trained to meet their children's developmental needs. This is not a case where nutrition alone is an issue, which by itself would not support a CINA finding. This is a case in which we have two children who have dramatic and extensive special needs, and parents who have been unable or unwilling to accept the services that they would need in order to safely maintain their children in the home. ...

Especially poignant was the juvenile court's observation with respect to Tiffany's obesity problem:

> We have a young lady who had been dangerously obese, and got that way in six months in her mother's care. Dangerously obese. We have a young lady who cannot be taught healthy eating on her own. She does not have the cognitive ability to make those choices. So they must be made for her. Therefore, mom's refusal to understand her daughter's nutritional needs and inability perhaps to understand her daughter's nutritional needs is a fundamentally unhealthy situation for this child.
>
> ... And if mom continues to offer and provide unhealthy diet, then it is per se unhealthy for Tiffany to live in that environment because she was found to be medically unhealthy at that point because of obesity at 12 years old. And she wasn't like that when she was returned home to her mom six months' before.
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> ***
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> My recollection is that we addressed nutritional issues with mom back in January, I think. And I have not seen any indication that mom has participated in any nutritional classes or anything else. ... I don't know that Ms. A. is eating healthier herself or keeping healthier food in the home because we have not been given the results of a home health assessment because Ms. A. refused to admit social workers to her home to make a home health assessment.

That opinion also noted with respect to toilet training:

> We know that both children had achieved a level of bladder and bowel control and the ability to toilet. Once returned home, they regressed. Their developmental needs were not being supported in their home. That means, in this case mom, because dad was not in the picture. Mom was unable or unwilling to provide adequate care for her children so that they would continue to progress within the limits of their cognitive abilities. The failure to support the developmental progression of children with special needs is the inability or unwillingness to provide adequate care for them.
>
> Adequate care for children in the autism spectrum who have the significant developmental disabilities of Kent and Tiffany and are non-verbal require far greater level of care than the average child, simply to meet the fundamental level of adequacy.

In affirming the juvenile court's order that the Mother submit to a thorough psychological evaluation, Judge Zarnoch's opinion noted:

> In our view, the court clearly focused on the necessity that Tiffany and Kent A.'s parents understand the very serious special needs of their children. At the hearing, Ms. A. showed a general distrust of the Department and claimed she had never been presented with the various services in which the Department asserted she had not participated. Further, Ms. A. claimed that she thought the children "were fine" when they were in her custody. But they were not. Given that Ms. A. did not appear to acknowledge her children's developmental regression when in her care or recognize how properly fostering their development was particularly critical to their health and safety, we are not persuaded that the court erred by ordering a new psychological examination in an effort to gauge Ms. A.'s current mind set with respect to the level of care Tiffany and Kent A. require.

From September 2013 Forward

Following the placement of the children again in the hands of the Department on September 12, 2013, the Mother continued to be uncooperative. On October 3, 2013, the

juvenile court temporarily suspended unsupervised visits with her. The court ruled that she did not demonstrate the parenting skills required to care for the special needs of her children. She was again ordered to participate in services and to allow the Department to monitor her participation in her therapy, her parenting classes, her nutritional education, and her comprehensive psychological evaluation. She was also ordered to submit to a home health inspection. On the very next day, however, October 4, 2013, she refused to permit the Department to complete the court-ordered home health inspection. Twice she refused to work with a professional organizer who contacted her to discuss the services that she could offer. The Mother requested that she not be contacted by the organizer.

In the meantime, Kent required dental surgery but could not receive it on November 25, 2013, because the Mother would not consent to it. The Father, who had earlier given his consent, withdrew his consent upon learning that the Mother had not consented. The Mother also refused to allow the Department to monitor her compliance with services. She also refused to sign consent forms allowing the Department to contact her mental health provider. The Department referred both the Mother and the Father to training provided by the Center for Autism and Related Disorders at the Kennedy Krieger Institute on December 9, 2013. The Department offered to transport both parents to the training, but both declined to participate because of the weather.

On January 16, 2014, the juvenile court ordered the Mother to sign the necessary consent forms immediately. As of March 3, 2014, the court ordered a resumption of

unsupervised visits, but further directed that the visits could not take place at the home of the Mother or the Father until an inspection could be conducted at those homes. The court once again ordered that the Mother complete her psychological evaluation, sign all necessary waivers and consent forms, and submit to a home inspection. The Mother, however, refused to schedule a time for the Department to come to her home. The Department in the meantime learned from the Mother's therapist that the Mother had missed twelve therapy sessions between October 2013 and March 2014.

On April 24, 2014, the juvenile court met with Kent and noted that he appeared to be in pain. It then learned that the pain was the result of his untreated dental condition. The Department reported that Kent needed emergency dental surgery because the Mother had failed to attend the previously scheduled dental appointments. The court granted the Department's request to award it limited guardianship of Kent so that it could consent to the dental surgery.

The Department reported to the court that a home visit to the Mother's home revealed that the furniture was inadequate: there was only one bed and one crib. The smoke detectors, moreover, were not working. At an August 7, 2014 hearing, the Department reported that the Mother continued to refuse to allow social workers to visit her home. The Mother was also discharged from her mental health therapy program because of her lack of attendance.

The Children's Adjustment to Foster Care

After being returned to foster care on February 8, 2013, both children made excellent progress. Kent bonded with Ms. Sheena B., who had been his regular caregiver since his removal from the Mother's home. He began to eat nutritious food. He stopped night bed-wetting and was able to wear underwear instead of diapers. He learned to communicate the fact that he needed to go to the bathroom. He regressed, however, when in the presence of either his Mother or his Father. He does not use his sign language to communicate his toileting needs and he soils himself during visits with them. The Mother stated that Kent's behavior was "off the hook" during their visits but she did nothing to redirect him.

Tiffany's foster mother, Ms. T.B., enjoys having Tiffany in her home and reported that Tiffany continued to do well there. The Department's caseworker reported on April 8, 2014, that "Tiffany has adjusted well to this placement." Tiffany was encouraged to communicate by signing and gesturing. She had, moreover, been meeting her academic goals. She could go to the bathroom independently and she could communicate basic needs and wants, such as food. She was also eating a nutritious diet and had lost significant weight. The Department also insured that Tiffany and Kent would see each other on a regular basis. That sibling contact was, indeed, on a daily basis.

The Permanency Plan

Hovering above this entire sordid saga was the inevitable issue of a permanency plan. Prior to November 24, 2014, the permanency plan was consistently and exclusively one of

reunification with the Mother. For almost six years – from January 29, 2009 through November 24, 2014 – the Department made, as we have recounted at length, a Herculean effort to provide services to the Mother, to assist the Mother, and to train the Mother so that she, with such assistance, could provide adequate parenting for two severely handicapped autistic children. The Department and the juvenile court ultimately concluded that that effort was hopeless.

At a hearing on August 7, 2014, Judge Krauser reviewed in depth the frustrating history of this case since the beginning of 2009. In a Permanency Planning and Review Hearing Order filed on November 24, 2014, Judge Krauser ordered that the permanency plan be changed from one of reunification with the Mother to one of custody/guardianship to relative or non-relative. The Mother and the Father have filed separate appeals from that new permanency plan of November 24, 2014.

A Contention Out of Deep Leftfield

Simply to clear away some of the clutter, it behooves us to take up first the Father's appeal. It takes us down a tangent, but it is a mercifully short tangent. It raises the single contention that the Father was discriminated against because of his sex in violation of the Maryland Constitution. On its merits, his complaint is not that he was denied his parental rights but that he was, because of his male sex, unconstitutionally afforded less consideration than was extended to the Mother. If Portia's quality of mercy was twice-blest, the Father's lone contention before us is thrice-curst.

A. Curst:

The Department first poses the gate-house challenge that the November 24, 2014 order being appealed from is, for the Father at least, a non-appealable interlocutory order. There is much merit in that challenge. Basically, the appealability of any judicial action is rooted in Maryland Code, Courts and Judicial Proceedings Article, §12-301, which provides that "a party may appeal from a final judgment in a civil case." One may not, as a general rule, appeal from anything else. There are, however, some limited exceptions to that final judgment appealability requirement. Section 12-303 permits a party to appeal from certain enumerated interlocutory orders. In In re Damon M., 362 Md. 429, 434, 765 A.2d 624 (2001), Chief Judge Bell referred to the permitted interlocutory appeal that might embrace certain changes in a permanency plan:

> Relevant for our purposes is §12-303(3)(x), which provides:
>
> > "A party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case:
> >
> > *****
> >
> > "(3) An order:
> >
> > *****
> >
> > "(x) Depriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order."

(Emphasis supplied).

Although a change in a permanency plan does not ipso-facto have an immediate effect on the care and custody of a child who has already been taken from the custody of a parent or guardian, it may nonetheless be intimately connected with it. The In re Damon M. opinion, 362 Md. at 436-37, went on to discuss this connection:

> It is true, of course, that a parent will have lost custody before a permanency plan will have been developed. Nevertheless, once determined, because the permanency plan sets out the anticipated permanent placement, to the achievement of which the "reasonable efforts," required by §3-826.1(f)(3), must and will be directed, it can not 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.

(Emphasis supplied).

In fine-tuning the analysis of which changes in a permanency plan might qualify for a permitted interlocutory appeal and which might not, In re Joseph N., 407 Md. 278, 280, 965 A.2d 59 (2009), focused on the very question now before us.

> [W]hat constitutes a "change" in the terms of an order for care and custody of a CINA child for purposes of determining a parent's right to an interlocutory appeal pursuant to Maryland Code, ... Section 12-303(3)(x)[?]

(Emphasis supplied).

Judge Adkins's decision for the Court of Appeals made it very clear, 407 Md. at 289, that a party seeking to take an interlocutory appeal from a change in a permanency plan must be a party who was "detrimentally affected" by the change. In re Joseph N., 407 Md. at 286

n. 7, relied heavily on In re Billy W., 387 Md. 405, 425, 875 A.2d 734 (2005), wherein the Court of Appeals left no doubt with respect to the appeal-qualifying conditions:

> [T]o be appealable interlocutory orders, court orders arising from the permanency plan review hearing must operate to either deprive the parent of the care and custody of his or her children or change the terms of the care and custody of the children to the parent's detriment.

(Emphasis supplied). See also, In re Samone H., 385 Md. 282, 299, 869 A.2d 370 (2005). And see In re Billy W., 386 Md. 675, 691-92, 874 A.2d 423 (2005).

The Father's attempted interlocutory appeal fails utterly to satisfy those qualifying conditions. The change in the permanency plan not only failed to affect his status detrimentally, it failed to affect his status at all. He had never been mentioned in any pre-existing permanency plan and reunification with him had never been a consideration. The November 24, 2014 change in the permanency plan was obviously not a final judgment. Moving on from there, there is no way that this appeal by the Father could remotely qualify as a permitted interlocutory appeal. The Father, moreover, does not in his appellate brief even mention appealability or suggest a way in which this appeal by him would be permitted. It must be dismissed.

B. Twice-Curst:

Even if, arguendo, this attempted appeal by the Father were otherwise a permitted interlocutory appeal, it would still have to be dismissed for the separate and independent reason that it is moot. In arguing his case for constitutional equality with the Mother, he

claims that he should have been considered as a candidate for reunification to the same extent that the Mother was considered.

Although the respective appeals in this case were literally from the court order of November 24, 2014, the parties, without objection from anyone, have brought to our attention that there was a further hearing in this case on April 16, 2015 before Judge Larnzell Martin, Jr., which produced as of May 16, 2015, a new Permanency Planning Review Findings and Order. The new permanency plan calls for both 1) "custody and guardianship by a non-relative pursuant to CJ Sect. 3-819.3" and 2) "reunification with a parent or guardian." Every previous permanency plan had spoken of reunification exclusively in terms of the Mother. For the first time, the plan speaks generically of "a parent." The required findings mention expressly:

> That reasonable efforts were made by the Department to support the current concurrent permanency plan of custody and guardianship to a relative or a non-relative and a secondary plan of reunification with either mother or father.

(Emphasis supplied).

The order further specifies that there shall be parent visitation under the following condition:

> Unsupervised: But not to occur in the family home [of] mother or father until either submits to a home health assessment to be conducted by the local Department.

The Department, moreover, was directed to take the following steps:

- Execute a service agreement with each parent;
- Explore the viability of the Respondent's father as a placement resource;

...

• Conduct announced and unannounced visits at the family home of either the mother and/or father.

(Emphasis supplied).

The order specifically directs the Father to comply with the following requirements:

The father of the Respondent shall:
• Submit to announced and unannounced visits by the local Department in his family home;
• Execute a service agreement with the local Department.

(Emphasis supplied).

This new order gives the Father everything that he contends he has been deprived of. There are no remaining grievances that he has expressed either to the court below or in the course of his appellate brief. The new permanency plan does not work to his detriment, but to his benefit. Accordingly, his appeal would have to be dismissed for the additional reason that it is now moot.

C. Thrice-Curst: Arguendo Squared

Even if, arguendo, the Father's appeal from the change in the permanency plan were a permitted interlocutory appeal and even if, arguendo, it were not barred because of mootness, it would nonetheless collapse immediately on the merits. It is based exclusively on Article 46 of the Maryland Declaration of Rights, which proclaims:

> Equality of rights under the law shall not be abridged or denied because of sex.

The single contention raised by the Father's appeal consists solely of the question:

Was appellant Father discriminated against because of his sex in violation of the Maryland Constitution?

The Alpha and Omega of his brief appellate argument is not a criticism of what the Department did generally, but only that the Department favored the Mother over him as the express target of reunification and that the Department, therefore, favored her over him with respect to the services and other support that it offered to prepare her for reunification with the children.

It is ironic that the Father now makes this contention, because when the children were first removed from the Mother's custody on January 29, 2009, and a family facilitation meeting was held on the very next day, the Mother was not in attendance but the Father was. He explained to the Department at that time that he could not be considered for custody purposes because he lived with his mother and she was unable to have children in her home. Throughout the six-year life of this case, the Father's living arrangement with his mother has not changed. That inability to assume the custody of the children, moreover, is a factor that has nothing to do with the Father's sex. He rendered himself unavailable for reunification.

At that family facilitation meeting of January 30, 2009, the Father expressly supported the Department's plan to work toward the reunification of the children with the Mother. He never subsequently changed his position in that regard nor voiced any objection to the plan of sole reunification with the Mother. Prior to January 29, 2009, moreover, the two children, then ages eight and four respectively, had been living with their mother for all of their lives. The Father never requested the consideration of himself as a placement

resource for the children. As someone who was not a candidate for reunification, he was obviously not a person entitled to various services and other support as preparation for reunification. This critical position taken by the Father himself was self-evidently not a factor based on his sex that was unconstitutionally used to his detriment. Under the circumstances, his current complaint about a history of unconstitutional deprivations is unreal.

The most obvious flaw in the Father's contention is that it was not remotely preserved for appellate review. At no point in any legal proceeding did the Father in any way so much as allude to the issue of constitutionally unequal treatment based on sex. This is an exemplar of what we call appellate afterthought.

Quite aside from non-preservation, the Father does not in his brief even argue the constitutional issue. He simply makes the bald assertion that his non-consideration as an object of reunification was based upon his sex. It was an ipse dixit based on nothing more than that he said it: "Because I am a male, the court's actions were necessarily based upon the fact that I am a male."[1]

For either non-appealability or mootness or both, we dismiss this appeal by the Father. We simply point out, by way of back-up, that if the appeal were properly before us, we would reject it on its merits. At this point, we may factor the Father out of any further consideration.

[1]In logic, the flaw would be that of "Post hoc, ergo propter hoc."

The Mother's Entitlement to an Appeal

It is time for the Mother to enjoy at least a passing, minor victory. At the threshold, the Department seeks to have us dismiss the Mother's appeal on the basis of mootness. It concedes that the new permanency plan of November 24, 2014, would be appealable by her because it completely removes her as a beneficiary of possible future reunification. That would be an undeniably appealable interlocutory order. In re Damon M., supra. The Department's drop-back position on the issue of mootness, however, is that the superseding permanency plan of May 15, 2015, restores her as one of the targets of reunification and that plan, therefore, is not detrimental to her interests. To be sure, it, unlike its predecessor plan of November 24, 2014, does not totally eliminate her hopes for reunification. That does not mean, however, it was not subtly corrosive of her expectations in that regard. A change in status or position may be detrimental even if it is less detrimental than something else.

That self-evident truism about the relative nature of detriment was made most effectively in In re Karl H., 394 Md. 402, 906 A.2d 898 (2006). In that case, the permanency plan that was deemed to be immediately appealable was not a change from an earlier permanency plan, but change per se was held not to be the critical criterion. Judge Greene's opinion, 394 Md. at 430, made it clear that the Court focuses

> not only on orders that revise a permanency plan, but also on orders that approve a permanency plan when considering the question of appealability of an interlocutory order.

(Emphasis supplied).

It is not the change but the detriment that is the constant in assessing immediate appealability. The Court of Appeals, 394 Md. at 430-31, went on:

> Whether the concurrent permanency plan was ordered at the permanency planning hearing or, subsequently, at the periodic review hearing, the detrimental effects are the same.

(Emphasis supplied).

In the Karl H. case, it was at the initial adoption of a permanency plan hearing that the trial court adopted a concurrent permanency plan looking to both 1) adoption and 2) reunification with the parents. To be sure, adoption involves the termination of parental rights and is, therefore, more detrimental to those rights than is the "custody and guardianship to a relative or non-relative" that was one of the concurrent goals of the ultimate order of May 15, 2015. That was the primary goal of the May 15, 2015 order that then relegated the parental rights to a subordinate position as "a secondary plan of reunification with either mother or father." (Emphasis supplied). By parity of reasoning with adoption, an announced goal of awarding guardianship to a non-relative would be detrimental to a parent's expectation of reunification, even if, to be sure, not as detrimental as an announced goal of adoption.

In re Karl H., 394 Md. at 422, made the point that a concurrent permanency plan may, by its very nature, be serving contradictory ends and may be thereby derogating from the expectancy of reunification with the parent.

> The problem with concurrent permanency plans that are diametrically inconsistent is that they give DSS (and the parents) no real guidance and can

> lead to arbitrary decision-making on the part of DSS. If the court approves a permanency plan that calls for reunification or family placement, that should be the paramount goal. It should not share the spotlight with a completely inconsistent court-approved goal of terminating parental rights, especially when the inconsistent plan calls for a TPR petition to be filed before the next scheduled court review of the permanency plan.

(Emphasis supplied).

In the case of the Mother here, however, there is not only detriment per se in the permanency plan of May 15, 2015, but detrimental change as well. Until the permanency plan ordered by the court on November 24, 2014, the entire focus of the permanency planning had been on reunification with the Mother. Her expectancy was that of reunification. As of May 15, 2015, however, the expectancy that had been hers alone was reduced to an expectancy of one out of three. The reduction was even more severe in that reunification with her as a well as reunification with the Father was relegated to the status of "a secondary plan." The order of May 15, 2015, moreover, added the Father to the reunification sweepstakes for the first time. To have one's sole candidacy for reunification drastically reduced to something slightly less than one out of three is unquestionably a detrimental change in one's expectations.

Just as the Mother would have had an obvious right to take an interlocutory appeal from the permanency plan of November 24, 2014, she also has the right to appeal from the permanency plan of May 15, 2015. At that point, however, her winning streak may be at an end.

The Merits As To The Mother

On the merits of her appeal, the Mother raises a single contention:

> The court erred in changing Kent and Tiffany's plan from a sole plan of reunification.

For all of the reasons we have laboriously laid out in narrating the sad and sordid six-year history of this case, we hold that Judge Krauser would not have been in error in her permanency plan of November 24, 2014, for removing reunification with the Mother as a permanency goal. We hold, alternatively, that Judge Martin was not in error in his permanency plan of May 15, 2015, 1) in retaining the permanency goal of custody and guardianship to a relative or non-relative, 2) in reinstating reunification with the Mother as a secondary goal, and 3) in adding reunification with the Father as an additional secondary goal.

APPEAL BY KENT G., Sr., DISMISSED; JUDGMENT IN APPEAL BY DEBORAH A. AFFIRMED; COSTS TO BE DIVIDED EQUALLY BETWEEN KENT G., Sr., AND DEBORAH A.