APPENDIX

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APPENDIX A

IN THE COURT OF APPEALS OF MARYLAND

Petition Docket No. 187
September Term, 2021

(Nos. 1023 & 1137, Sept. Term, 2020
Court of Special Appeals)

(Nos. 6-I-16-000056 & 6-Z-17-000033,
Circuit Court for Montgomery County)

[Filed: October 22, 2021]

IN RE: J.T.)
)

O R D E R

Upon consideration of the petitions for a writ of certiorari to the Court of Special Appeals and the answers filed thereto, in the above-captioned case, it is this 22nd day of October, 2021

ORDERED, by the Court of Appeals of Maryland, that the petitions be, and they are hereby, DENIED as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Joseph M. Getty
Chief Judge

*Judge Gould did not participate in the consideration of this matter.

APPENDIX B

UNREPORTED

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

Nos. 1023 & 1137

September Term, 2020

[Filed: June 28, 2021]

Circuit Court for Montgomery County
Case Nos. 6-Z-17-00033 & 6-I-16-0056

IN RE: J.T.

Kehoe,
Leahy,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Adkins, Sally D., J.

*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.

We have seen this heart-wrenching case on various procedural postures before, and we are now called upon to address the termination of parental rights ("TPR"). J.N.T. ("Mother") gave birth to a daughter, J.T., in 2016. J.T.'s father, I.M. ("Father") was, and still is a resident of Cameroon. J.T. was removed from Mother's care by the Montgomery County Department of Health and Human Services ("Department") a few days after her birth, and the Montgomery County Circuit Court found J.T. to be a Child in Need of Assistance ("CINA") shortly after. J.T. has been in out-of-home placements ever since.

The juvenile court granted guardianship of J.T. to the Department, terminating Mother and Father's parental rights. Mother and Father both appealed. Shortly after, the court filed a separate order closing J.T.'s CINA case. Father appealed the closure of the CINA case on his own.

Mother presents us with the following questions:

1 Did the court commit error when it found by clear and convincing evidence that Mother was unfit to continue a parental relationship with J.T.?

2. Given Mother's relationship with J.T. and the family history they share, did the court err in deciding that termination of their parental relationship was in J.T.'s best interest?

3. Did the court commit error when it refused to hold a hearing before ordering a reduction in Mother's visitation with J.T.?

Father presents us with two questions in his TPR appeal:

1. Whether the circuit court's exercise of personal jurisdiction over Father's parental rights is limited by the unfairness of forcing Father to prove his parental fitness in Maryland, where Father is unable to enter the United States, where Father complied with every request by the Department for information, where the Department refused to evaluate Father's fitness unless he came to Maryland, where Father sponsored a home study in Cameroon to demonstrate his fitness to parent, where Father is ready, willing, and able to parent the child, and where Father's absence is deemed an exceptional circumstance warranting the termination of his parental rights?

2. Whether the circuit court erred by finding exceptional circumstances sufficient to overcome the presumption that it is in the best interests of the child to preserve Father's inherent rights as a natural parent?

Father presents us with one question from his appeal of the CINA closure:

1. Whether the juvenile court erroneously found [J.T.] a CINA where Father was not given notice of the CINA adjudication or disposition and where the court implicitly found that Father was unwilling or unable to

> care for JT based on his absence from the proceedings?

For the reasons below, we affirm.

FACTS AND PROCEDURAL HISTORY

We primarily focus our history on events occurring after our last opinion. For a more in-depth history, see our prior opinions: *In re Adoption/Guardianship of J.T.*, 242 Md. App. 43 (2019) ("*J.T. 1*") and *In re J.T. and G.N.*, No. 2372, Sept. Term 2019 (Sept. 11, 2020) ("*J.T. 2*").

While Mother was on a visit to see family in Cameroon, she rekindled her relationship with Father, conceiving J.T. *J.T. 2* at 4–5. The two agreed that Mother would return to the U.S. to give birth. *Id.* at 5. J.T. was born on April 1, 2016. Mother's mental health deteriorated soon after, and J.T. was removed from her care before being adjudged a CINA a few weeks later. 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. *J.T. 2* at 5.

Mother's mental health challenges were at their worst when she had to discontinue medication after discovering her second pregnancy in December 2016. *J.T. 2* at 5. She was hospitalized multiple times between December 2016 and March 2017, and received a diagnosis of Bipolar I with psychotic features. *J.T. 2* at 6. Mother began to recover, and gave birth to her second daughter, G.N., in September 2017. *J.T. 2* at 6.

She soon suffered a mental health relapse, which resulted in G.N. being removed and declared a CINA. *J.T. 2* at 6–7. G.N. was placed in the P. household. *J.T. 2* at 7.

The juvenile court terminated Mother and Father's parental rights in November 2018 right after J.T. was removed from her placement at the request of her foster parents, whom the Department—and court—assumed would adopt her. *J.T. 2* at 7. We reversed that termination in *J.T. 1*, holding that the court "erred in not holding another hearing—not fully evaluating Mother's mental health progress in light of her fundamental right to parent or J.T.'s best interests in light of the trauma of losing her home with her foster parents[.]" *J.T. 1* at 72.

J.T. joined her sister G.N. in the P. household in the summer of 2019. *J.T. 2* at 8. After a Permanency Plan Review ("PPR") hearing, the juvenile court changed J.T.'s permanency plan to adoption by a non-relative in January 2020 because it could not "reasonably predict a time when [J.T.] might return to [Mother's] care." *J.T. 2* at 19. We affirmed the permanency plan change in September 2020, noting that the ultimate goal was "the best interests of the children," expressing concern that 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." *J.T. 2* at 35, 44.

The TPR Hearing was initially set for May 2020, but postponed due to the Covid-19 pandemic. Mother and Father opposed the TPR, while Counsel for Child ("Child") supported the termination. Mother wanted

J.T. returned to her, and Father requested that J.T. come live with him in Cameroon.

The Hearing

The juvenile court conducted its hearing in October 2020. J.T.'s therapist, Kay Connors, testified that J.T. often has "some regression around separation concerns so she is clingier with her foster mom before and after visits," and "some behavioral regression including wetting herself in the day even though she's been fully potty trained and having crying spells when she is asked to do either new tasks or . . . learning tasks[.]"

Offering an expert opinion, Connors stated that J.T. and her foster mother "have a very strong relationship." While J.T. experiences attachment with her current foster family, Connors cautioned that the healthy, secure attachment could not just be transferred: "if she were in a new family, you would have to go through the whole process again." Even then, Connors said she "can't guarantee that" J.T. would develop another secure attachment.

Connors also addressed J.T. and Mother's relationship: "She can identify her mom and say that they've done something pleasurable [during visits] but that's really all she said." She opined that J.T. "has a way to speak about [Mother] and she has current memories and knowledge." Connors noted that J.T. "doesn't really speak about visiting her father."

Shiho Murakami, the Department's caseworker, testified that, in her expert opinion, J.T. "cannot be safe in [Mother's] care." She noted that "two professionals who worked with [Mother] as parent

coach cannot recommend to remove the supervision . . . [which] lets [her] know that [she] cannot have her in [Mother's] care full-time." Further, she stated: "I as a clinician myself do have an opinion of my own and I cannot recommend to put [J.T.] in [Mother's] care, especially after seeing [Mother's] lack of understanding in regards to physical safety[,] not to mention the emotional safety." Murakami worried about J.T.'s relationship with Father, as well: "for one, [J.T.] has never met him and as you heard earlier today attachment develops in day to day care in person. So she has either no attachment or insecure attachment[.]" Murakami opined that J.T. was thriving in the P. household: "She is definitely safe where she is now."

Kerrie LaRosa, one of Mother's parenting educators, testified that she had concerns with Mother's ability to engage with J.T. in age-appropriate play, and that she "has difficulty reading cues" for J.T. LaRosa thought Mother was "definitely eager to make progress," but she still noted that "there are other areas where she is inconsistent or where she won't follow recommendations."

LaRosa noted that she "still need[s] to stay pretty engaged [during visits] to help [Mother] understand those emotional needs and continue working on the safety and to follow through on the routine and to be able to meet these goals." LaRosa believed that "if the progress would continue as it currently is, then [she] would imagine it would take months to achieve [Mother's parenting] goals." LaRosa was asked about her opinion on Mother's prognosis, to which she

responded that "[i]t is not a good prognosis. She needs to work towards these goals."

Sophia Coudenhove, another one of Mother's parenting educators, testified on Mother's behalf. She thought that Mother "still [had] work to be done but she's certainly showed improvement." Although Mother had made progress, Coudenhove was still unsure of Mother's ability to keep J.T. physically safe: "I'm not convinced that if nobody were there she would run after [J.T.] fast enough to catch her or . . . exert the authority to summon her back if for example she moved beyond the agreed boundaries physically." She could not recommend unsupervised visits, either short or indefinite. As of her last visit with Mother in August 2020, Coudenhove could not provide a roadmap for when she would have felt comfortable recommending unsupervised visits.

Dr. Ronald Means, a forensic psychiatrist, testified as an expert for Mother. He noted that Mother has "demonstrated stability" since her last psychiatric crisis in 2018. Means did admit that Mother's symptoms could "[v]ery potentially" re-emerge. Means would not give an express prognosis of Mother's mental illness, instead stating: "her symptoms can be managed . . . and I think that her symptoms have been managed effectively for now nearly three years."

Means opined about insight—a concept crucial to Mother's progress:

> I think that remembering that she can be that ill and knowing that she can be that ill versus remembering details or just remembering the

> exact, those exact episodes[;] I think the most important thing is her insight and understanding that she can become that ill and she has become that ill in the past.

He affirmed that it would be a concern if a patient did not have insight into their mental illness: "It's something that I think should be a focus of treatment so that she can gain some insight and be more aware so that she avoids pitfalls."

Mother testified at the hearing in English, instead of using a translator as in the PPR hearing in December 2019 and January 2020. She claimed that, in the PPR hearing, she misunderstood some double negatives and the translator "was saying something different that [she] didn't even mention." In the TPR hearing, Mother testified that "the mental health issue has been an obstacle to prevent [her] to take care of [her] children." She did not, however, think her second daughter required intervention: "before they took [G.N.], I was fine with her." Her belief is inconsistent with proven history: shortly after G.N.'s birth, Mother was found with her in a catatonic state. This necessitated Mother's hospitalization and G.N.'s placement with the P. family.

Mother acknowledged her daughters' bond with the P. family by saying that she "would like to see them continue [to] have a relationship." The Department asked her whether she has "thought about the effect that removing [her children] from their foster parents would have[.]" She replied that she had not. Mother then elaborated: "It's not that I'm not thinking about it[;]" she planned to rely on J.T.'s therapist, "the expert,

to go through it with the children, who can give [her] some kind of advice how to proceed with them."

Father testified that he was the "best person[,] better than anyone else to take care of [J.T.]." Although he had yet to begin English classes to learn the language his daughter speaks, he was learning some words on his own. Father reaffirmed that he was still comfortable with Mother's care: "It's all good, but it would be preferable that [J.T.] is sent to be with me."

Ultimately, the court terminated Mother's parental rights by finding her unfit:

> The Court acknowledges Mother's co-operation in working with the Department and her progress in managing her own life, but in weighing the evidence in its entirety, the Court considers her lack of insight into core issues, and inability to make real progress in her parenting capacity, an insurmountable obstacle when measured against [J.T.'s] health and safety. . . . Parental unfitness does not require unremitting abuse or neglect. . . . Mother's psychiatric history and its aftermath have left her largely unavailable to parent [J.T.] in a safe and emotionally grounded manner.
>
> The particular circumstances of this mother and child yield a reality that argues against continuation of their relationship. [J.T.] needs permanence. And she needs parenting that Mother has not been able to provide, and that she will not be able to provide in the foreseeable future without endangering her child's welfare. The Court finds by clear and convincing evidence

> that the evidence supports a finding of parental unfitness that successfully rebuts the legal presumption that continuation of the parental relationship is in the child's best interest.

The court then terminated Father's parental rights due to exceptional circumstances:

> After considering the entirety of the evidence, the Court is unable to determine [Father's] fitness as a parent. There is simply not enough information. The circumstances, however, of his parental relationship with [J.T.] are exceptional. He has been absent in [J.T.'s] life except for video visitation. He is unable to come to the U.S. and the Court is persuaded that sending her to live in Cameroon is not viable. She would lose her support system, her family, her culture and her country. Perhaps even more importantly, her emotional health would be severely taxed to the point of endangering her welfare. The Court does not believe it is in [J.T.'s] best interest to remove her, based not on an expectation but merely a hope, that such a plan will succeed.
>
> ***
>
> When Father's exceptional circumstances are measured in terms of detriment to [J.T.'s] best interest, it is clear to the Court that her best interests will be served by terminating his parental rights. There is no foreseeable future for [J.T.] with [Father] as a parent. She both requires and deserves permanence and stability in a safe and emotionally sustaining environment.

This appeal followed.

STANDARD OF REVIEW

We use three interrelated standards of review in TPR and custody cases:

> 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). Factual findings cannot be clearly erroneous "[i]f any competent material evidence exists in support of the trial court's factual findings[.]" *Schade v. Maryland State Bd. of Elections*, 401 Md. 1, 33 (2007). "Legal conclusions of unfitness and exceptional circumstances are reviewed without deference. In reviewing whether the juvenile court abused its discretion, we are aware that juvenile courts must apply a statutory termination of parental rights directive to factual scenarios that are far from clear." *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 47–48 (2019).

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).

DISCUSSION

The Legal Landscape

To non-consensually terminate parental rights, the local department petitions the court for guardianship. The pertinent statute provides:

> If, after consideration of factors as required in this section, a juvenile court finds by clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interests of the child such that terminating the rights of the parent is in a child's best interests, the juvenile court may grant guardianship of the child without consent[.]

Maryland Code (1973, 2019 Repl. Vol.), Family Law Article ("FL") § 5-323(b). The court must address the following considerations:

> (d) Except as provided in subsection (c) of this section, in ruling on a petition for guardianship of a child, a juvenile court shall give primary consideration to the health and safety of the child and consideration to all other factors needed to determine whether terminating a parent's rights is in the child's best interests, including:
>
> (1)(i) all services offered to the parent before the child's placement, whether offered by a local department, another agency, or a professional;
>
> (ii) the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent; and
>
> (iii) the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any;
>
> (2) the results of the parent's effort to adjust the parent's circumstances, condition, or conduct to make it in the child's best interests for the child to be returned to the parent's home, including:
>
> (i) the extent to which the parent has maintained regular contact with:
>
> 1. the child;
>
> 2. the local department to which the child is committed; and
>
> 3. if feasible, the child's caregiver;

(ii) the parent's contribution to a reasonable part of the child's care and support, if the parent is financially able to do so;

(iii) the existence of a parental disability that makes the parent consistently unable to care for the child's immediate and ongoing physical or psychological needs for long periods of time; and

(iv) whether additional services would be likely to bring about a lasting parental adjustment so that the child could be returned to the parent within an ascertainable time not to exceed 18 months from the date of placement unless the juvenile court makes a specific finding that it is in the child's best interests to extend the time for a specified period;

(3) whether:

(i) the parent has abused or neglected the child or a minor and the seriousness of the abuse or neglect;

***

(4)(i) the child's emotional ties with and feelings toward the child's parents, the child's siblings, and others who may affect the child's best interests significantly;

(ii) the child's adjustment to:

1. community;
2. home;
3. placement; and
4. school;

(iii) the child's feelings about severance of the parent-child relationship; and

> (iv) the likely impact of terminating parental rights on the child's well-being.

FL § 5-323(d).

Parental unfitness and exceptional circumstances are newer additions to the statutory scheme: "For years, the statute spoke only of the child's best interest." *In re Adoption/Guardianship of Jayden G.*, 433 Md. 50, 95 (2013). "[B]eginning the analysis with the child's best interests was improper because it created the impression that the natural parents and a third party stood on the same footing." *Id.* Courts must account for the presumption that "it is in the best interest of children to remain in the care and custody of their parents" either by showing that a parent is unfit, or that exceptional circumstances exist such that terminating the relationship is in the child's best interests. *Id.* A finding of parental unfitness, in and of itself, does not justify termination of parental rights. *Id.* at 96. The juvenile court must still decide whether termination is in the child's best interests. *Id*.

Mother's Parental Fitness

Mother contends that the trial court erred when it found by clear and convincing evidence that she was unfit to continue a parental relationship with J.T. The Department and Counsel for Child ("Child") both respond that the trial court appropriately found her to be unfit based on the evidence.

Factual Findings

Mother begins her argument by saying the trial court made clearly erroneous factual findings. Her first

contention is that the trial court found that she had not made appreciable progress in the critical piece of parenting, despite parties testifying that Mother did make progress in her parenting goals. The court found that Mother was "not likely to benefit from additional [parenting] services to effect a lasting parental adjustment, so that [J.T.] can be returned to her within an ascertainable time."

Mother has had sixteen months of parenting education. Not a single witness could comfortably recommend unsupervised visits. Murakami did not think J.T. could ever be safe in Mother's care. Coudenhove could not project a time when she would have felt comfortable recommending unsupervised visits. LaRosa did not think Mother's prognosis was good after sixteen months of parenting education. She speculated that Mother needed months to achieve her goals but was unsure if she ever fully could.

Mother is correct in asserting that she has made progress, but we see no error in the juvenile court's conclusion that she is unlikely to benefit from additional support to reach her goals in a reasonable time. *See In re Adoption / Guardianship of Rashawn H.*, 402 Md. 477, 499–500 (2007) ("What the statute appropriately looks to is whether the parent is, *or within a reasonable time will be*, able to care for the child in a way that does not endanger the child's welfare.") (emphasis added). While her consistent progress is commendable, we conclude that the continued doubts of support staff regarding whether Mother would ever meet her goals supports the court's finding.

Next, Mother takes issue with the juvenile court's finding that J.T. and Mother's relationship "is not emotionally grounded but fraught with conflicted feelings of insecurity and confusion." She believes this finding had "no evidentiary support in the record" because "[n]o expert testified regarding J.T.'s emotional understanding of the relationship with Mother."

The testimony regarding J.T. and Mother's relationship was varied: Coudenhove stated that the two have "an imperfect, but loving connection[.]" She further discussed that she "saw plenty of pleasure and plenty of affection at times. [She] saw confusion from [J.T.] as well and there were times when she did not want to be there but there were certainly times when she did." Mrs. P. noticed that, although J.T.'s tantrums and regressive behaviors had mostly subsided, "sometimes when she comes home from the visit [with Mother] or something like that, she may wet herself." We consider it important that, before each visit, J.T. would verify with Mrs. P. that she would not stay with Mother: "I'm going to play with Mama [J.]. Then I'm coming back home, right?"

These excerpts from testimony are a sufficient basis for the juvenile court's finding that Mother and J.T. have a complicated relationship, bringing up feelings of insecurity and confusion for J.T. *See Schade*, 401 Md. at 33 ("If any competent material evidence exists in support of the trial court's factual findings, those findings cannot be held to be clearly erroneous.").

Mother also challenges the juvenile court's evaluation of Means' testimony. She argues that the court's misquote—"Most important is the patient's

insight in order to understand and avoid pitfalls"—misrepresents his testimony and gives his statement unwarranted significance.

Mother is correct that the court misquoted Means—it combined two of his statements: "I think the most important thing is [Mother's] insight and understanding that she can become that ill and she has become that ill in the past" and that her insight is "something that I think should be a focus of treatment so that she can gain some insight and be more aware so that she avoids pitfalls." Combining these quotations, however, did not change their meaning: Mother's insight is one of the most crucial parts of her long-term stability and prognosis. In short, the error was harmless because the significance of Means' statements does not change based on consolidation.

Mother's final factual challenge is the juvenile court's finding—based on Dr. Samantha Bender's expert testimony—that Mother "has evidenced a marked deterioration in her functioning from 2016 to the present[.]"[1] Mother thinks that Bender's evaluation, performed in September 2019, does not reflect her "increased ability to function independently in the world since her last hospitalization in 2018."

Bender first evaluated Mother in the summer of 2016, a few months after J.T.'s birth. She noted that, in 2016, Mother "was cooperative and warm throughout

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[1] Father presented an expert witness to review Bender's reports, testifying that Bender's testing raised questions of bias. We give due regard to the trial court's opportunity to evaluate the credibility of witnesses. *See* Md. Rule 8-131(c).

all sessions, and her thought processes were clear, coherent, linear, and indicative of good insight into herself, her past and (then) current relationships, and her past and (then) current circumstances."

In 2019, Bender noted that Mother "presented with none of the warmth or openness she had demonstrated in the earlier evaluation." Further, Mother's "affect was flat[,] and her speech was slow and at times slurred, although her thought process was coherent." Bender concluded that Mother had "Major Depressive Disorder, Recurrent, with Psychotic Features, in Partial Remission," an "Unspecified Neurocognitive Disorder, with impairment in visual memory, aspects of social cognition, visuo-constructional skills, recent memory, implicit learning, working memory, feedback/error utilization, impulse control, cognitive flexibility, and sustained attention," and Borderline Intellectual Functioning.

Mother received a neuropsychological evaluation in December 2019 from Dr. Melissa Carswell. Carswell noted that Mother "denie[d] any current problems"—saying she experiences no difficulty with memory, attention, or concentration. She echoed Bender's evaluation that Mother's "affect was flat." Carswell summarized her evaluation: "Overall impression is frontal-executive dysfunction and mildly impaired verbal memory likely due to impaired auditory attention and also consistent with her psychiatric diagnosis." Mother additionally received a neurology workup from Dr. Nadia Yusuf a few days later. Yusuf's conclusions were that Mother had "some

difficulty understanding [Yusuf's] simple commands on examination[.]"

Bender reviewed both Carswell and Yusuf's evaluations, concluding that they "confirm [Bender's] assessment that the differences in [Mother's] presentation in 2019 relative to 2016 reflect the impact of her mental illness." She believed "the deterioration in [Mother's] presentation and functioning can be understood to reflect the trajectory of that mental illness and the impact of her medications on her functioning."

We understand Mother's frustration that the court sees a deterioration in her functioning despite her consistent progress to live independently and take care of herself. Nevertheless, Mother's evaluations by Bender, Carswell, and Yusuf support the court's conclusion. The juvenile court "accept[ed] Dr. Bender's opinion that [Mother] has evidenced a marked deterioration in her functioning from 2016 to the present." We see no clear error in this, or any other factual finding Mother complains of.

Mother's Progress

Mother contends that the juvenile court "improperly focused on older evidence" of her lifetime mental health diagnosis instead of her more recent progress. "It has long been established that a parent's past conduct is relevant to a consideration of the parent's future conduct." *In re Adriana T.*, 208 Md. App. 545, 570 (2012). Mother concedes that this proposition is true. Nevertheless, she argues that "when the court has more recent evidence, not only of a parent's progress,

but a demonstrated track record of stability, the court cannot ignore progress in favor of past concerns."

Mother cites FL § 5-323(d)(2)(iv) to support her assertion that "the heart of the court's consideration should be on *current* parental fitness." The subsection she cites looks at "whether additional services would be likely to bring about a lasting parental adjustment so that the child could be returned to the parent within an ascertainable time[.]" *Id.* The juvenile court stated that Mother "has made appreciable progress in managing the basics of housing, employment, transportation, and finances. On the critical piece of parenting, this has not been the case."

The juvenile court did look at Mother's past mental health challenges, but it also focused on her ability to safely parent J.T. in the past, the present, and the near future. The court accepted testimony that Mother's prognosis was "not good if she is still working on her parenting goals after 16 months." It stated:

> Given the length of time that services have been provided, especially one-on-one parenting education during regular and frequent visitation, and the fact that [Mother] has not yet progressed to even unsupervised visitation, the Court finds that [Mother] is not likely to benefit from additional services to effect a lasting parental adjustment, so that [J.T.] can be returned to her within an ascertainable time.

We "give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). The heart of the consideration remains

the same: "the best interest of the child remains the ultimate governing standard." *Rashawn H.*, 402 Md. at 496. Given the overarching standard—best interests of the child—we conclude that the juvenile court did not give undue weight to Mother's past.

Mental Illness Nexus

In her last point under this question, Mother asserts that the juvenile court was required to find "a cognizable nexus between Mother's mental health issues and her unfitness to continue in a parental relationship with J.T. That is, Mother's mental health diagnosis must, in some respect, cause her inability to parent J.T., to J.T.'s detriment."

Mother's mental illness is a lifetime diagnosis, and she has been hospitalized thirteen times. Although she has been crisis free since March 2018, the Department still raised substantial concerns that Mother's "mental health issues have not been sufficiently resolved and that she cannot safely parent [J.T.]." During the PPR hearing in December 2019 and January 2020, Mother "stated repeatedly that mental health was not the cause of her inability to care for her children." Mother "steadfastly maintained that her mental health had not been an obstacle to caring for her children at any time." This assertion is—importantly—misguided. In our opinion addressing the change of J.T.'s permanency plan, Mother's lack of insight into her mental illness was key to our decision: "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." *J.T. 2* at 35.

Mother addressed this troubling statement in her testimony at the TPR hearing. She said that there was some confusion in the translation and interpretation based on a double negative: "I had been saying it was because, of course, the mental health has been the main reason why my children have been taken away from me." Mother emphasized that her "mental health issue has been an obstacle to prevent [her] to take care of [her] children."

The juvenile court was unconvinced by Mother's TPR testimony: "[Mother's] attempt to disavow her prior testimony was not credible. It rather cemented the Court's concern regarding her lack of insight into the role her mental health history has played in the lives of her children."

Further, the court found that "[t]he practical effects of Mother's disability, with the deterioration in functioning and lack of insight into core issues, elevates the risk in terms of her ability to safely parent [J.T.] over a long period of time." The juvenile court noted that its concern "is not that [Mother's] mental health has gone untreated, but that it has not resolved such that [J.T.] would be safe in her care and custody." Mother's mental illness, deterioration, lack of appropriate insight, and inability to safely parent J.T. led the juvenile court to determine that she was unfit to remain in a parental relationship with J.T. We affirm the juvenile court's conclusion that Mother is unfit.

Mother's Parental Relationship & J.T.'s Best Interests

Mother charges that termination of her parental rights was not in J.T.'s best interests because the two had a parental relationship and family history to preserve. Both the Department and Child counter that termination was in J.T.'s best interests, namely, to provide permanence.

Maryland caselaw acknowledges "a presumption in our parental rights' jurisprudence that a continuation of the parental relationship is in a child's best interests." *Jayden G.*, 433 Md. at 53. Nevertheless, a "critical factor in determining what is in the best interest of a child is the desire for permanency in the child's life." *Id.* at 82. "Permanency for children means having constant, loving parents, knowing that their home will always be their home; that their brothers and sisters will always be near; and that their neighborhoods and schools are familiar places." *Id.* at 82–83 (cleaned up). Foster care should not be permanent: "Long periods of foster care are harmful to the children and prevent them from reaching their full potential." *Id.* at 83 (cleaned up).

The statutory scheme gives parents time to rectify what brought the child into the Department's care in the first place: "The statute does not permit the State to leave parents in need adrift and then take away their children." *Rashawn H.*, 402 Md. at 500. The law, however, recognizes "that children have a right to reasonable stability in their lives and that permanent foster care is generally not a preferred option[.]" *Id.* at 501.

Mother cites *In re Yve S.* for the proposition that just because she "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." *Yve S.*, 373 Md. at 572. We distinguished Mother's situation from *Yve S.* in *J.T. 2* for several reasons: Mother has never had custody of J.T., and the mother in *Yve S.* never showed such a concerning lack of insight into what necessitated her child's removal. *J.T. 2* at 38. Mother has not been able to demonstrate competence in caring for J.T.; not a single witness could express confidence in allowing Mother to parent J.T. unsupervised. This is not merely a case of a Mother's mental illness preventing her from obtaining custody, but "her ability to parent [J.T.], as well as her ability to take care of herself without an extended support system." *J.T. 2* at 39.

The juvenile court, in its analysis of J.T. and Mother's emotional ties, expressed that their relationship has "a record of vacillating and contradictory encounters . . . . At times, [J.T.] seems happy to see her mother, and then within the same visit will say to the community service aid 'don't leave me.'" J.T. expressed consistent fears that she would be left behind at visits and have to stay with Mother: "I'm coming back, right?" Although she did experience moments of joy and happiness with Mother, J.T.'s foster parents "report[ed] incidences of regressive behavior" after visits such as "bed-wetting, thumb sucking, and whining[.]" The court found that "termination of parental rights will allow [J.T.] to have

permanence in the home of Mr. and Ms. P. and their extended family."

Simply put: J.T. cannot currently be safe in Mother's care, and not a single witness could predict how long it would take to get there. J.T. has been through so much loss and trauma in her life, and she should not be subjected to wait indefinitely for permanence. Murakami testified at length that J.T. is thriving in the P. household, and that she did not think J.T. could ever be safe in Mother's care. The court could not predict a time for J.T. to be safe in Mother's care, and the statutory scheme does not encourage courts to keep children in foster placements until their parents are potentially able to care for them in the future. We evaluate the court's conclusion for abuse of discretion, and we see none here. It is with a heavy heart that we affirm the juvenile court's termination of Mother's parental rights.

Mother's Visitation

Mother asserts that the court erred by reducing her visitation with J.T. without a hearing to determine whether it was in J.T.'s best interests. The Department responds that the court did not err because Mother no longer had a right to visitation after her parental rights were terminated. Child agrees that the court did not need an additional hearing to reduce visitation after it found Mother unfit and terminated her rights.

Mother cites *In re M.C.*, 245 Md. App. 215 (2020) to state that trial courts must hold hearings when reducing visitation if there are disputed factual claims at play. *In re M.C.* was the product of a circuit court

modifying a mother's visitation without a hearing in a CINA case. *Id.* at 219. We noted that a court "abuses its discretion by not receiving testimony as to material, disputed allegations when requested by a party unless the disputed allegation is immaterial to whether the child is in serious immediate danger or if modification is required for the safety and welfare of the child." *Id.* at 231–32. When attempting to change the visitation, the local department's "allegations raised a substantial question as to the safety and welfare of [the child] during unsupervised visitation, but they were disputed, and [the mother] requested a hearing to present testimony and witnesses." *Id.* at 232. We held that the court "should not have modified [the mother's] visitation with [the child] without a hearing, and that [the mother's] rights to due process were violated when visitation was modified without one." *Id.*

In this case, however, Mother had her parental rights terminated. She no longer has any duties, obligations, or rights toward J.T. *See* FL § 5-325(a) ("An order for guardianship of an individual . . . terminates a parent's duties, obligations, and rights toward the individual[.]"). Mother even concedes that "the right to visitation is usually rendered moot" after the termination of parental rights. The court was under no obligation to continue any visitation; it is now a privilege. Mother's interest in visitation is no longer protected by due process, so she is not entitled to a hearing.

Jurisdiction Over Father

Father claims that the court's exercise of personal jurisdiction over his fundamental right to parent does

not comport with traditional notions of fair play and substantial justice. The Department and Child both respond that personal jurisdiction over a party is not required as long as the court had jurisdiction over the guardianship petition.

Section 9.5-201 of the Family Law Article, adopted from the Uniform Child Custody and Jurisdiction Enforcement Act ("UCCJEA"), dictates the grounds for jurisdiction over initial custody determinations when:

> [T]his State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this State[.]

FL § 9.5-201(a). This section is "the exclusive jurisdictional basis for making a child custody determination by a court of this State." FL § 9.5-201(b). Further: "*Physical presence of, or personal jurisdiction over*, a party or child is not necessary or sufficient to make a child custody determination." FL § 9.5-201(c) (emphasis added). The same court has "exclusive, continuing jurisdiction" over the custody determination until a court in that State or a court of another state decides otherwise. *See* FL § 9.5-202(a).

While he concedes the court had jurisdiction over J.T.'s initial custody determination, Father argues that the court's jurisdiction is limited to just that initial determination. We see little merit to that argument in light of the court's exclusive, continuing jurisdiction.

Further, Father contends that, even if the court had jurisdiction, "[t]he UCCJEA requires more than notice and a futile opportunity to be heard in a TPR. The statute must be construed to avoid a conflict with due process requirements for a *meaningful* opportunity to be heard." He focuses on physical presence for his meaningful opportunity: "Father challenged the fairness of the court subjecting him to its exercise of personal jurisdiction, because, without the ability for him to be physically present in Maryland, the risk was too high of an erroneous deprivation of his fundamental right to parent." Father believes that the court focused on his absence from Maryland, violating notions of fairness. He contends that his participation via WhatsApp's video platform "plainly did not substitute for his physical presence in Maryland in order to demonstrate his [parental] fitness."

We have addressed physical participation in TPR proceedings when an out-of-state incarcerated father's parental rights were in question. *In re Adoption/Guardianship No. 6Z980001 in Dist. Court for Montgomery Cty*, 131 Md. App. 187, 189 (2000). There, the incarcerated father was unable to attend proceedings, but the court allowed him to obtain certified copies of the audiotapes and submit a written statement within sixty days. *Id.* at 190. The court ultimately terminated his parental rights. *Id.* at 190–91. The father alleged that the court denied him his right to due process when it (1) "denied the motion to allow him to listen to the proceeding via speaker telephone," and (2) "denied the motion to dismiss or continue" proceedings until he could attend the hearing. *Id.* at 191.

We first addressed the court's refusal to conduct the proceedings in his absence and its denial of his motion to continue. *Id.* at 191. This was an issue of first impression, so we surveyed many sister states, "and none have concluded that an individual who was incarcerated under circumstances not permitting transportation or otherwise unable to appear personally in court has an absolute right consistent with the Due Process Clause to appear at a termination of parental rights hearing." *Id.* at 192–93. We determined that the proceedings were appropriate as long as the parent was represented by counsel and provided with alternative means of participation. *Id.* at 193.

We then addressed the father's contention regarding the court's denial of his motion to listen via speaker telephone. *Id.* This issue was also one of first impression, so we looked to our sister states to conclude that the father was still allowed to meaningfully participate through counsel and by his alternative means of participation after the hearing. *Id.* at 194–97. We held that "[t]he question of what process is due depends on the facts of each case," and that "[w]hat is required is meaningful access to the courts." *Id.* at 199.

We do not equate Father's absence with incarceration. We use *No. 6Z980001* to illustrate levels of participation and due process appropriate when a parent is unable to attend the TPR hearing in person. In the present case, Father participated in the hearing contemporaneously via WhatsApp. His counsel participated in the proceedings, cross-examined witnesses, presented witnesses, and admitted evidence.

Father does not assert that his counsel was ineffective, or that he was denied the opportunity to participate in the hearings. Father asserts that his participation via a remote platform was not meaningful participation, but fails to mention that *all* parties participated remotely in the proceedings due to the Covid-19 pandemic. Father had every opportunity to present his case through witnesses, evidence, and his own testimony. We see no error in the exercise of jurisdiction in this case.

Father's Exceptional Circumstances

Father asserts that the court erred in finding exceptional circumstances sufficient to terminate Father's parental rights because any exceptional circumstances "did not provide a substantial basis to conclude that the presumption that [J.T.'s] best interest is to maintain a relationship with her father has been rebutted." He charges that any exceptional circumstances are temporary and correctable. The Department responds that clear and convincing evidence supported the trial court's conclusion that exceptional circumstances existed and that the parental relationship with Father was detrimental to J.T.'s best interest. Child argues that exceptional circumstances exist, and were partially based on Father's "failure to act or assert himself as a parenting resource for [eighteen] months while J.T. was in foster care[.]"

The Court of Appeals looked at exceptional circumstances in *In re Adoption/Guardianship of C.E.*, 464 Md. at 54. The Court noted that "[i]n examining whether an exceptional circumstance exists, a juvenile

court should look to whether there is a reason to terminate the parental relationship because the best interest of the child is not served through continuing the parental relationship." *Id.* There, both parents had their parental rights in question, but the juvenile court ultimately did not terminate either parents' rights, continuing the child's placement with extended family. *Id.* at 44. While the juvenile court combined its analysis as to the father's unfitness and exceptional circumstances, the Court of Appeals noted "an important exceptional circumstance that the juvenile court failed to give sufficient consideration and that would have warranted the termination of parental rights in this matter." *Id.* at 59–60.

The Court evaluated the father's exceptional circumstances, expressing its "concern[] with the continuing relationship between [the father] and [the mother]." *Id.* at The father "refuse[d] to acknowledge [the mother's] mental health conditions despite the fact that [the mother was] undoubtedly unfit to care or be left alone with [the child]." *Id.* He was content to live with the mother and rely on her for childcare during work. *Id.*

The Court looked at cases in sister states that terminated parental rights not based on a parent's direct danger to the child, but failure to recognize the other parent's inability to safely parent. *Id.* at 60–61. It looked at cases where a father "did not seem to understand the limits of son [and] made excuses for the behavior of the mother." *Id.* at 61. Focusing back in on the relevant facts, the Court noted that the father "has not shown he can be a placement resource" for his

child. *Id.* at 62. He continually "fail[ed] to recognize the threat [the mother] is to [the child's] safety and welfare." *Id.* The Court stated, based on these exceptional circumstances, "the juvenile court should have looked to . . . termination of parental rights to permit guardianship and adoption." *Id.* at 62–63.

We consider *C.E.* instructive. The Department first connected with Father on June 10, 2016; although it asked him for an email and physical address, the Department had to receive that information later from Mother. After failed connections over the following few months, Father contacted the Department on September 11, 2016, and the Department advised him to seek the services of the public defender's office, which also provided Mother's representation, starting with the initial CINA proceedings. Father had minimal contact with J.T. from the time of her birth until 2018.

Until the most recent hearing, Father consistently stated that he wanted J.T. to be with Mother first, and offered himself as a backup: "He . . . has lived in Cameroon since the outset of this case, seemingly content to let the child's mother serve as sole caretaker once she was born in the United States. [J.T.] had been in foster care for 1 1/2 years before he evidenced any meaningful interest[.]" He was consistently fine deferring to Mother, even after J.T. was removed from her care. Father continually supported Mother's position that she should obtain custody, only offering himself as a back-up if she could not. He did not assert himself as a primary parenting resource until the instant trial.

The court found that "it is hard to project what [parenting] services might be likely to cause a lasting parental adjustment." There was "little real engagement" during J.T. and Father's virtual visits. The juvenile court was also skeptical of sending J.T. to live with Father abroad:

> The Court finds that sending [J.T.] to Cameroon is not an "additional service." It is a decision to displace her from all nurturing relationships here, and essentially remove her to live among strangers in unknown surroundings. Nor is there any evidence that such a move would bring about a "lasting parental adjustment." It is a gamble that places [J.T.] in the untenable position of being the one to lose the most should it not succeed.

In finding exceptional circumstances, the court noted that "[s]ending [J.T.] to Cameroon would mean separating her from her sister." Mrs. P. remarked just how bonded J.T. and G.N. are: "If we're going somewhere and somebody gives her something, she's going to get something for her sisters as well."[2] Mrs. P. talked about how J.T. nurtures G.N., such as saying "You've got to sit on the potty. Come to the bathroom with me," or "come on [G.N.], let's go wash our hands." Mother preferred—if she could not have J.T.— that J.T. would go to her cousin in Hawaii, so G.N. can go with her too. She wanted to keep the two together, and knew that G.N. would not go to Cameroon with J.T.

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[2] J.T. is also bonded with K., the P. family's daughter.

The court found that it was "unable to determine [Father's] fitness as a parent" because there was "not enough information." It did, however, find that his circumstances were exceptional based on Father's absence in J.T.'s life and the high risk associated with sending her to Cameroon. Father time and time again deferred to Mother for J.T.'s care, even after J.T.'s removal. Father and J.T. do not speak the same language. Father and J.T. have never met in person, nor have they developed a meaningful, concrete relationship through their video connections. J.T. does, however, share a close relationship with her sister, G.N. Sending J.T. to Cameroon—or anywhere outside of her current environment where she does not speak the language or know anyone—would be a significant gamble and is not in her best interests. We see no abuse of discretion.

J.T.'s CINA Case

The circuit court closed J.T.'s CINA case on November 24, 2020. Father appeals the closure of J.T.'s CINA case, using this appeal as a vessel to contest her initial CINA declaration. The Department initially moved to dismiss this appeal, arguing that it was moot and not allowed by law because "the guardianship order frustrates any possible remedy and renders this appeal moot." Child also moved to dismiss, asserting that "Father does not have legal basis to appeal the [order closing the CINA case] and any remedy he seeks must be addressed in the appeal of his termination of parental rights[.]"

A CINA, by statutory definition, is "a child who requires court intervention because . . . [t]he child has

been abused [or] has been neglected . . . and . . . [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Maryland Code (1973, 2020 Repl. Vol.), Courts & Judicial Proceedings Article ("CJP") § 3-801(f). An "order for guardianship of an individual . . . terminates the individual's CINA case." FL § 5-325(a). After granting guardianship and terminating parental rights, the juvenile court "[s]hall include a directive terminating the child's CINA case" in a "separate order accompanying an order granting guardianship of a child[.]" FL § 5-324(b).

We have long acknowledged the interrelated nature of CINA and TPR cases: "While a CINA adjudication must precede a TPR determination, it is a separate legal proceeding." *In re Adoption/Guardianship of Cross H.*, 200 Md. App. 142, 150 (2011). Despite this relationship, "there is no prohibition against the initiation of TPR proceedings during the pendency of a CINA appeal." *Id.* at 151. Further: "our statutory scheme recognizes that an order of guardianship terminates a CINA case." *Id.* at 150.

The juvenile court terminated Mother and Father's parental rights, and in doing so, granted guardianship to the Department. J.T. cannot be a CINA because her guardian is now able and willing. *See* CJP § 3-801(f). Because we affirm the grant of the order for guardianship terminating Mother and Father's parental rights, we need not reach the substance of Father's argument. While we are sympathetic to Father's frustration about the complicated history of J.T.'s CINA case, and the difficulty of litigating from

afar, the statutory scheme requires the closure of a CINA case after an order for guardianship. Father's appeal regarding the CINA determination is not allowed by law.

CONCLUSION

Our decision is not an easy one. We are wholly cognizant of the progress Mother has made over the years and commend her on her continued stability. But we cannot look at Mother's progress and stability alone; the standard at the forefront of our decision is the best interests of the child. With that standard in mind, we hold that the juvenile court did not abuse its discretion in determining that J.T.'s best interests would be served by severing Mother and Father's parental rights.

Although we affirm, we express a strong desire for continued visitation with Mother and Father. Mrs. P. noted in her testimony that her "intentions are to adopt [J.T.]—and [G.N.], if possible." In her testimony at the PPR hearing, Mrs. P. expressed an openness to mediating visitation with J.T. and Mother. We hope that Mrs. P. will continue down this path—visits with both Mother and Father—as long as it remains in J.T.'s best interests.

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

APPENDIX C

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND JUVENILE DIVISION

Case No. 06-I-16-000056

[Filed: February 28, 2018]

IN THE MATTER OF:	)
	)
J. T.	)
	)

HEARING

Rockville, Maryland February 28, 2018

DEPOSITION SERVICES, INC.
12321 Middlebrook Road, Suite 210
Germantown, Maryland 20874
(301) 881-3344

WHEREUPON, the above-captioned matter was before the Court on February 28, 2018.

BEFORE: THE HONORABLE HARRY C. STORM, JUDGE

APPEARANCES:

MAC EHRLICH, Esq.
(For the County)

SARA FURLOW, Esq.
(For the Child)

SYLVIA LONG, Esq.
(For the Mother)

ISABELLE ROXANE RAQUIN, Esq.
(For the Father)

[pp. 29-39]

MR. EHRLICH: I just wanted to make sure the Court had that in mind. Thank you.

THE COURT: But as a practical matter, I don't know that that's the best approach with that.

MR. EHRLICH: Thank you, Your Honor.

MS. LONG: And there's a case law that says Your Honor, as the TPR judge --

THE COURT: Right. I have the discretion to stay it.

MS. LONG: Exactly.

THE COURT: Right, and that's probably what I'm going to do. All right. Anything else?

MS. RAQUIN: I would note my objection after your ruling on the jurisdiction --

THE COURT: Okay.

MS. RAQUIN: -- issue.

THE COURT: All right. And I know Ms. Kelly's sitting there thinking that she's glad she's like moving to New Mexico or wherever she's going. All right.

JUDGE'S RULING

THE COURT: This case involves an almost 2-year-old child, [J.T.]. Pending before the Court are the motions filed by the father, [I.M.] (phonetic sp.).

MR. EHRLICH: M.

THE COURT: M.

MS. RAQUIN: M.

THE COURT: M. To vacate the permanency planning review hearing order entered on September 19, 2017 at Docket Entry 75 for lack of personal jurisdiction and a violation of due process in the failure to provide notice to him of the proceedings. Alternatively, he asked that the permanency planning order be modified and that the Court order reunification services for him. The motion is at Docket Entry 79 and 80. He has also requested in the guardianship case, No. 6Z17033, that it be dismissed largely on the same grounds and the Department has opposed both motions.

While a parent has a fundamental right to raise his or her child, it is well-recognized that the right is not absolute. It is subject to state intervention acting as Parens patriae to protect the health, safety and welfare of the child. In this case, we're dealing with a case where the mother gave birth to the child in Montgomery County. The father was and is in Cameroon, has never met the child in person although he has had limited contact by phone and/or video.

The child was removed from the mother's care shortly after birth because of the mother's mental health issues, issues with which she has continued to struggle. Until my September 2017 order, the Department was recommending and a permanency plan order that was put into place by Judge Maloney was reunification with the mother. Father was aware of that and through his limited telephone and e-mail contacts, through his limited e-mail and telephone contacts with the Department, and it appears that he was fine with that reunification plan. At the same time, he was also aware that [J.T.] had been removed from the mother's care but he knew that the plan was to reunite [J.T.] with her mother.

When the plan changed, however, and the natural parents became threatened with the potential loss of their child to adoption, the father who had previously shown limited interest in or perhaps a limited need to engage in the proceeding emerged asserting his parental rights and objecting to his child being taken away without notice.

As I mentioned, I spent considerable time reviewing this over the last several days. I've reviewed the CINA file, the parties' memoranda, the cases, and while I'm not convinced by the personal jurisdiction argument and I'll deny the motion on that basis, I am convinced that the father was not given proper notice of the proceedings as required under the Maryland rules and as a matter of fundamental fairness and due process.

With respect to the personal jurisdiction argument, the case involves a child born here. The child is U.S. and Maryland citizen by birthright. The CINA case is

one involving a status determination as I see it unlike the Hawaii case, In Re Doe at 926 P.2d 1290 (1996 case) cited by the father, Maryland has the greatest connection to the child, the mother and is the appropriate forum for this matter to be litigated. The child has never been anywhere but Maryland, so I think that the courts of this state may properly act without having personal jurisdiction over the non-resident father.

This does not, however, end the matter. Maryland Rule 11-110(c) provides that except in the case of a hearing on a petition for continued detention or sheltered care, the clerk shall issue a notice of the time, place and purpose of hearings scheduled pursuant to the provisions of this title. The notice will be served on all parties, together with a copy of the petition or other pleading, if any, and the manner provided by Section (c) of rule 11-104 at least five days prior to the hearing. Rule 11-104(c) requires in the case of a non-resident parent or where the parent cannot be served by the summons and petition that notice of the pendency of and nature of the proceeding be given as directed by the Court and proof of the steps taken to give notice as justice shall require.

In this case, even before the 3-816.2 review hearing in 2016, the Department and the Court had, at a minimum, an e-mail address for the father. The e-mail communication between the father and Ms. Kelly was docketed at Docket Entry 40. In that e-mail, father identified himself to the Department as the father and expressed at a minimum concern for what was going to happen, yet the father was essentially forgotten in

terms of the Court proceedings. As relevant to the issue now before the Court, he was not notified of the September permanency review hearing, and while Judge Maloney's permanency plan order, which set the September date for the review hearing contained the standard language about serving the parties by first class mail, that wasn't an option here because in that same order, it indicated, the order itself said that there was no address yet for the father, the father hadn't provided a mailing address, yet by that time both the Department and the Court had information that would have allowed some minimal notice to be given to the father by e-mail at the least.

I also note that COMAR Section 07.02.22.19(d) provides that in the case of periodic review of permanency plans, the local Department shall in preparation for the periodic review held by the Court, give 10 days' notice of the review whenever possible to the parents and document the notice in the child's case record. Here, the evidence showed that on August 18, 2017, the day the report was due, Ms. Kelly spoke with the father and the call dropped. She testified that she did not tell him that she intended to recommend a change in the plan and he was never sent a copy of the Court report. She also testified that the father was not included in a family involvement meeting which she acknowledge also was a mistake.

Granted, the father did not provide a physical address when it was requested several times, but that does not in my opinion outweigh what I think is the fundamental fairness issue here that the biological father of this child receive notice by at least the method

known to be effective of the proceedings and the possible loss of this child to adoption.

What was said by the Court of Special Appeals in Barry E. at 107 Md. App. 206, 222-23 (1995) in an opinion by Chief Judge Wilner at that time, the parties are entitled to notice so they can have the opportunity to object to such proceedings even if the Court is justified in overruling the objection and to review what occurred. If no notice is given, how are they to know that there's anything to review?

In making these findings, I do so mindful that at the end of the day, the primary concern is the best interest of the child, and while there is certainly an interest in achieving permanency, I do not find that [J.T.]'s best interest will be materially impacted by this decision at this time. Moreover, there's at least a question of whether it would be in her best interests for me to rule in the Department's favor, allow the case to proceed as the Department desires only to have things later reversed as I believe they would be if I were to rule otherwise.

There is an opportunity to right the ship now. The father is represented, he's in the case and his circumstances may be examined and considered. So, I will grant the father's motion in the CINA case to vacate the September 19th order at Docket Entry 75. The permanency plan will at this time continue to be reunification unless and until changed at a future review hearing. The Department will be ordered to exercise reasonable efforts to determine father's circumstances and investigate him as a possible placement, again within reason. The father will be

ordered to cooperate reasonably with the Department and to provide such information as the Department reasonably requests.

Notice of further proceedings shall be provided to father's counsel and service on counsel shall be deemed service on the father. The permanency review hearing shall be continued for sufficient time to allow the Department to complete its investigation of the father and I would think that 90 days should suffice for that.

With respect to the motions in the guardianship case and TPR case, the father's motion requesting the Court order father here, for the Department to pay his travel expenses, that motion will be denied, and finally with respect to the motion to dismiss the guardianship case, the father is here participating in that case. The issue as I see it is whether the guardianship TPR case should be stayed while the CINA case is proceeding as it is. The issue of staying the TPR case is in the Court's discretion, In Re Jaden, 433 Md. 50 and In Re Quintline B, 219 Md. App. 187. As the courts in those cases discussed, the considerations are not identical in the two different cases.

TPR proceedings do not require that there be a change of the permanency plan. Other bases include the child being out of the home for 15 of the last 22 months. If that applies here, it might not quite apply yet, and where the Department determines that it's in the best interest of the child under Family Law 5-525.1(a) and (b). I'm also mindful of the directive that permanency should be achieved within 24 months after the date of initial placement. Here we have a child who is approaching the 24 month mark. However, all things

considered, absent the Department's willingness to dismiss the TPR case without prejudice at this time, I think the appropriate thing to do is to stay that case until the father's situation is reviewed by the Department and at least until another further review in the hearing in the CINA case is held.

So, I will grant a stay of the case for 90 days unless, Mr. Ehrlich, you tell me that you think it makes more sense to dismiss that case right now.

MR. EHRLICH: Well, are those only two options?

THE COURT: Not really.

MR. EHRLICH: So --

THE COURT: I don't think it should proceed right now --

MR. EHRLICH: Yes.

THE COURT: -- is what I'm saying, so.

MR. EHRLICH: I understand. The Department takes exception to the --

THE COURT: All right.

MR. EHRLICH: -- Court's ruling. The Department believes that the import of the law, the thrust of the law is permanency for children. 90 days is going to delay that. His father has waited this child's entire life to even meet her and the Department needs to go forward with it. So, essentially, permanency denied type of argument with regard to the exceptions. Thank you, Your Honor.

THE COURT: All right. So, with that, just so everybody's clear, the father's motion with respect to vacating the September order is granted on the basis of the defective notice issues, not on the ground that there is a personal jurisdiction issue. The request to pay the father's expenses under UCCJEA is denied and the TPR case will be stayed for 90 days.

MR. EHRLICH: My exceptions were only directed at the stay, the stay order.

THE COURT: All right. All right.

MS. RAQUIN: May I make some exceptions, Your Honor, just for the record --

THE COURT: Sure.

MS. RAQUIN: -- in terms of the jurisdiction order?

THE COURT: Sure. Yes.

MS. RAQUIN: So, we do take exception that the Court found that personal jurisdiction was not required, both in the CINA case and in the TPR case. Is the Court finding that Mr. M. also did not have minimal contacts with Maryland and despite the lack of minimal contact --

THE COURT: I don't think it makes any difference because I don't think that the Court needs personal jurisdiction over him under the circumstances that exist.

MS. RAQUIN: Would the parties, and I think that was part of the testimony from the social worker, but

my intention was to call Mr. M. to establish for the record lack of personal contacts.

THE COURT: I don't think there's any dispute that he's never had any contact with, other than whatever communications he's had with the Department by phone and e-mail.

MR. EHRLICH: As far as the Department knows, he's never been here.

THE COURT: Right.

MS. RAQUIN: Or done any business with the state --

MR. EHRLICH: We don't know

MS. RAQUIN: -- of Maryland in any way.

MR. EHRLICH: -- about that.

THE COURT: Yes.

MR. EHRLICH: He's never been here, as far as we know. That's all we know.

MS. KELLY: Yes.

MS. RAQUIN: And so with that, on the record, I do take exception of --

THE COURT: All right.

MS. RAQUIN: -- your ruling.

THE COURT: All right.

MR. EHRLICH: Your Honor, may --

THE COURT: Some jurisdiction has to be able to make these determinations, and there's no other logical place to do it. So, I do think that this is one of those status determinations where the rules are a little different. So, that's my ruling, right or wrong.

MS. RAQUIN: Would the Court entertain the mother's request for a status hearing in 30 days to see if the Department is going to pay for travel expenses?

MR. EHRLICH: The Department is, I'll tell you what, rather than come back here for a hearing, if the Department decides in its infinite wisdom and wants to pay for travel expenses, it will file a memo immediately and let the Court know. At this point, the Department is not inclined to pay for his expenses.

THE COURT: All right.

MR. EHRLICH: So --

MS. LONG: What about the home study? In other words, what are we doing, you know? We're just going to wait three months and then argue reasonable efforts?