COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-715

ADOPTION OF ANSEL (and a companion case[1]).

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The Department of Children and Families (department) filed a care and protection petition in July of 2016 and, as relevant here, was granted temporary custody of the mother's then two year old son Ansel. The department filed a second petition in April of 2018 and was granted temporary custody of the mother's newborn daughter Caroline. After a 2019 trial, a Juvenile Court judge found the mother unfit, terminated her parental rights as to both children, and approved the department's adoption plans.[2] On appeal, the mother argues that (1) the judge's finding of unfitness was not supported by clear and convincing evidence; (2) the judge failed to consider whether any unfitness might be

[1] Adoption of Caroline. The children's names are pseudonyms.

[2] The judge also terminated the rights of Ansel's unknown father and of Caroline's adjudicated father, whom we shall identify using the pseudonym John. No appeal has been filed with respect to the unknown father, nor did John appeal. Accordingly, we discuss the facts regarding those individuals only as necessary to understand the issues in the appeals before us.

temporary; (3) the judge abused his discretion in approving the department's adoption plans; and (4) the judge abused his discretion in failing to order more frequent posttermination and postadoption visitation. Ansel has also appealed, raising similar issues and also arguing that the judge abused his discretion in denying the mother's motion to order the department to remove Ansel from his foster home. Both the department and Caroline ask that we uphold the decrees. We affirm.

Background. We set forth below an overview of the judge's findings regarding the mother's long history with the department, focusing in particular on the facts most relevant to his ultimate finding of unfitness. That ultimate finding was based on the mother's mental health and anger issues; her refusal to obtain evaluations for psychological, domestic violence, and substance abuse issues despite clear concerns about such issues; and her inability to provide a safe and stable home environment for the children.

1. Mother's two older children. The mother's involvement with the department as a parent[3] began in 2008, when the department received a report under G. L. c. 119, § 51A (51A report), alleging that she had neglected her eldest son by not

[3] The mother herself was in the department's custody between the ages of three and eighteen.

pursuing necessary medical and other services for him. That child had special needs including being on the autism spectrum. In 2010, the department received a 51A report alleging that the mother had neglected her second son by allowing him (and the eldest son) to be exposed to a domestic violence incident perpetrated by the second son's biological father. In 2013, the department received a 51A report alleging that the mother had neglected the eldest son by sending him to school without proper clothing and by failing to ensure his regular attendance. Each of these three 51A reports was supported and resulted in the department opening a case for services, but the cases were ultimately closed -- in part because, according to the department, the mother was resistant to the services offered to her.

2. Ansel's birth and the first petition. In August of 2014, Ansel was born, and the department received a 51A report alleging that he had been substance-exposed. The mother acknowledged having used prescription oxycodone and morphine for a tooth abscess but stated that she had stopped once she realized she was pregnant. The mother also acknowledged continuing use of prescription Percocet, stating that she did so only after the children were in bed and that she was unable to drive after taking the medication. The report was supported, partly on the basis that the mother was placing herself in a

state of some impairment while she had children, including a newborn, in her care.

In late 2015, the department received two 51A reports alleging that the mother and children were living in unsafe housing. The reports were supported. From this point forward, the department continuously offered services to the mother. In February of 2016, the mother alleged that her second child's biological father had struck her while she was holding the child, but she continued in a relationship with that father. In May of 2016, the department's social worker transferred mother's case to a successor social worker, noting that mother was refusing to meet with the department and was evasive and argumentative.

At her first meeting with the successor worker, mother became highly confrontational, screaming at the worker in the presence of the children, unable to focus on the issues to be discussed, and insistent that she be allowed to record the meeting. At about the same time, the worker learned that the mother had missed a neurology appointment for her eldest son, who was on the autism spectrum.

Shortly after the meeting with the social worker, the mother fled, taking all three children with her. Several 51A reports were filed alleging that the mother had failed to return her second child to his father as scheduled. The mother in turn

claimed that the father was abusing that child, despite the department having previously found her allegations to that effect unsupported. After nine days of being "whereabouts unknown," the mother was arrested for parental kidnapping. At about the same time, the department learned from Ansel's physician that Ansel had been diagnosed with cerebral palsy and severe learning disabilities; the physician stated that Ansel critically needed services but was not receiving them.

The department's investigation supported the allegations that the mother had neglected all three children, based on her apparent mental health issues, housing instability, failure to follow up on the children's medical care, and her flight with the children, which put them at risk. In July of 2016, the department filed a care and protection petition as to all three children and obtained temporary custody of Ansel.[4]

Starting with her first postremoval visit with Ansel, the mother began complaining that Ansel had numerous bruises and bumps; the department obtained an evaluation by a pediatrician, who concluded that none of the bruises appeared to have been intentional or inflicted by an adult and that there was no sign

[4] The eldest son was placed with his father under a conditional custody order; his custody is not at issue here. The second son was left in the sole custody of his father and dismissed from the petition; his custody is likewise not at issue here.

Ansel was being abused or neglected in foster care. The mother's response was that "DCF pediatricians lie."

The mother's first service plan, presented to her in September of 2016, included tasks such as obtaining domestic violence, substance abuse, and psychological evaluations, as well as identifying and maintaining stable housing and providing access to random urine screen results. The mother's overall response to the service plan was that she had already performed these tasks and would not repeat them; she refused to sign the plan. In particular, the mother claimed to have previously had three substance abuse evaluations and a psychological evaluation, but she never furnished the results to the department. The mother told a court investigator that she suffered from posttraumatic stress disorder (PTSD), adjustment disorder, and borderline personality disorder.

Starting in April of 2017, the mother's interactions with the department grew more contentious. She accused the social worker and her supervisor of lying, threatened to hurt the social worker, refused to meet with her, and demanded a new social worker. In July of 2017, the mother informed the supervisor that she had slit her wrists, was "bleeding out," and would cut deeper; when informed that the police would be called, the mother hung up. She was hospitalized and diagnosed with

major depressive disorder. In February of 2018, the mother was assigned a new social worker.

In March of 2018, the mother began weekly therapy; her therapist gave her a primary diagnosis of PTSD. As of April of 2018, the mother had not yet obtained domestic violence, substance abuse, or psychological evaluations, and had not provided urine screens.

3. Caroline's birth and the second petition. In April of 2018, the mother gave birth to Caroline, who tested positive for marijuana.[5] The mother then admitted to having smoked marijuana throughout her pregnancy. The department filed a care and protection petition and obtained temporary custody of Caroline. The mother soon became angry about Caroline's treatment in foster care. Among other things, the mother did not want Caroline vaccinated, purportedly due to the mother's religious beliefs, but when asked what those beliefs were, the mother told the social worker, "it's none of your . . . business," using an expletive. The judge did not credit mother's claim of religion-based objections to vaccinations.

[5] Although the mother argues that this finding was clearly erroneous, on the first day of trial she testified that both she and Caroline tested positive for marijuana when Caroline was born. She explained that she had a medical marijuana card and had been using marijuana for nausea.

In July of 2018, the department issued a no trespassing order requiring the mother to stay away from its area office, based on the mother's confrontational, loud, and angry behavior toward her social worker and other department personnel, in the presence of other clients of the department. The department, however, arranged for visits between the mother and children to occur off-site at a visitation center; arranged for meetings with a new social worker to occur off-site; and allowed the mother to participate in foster care reviews by telephone. At a review held a month later, the mother's telephone participation had to be terminated after she became angry, yelled continuously over other participants, and could not be redirected.

In September of 2018 the mother was hospitalized after she slit her wrists in another suicide attempt. As of October of 2018, the mother had still not obtained domestic violence, substance abuse, or psychological evaluations, and had not provided urine screens except for one performed during her pregnancy. The department's goal for Caroline was changed to adoption.

Later that October, the mother reported to a visitation center worker that she had been the victim of domestic violence by Caroline's father, John. See note 2, supra. The mother had visible scratches on her arm and neck and claimed to have been sexually assaulted as well. However, John was observed to be

waiting outside the visitation center for the mother to finish the visit, and the mother did not obtain an abuse prevention order against him.

The mother left threatening voice mail messages for her department social worker. In April of 2019, the mother made threatening remarks about Ansel's foster mother to workers at a visitation center. As of May of 2019, the mother had still not obtained domestic violence, substance abuse, or psychological evaluations, and had not provided any additional urine screens.

4. Trial. The trial commenced in July of 2019. We summarize below the judge's additional findings regarding the principal areas of concern as to the mother's fitness. We reserve for later discussion the judge's findings regarding whether the unfitness was temporary, the adoption plans, posttermination visitation, and the mother's motion to remove Ansel from his foster placement.

a. Mental health. Regarding mother's mental health issues, the judge found that the mother had never obtained the psychological evaluation required by her service plan. The mother testified that she had taken an anger management class, "just for giggles," which the judge found indicative of her inability to grasp her need for services.

The mother testified that she had obtained a medication evaluation but would not take mental health medications because

she was generally opposed to them.[6] The mother's therapist testified that he had discussed with the mother that medication could be helpful to her, but that she was opposed. The therapist also testified that his goal was to help the mother reduce her anxieties so that she could work more effectively with the department, and that the mother had made significant progress in this regard. But the judge found this assessment belied by the mother's continued hostile actions toward numerous department social workers, and he found that the therapist's testimony that the mother was "fully engaged" in therapy was not credible. The therapist further testified that the mother had concerns about her intimate partners and had "triggers" other than the department; she could be "triggered" in the presence of her children. The therapist stated that a psychological evaluation would help the department provide support for the mother. Still, by the time of trial, she had not obtained one.

b. Substance abuse. The judge found that on three separate occasions in 2017 and 2018, the mother had gone to health care providers seeking narcotics. The judge found that these actions, together with her prior history, provided a valid predicate for the department's request that she obtain a

[6] She also testified, confusingly, that she was taking PTSD medication; the judge did not credit this testimony.

substance abuse evaluation. Moreover, she had used marijuana throughout her pregnancy with Caroline, who tested positive for marijuana at birth. Although there was no evidence at trial that the mother was currently using substances other than marijuana, the judge did not credit her testimony that she had never used any other drugs.[7] Despite these concerns, the mother never obtained a substance abuse evaluation at any time during the case, nor did she provide any urine screens to the department except for the one performed during her pregnancy.

c. Domestic violence. Although she previously reported having been assaulted by John in October of 2018, the mother continued in a relationship with him, and she was pregnant by him at the time of trial. Nevertheless, and despite her history of several domestic violence allegations against the father of her second son (with whom she had also stayed in a relationship), the mother never obtained the domestic violence evaluation requested by the department.

d. Safety and stability. Related to the mother's mental health, anger, and domestic violence issues, there was considerable evidence that the mother was unable to provide a

[7] The mother's protestations that she had a prescription for oxycodone in 2014 and a medical marijuana card in 2018 thus miss the point. The judge found there to be a valid concern that she might also have used or attempted to use other drugs and thus that she needed to undergo a substance abuse evaluation.

safe and stable home environment. Much of this evidence related to Caroline's father, John.[8] The mother began her relationship with him in August of 2016, knowing that he was the subject of a child endangerment charge in Ohio. John had a serious, unaddressed substance abuse problem, particularly with fentanyl; had used or attempted to use drugs in the mother's presence; and had overdosed on at least two occasions while with the mother.[9] In June of 2017, police responded to a report of a physical altercation between the mother and John; she alleged that he had punched her in the face and she had seen the tip of a knife come through her door after she escorted him out of the apartment. John told a different story, which led to the mother being arrested for assault and battery. In November of 2017, police responded to a report of a verbal argument between the mother and John. There was also John's reported assault on the mother in October of 2018, described supra.

Nevertheless, at trial the mother testified that she intended to remain in a relationship with John. The judge found that the mother failed to appreciate that this risked exposing

[8] The mother also had a history of housing instability. At the time of trial, the department was unable to verify where the mother was living, and the mother would not allow the department to enter her home or to talk to her landlord.

[9] John testified at trial that he had been sober for thirty-three days, a claim the judge did not credit.

the children to domestic violence (by whomever perpetrated) and to a risk of harm or neglect by John.

Discussion. It was the department's burden to prove by clear and convincing evidence that the mother was currently unfit to parent. See Adoption of Gregory, 434 Mass. 117, 126 (2001). "Subsidiary findings must be proved by a fair preponderance of the evidence." Adoption of Helen, 429 Mass. 856, 859 (1999). "We give substantial deference to a judge's decision that termination of a parent's rights is in the best interest of the child, and reverse only where the findings of fact are clearly erroneous or where there is a clear error of law or abuse of discretion." Adoption of Ilona, 459 Mass. 53, 59 (2011). We discuss the mother's and Ansel's appellate arguments seriatim.

1. Unfitness. The mother begins by asking us to disregard the judge's determination that much of her testimony was not credible. We decline to do so. "It [was] within the judge's discretion to evaluate the credibility of witnesses and to make his findings of fact accordingly. . . . He was not obliged to believe the mother's testimony or that of any other witness." Care & Protection of Three Minors, 392 Mass. 704, 711 (1984). We reject the mother's related claim that the judge did not give close attention to the evidence and engage in an even-handed

analysis.[10] The mother's "dissatisfaction with the judge's weighing of the evidence and his credibility determinations" furnishes "no basis for disturbing the judge's view of the evidence." Adoption of Quentin, 424 Mass. 882, 886 n.3 (1997).

The mother argues that the judge failed to identify any nexus between her substance use and her parental fitness. See Adoption of Katharine, 42 Mass. App. Ct. 25, 34 (1997). To the contrary, the judge found that the mother's use of Percocet, rendering her unable to drive, impaired her ability to function while she had her children (including a newborn) in her care. The judge was not required to identify the precise harm that could come to the children if some emergency arose while the mother was in this impaired state.

More to the point, however, the judge's principal concern was not with the mother's substance use itself as proven at trial, but instead with her persistent refusal to obtain a substance abuse evaluation, despite ample evidence that one was warranted. The judge properly weighed this refusal in finding

[10] For example, the judge made findings that criticized the department's communications with the mother's therapist; supported the mother's concern as to a severe sunburn suffered by Ansel while in foster care; characterized the mother, with few exceptions, as faithfully engaging in positive visits with the children; and concluding that, according to all sources, the "mother loves her children."

the mother unfit.[11] Contrary to the mother's argument, this is not a case like Adoption of Yale, 65 Mass. App. Ct. 236, 242 (2005), where there was no serious concern about drug use and thus no basis to fault the mother for failure to submit to random drug screens.

With regard to domestic violence, the mother argues that the judge failed to make sufficiently detailed findings of a nexus between the mother's victimization by domestic violence and any harm to her children. But the mother cites no case, and we know of none, requiring findings to be especially detailed when, as here, a custody decision is made because of, rather than in spite of, a child's exposure or risk of exposure to domestic violence. Contrast Custody of Vaughn, 422 Mass. 590, 599 (1996); Care & Protection of Lillith, 61 Mass. App. Ct. 132, 142 (2004). Moreover, despite a previous incident in which the mother's two older children were present when she was the victim of domestic violence, and despite the mother's more recent allegations of domestic violence against Caroline's father John,

[11] The mother, citing her own trial testimony, argues that she requested a substance abuse evaluation from the Star program but "was turned away for lack of a substance abuse history." But her testimony was only that, when she went to Star, "because I have no drug history, I looked like a complete fool walking in there saying, 'I need a [d]rug [e]valuation for a person that do[es]n't do drugs.'" She did not testify that she was turned away, and her account exemplifies her unproductive attitude toward addressing the department's legitimate concerns.

the mother refused to obtain a domestic violence evaluation and was determined to remain in a relationship with John. There was ample support for the judge's conclusion that the mother risked exposing the children to domestic violence were they returned to her custody, and that this behavior, and her refusal of an evaluation, contributed to her unfitness.[12]

With regard to her failure to obtain a psychological evaluation, the mother points to her own testimony that, at the time of trial, she was scheduled for such an evaluation in August of 2020, a year in the future. Even assuming the judge credited this testimony, this would not explain why she had not tried to obtain such an evaluation when the department first requested that she do so in September of 2016. Indeed, at that time, the mother maintained that she had already had a psychological evaluation and would not undergo another, but she never furnished the results to the department, and the judge did not credit her testimony on this point. The judge properly concluded that her failure to obtain the evaluation, in light of

[12] The mother claims that she went to a battered women's shelter, explained her situation, and was "sent . . . away." But the testimony that she cites for this assertion says nothing about the shelter sending her away. Rather, she described herself as asking at the time, "why should I do a [b]attered [w]oman's [evaluation] when I no longer have contact with . . . my abuser."

the ample evidence of her mental health issues, contributed to the ultimate finding of her unfitness.[13]

The mother further argues that there was no nexus between her mental health issues (including anger) and her fitness as a parent, because she engaged in positive visits with the children and they did not fear her or perceive her as a threat. See Adoption of Jacob, 99 Mass. App. Ct. 258, 265 (2021) (mental impairment does not indicate unfitness except to extent it affects parent's ability to care for child). Although the judge acknowledged the mother's positive visitation record, he also concluded that the "mother's mental health issues have [led] to dramatic actions which have or would have affected her ability to care for the children if they were in her care/custody," and that her "continual display of unbridled anger and threats, sometimes in the presence of the children," contributed to her unfitness. The judge was hardly required to determine the

[13] As both the mother and the department note, the record also contains scattered references to a recommendation that she obtain a neuropsychological evaluation and to her failure to do so. Whatever confusion may have existed about whether the mother was to obtain one evaluation or two does not undermine the judge's clear and amply supported finding that she failed to obtain the recommended psychological evaluation. The mother conceded this point during her closing argument to the judge.

mother's fitness to parent based solely on the quality of her weekly visits.[14]

Ansel, for his part, argues that the judge gave excessive weight to the mother's housing instability. We are not persuaded. Although the judge concluded that the mother was unable to provide a safe and stable home environment, we understand this conclusion to have been based primarily on the role that John continued to play in the mother's life, rather than on the mother's housing arrangements. See note 9, supra.

2. Duration of unfitness. The judge found that the mother's unfitness was likely to continue into the indefinite future to a near certitude. He also specifically concluded, citing G. L. c. 210, § 3 (c) (xii), that the "mother's mental health issues are likely to continue for a prolonged, indeterminate period, making her unlikely to provide minimally acceptable care for both children." On appeal the mother argues that the judge failed to consider whether her unfitness might be merely temporary, in light of her progress with her therapist and the department's deficient efforts to assist her and cooperate with the therapist. See Adoption of Ilona, 459 Mass. at 60.

[14] For similar reasons, we do not agree with Ansel's argument that there was insufficient nexus between the mother's mental health issues, including her anger, and her parental fitness.

The judge found, however, that the therapist's assessments of mother's progress, and of her engagement in therapy, were not credible. Although the judge was also critical of the department's lackadaisical record in communicating with the therapist, the judge did not find that better communication would have allowed the mother to overcome her mental health issues. Nor does the record compel such a finding.

As for the mother's argument that the department's no-trespassing order, barring her from coming to its field office, constituted a lack of reasonable efforts to assist her, the judge found that this "action taken was the result of mother's behaviors, and just as [the department] has a requirement to use reasonable efforts, so does a parent." See Adoption of Daisy, 77 Mass. App. Ct. 768, 782 (2010), S.C., 460 Mass. 72 (2011) (department's reasonable efforts obligation is contingent upon parent's obligation to fulfill various parental responsibilities). The judge also found that in light of the no-trespassing order, the department made alternative arrangements for the mother to visit with the children, meet with the department social worker, and participate in foster care reviews. Accordingly, the judge concluded that the department had met its reasonable efforts obligation. We see no basis to disturb that conclusion or the conclusion that the

mother's unfitness was unlikely to be temporary. See Adoption of Ilona, 459 Mass. at 59.

3. Adoption plans. The mother argues that the judge abused his discretion in approving the department's adoption plans, which called for Ansel and Caroline to be adopted by their respective long-time foster parents. More specifically, the mother claims that the plans violated a department regulation providing that it "shall place a child with the child's full or half sibling(s) unless doing so would be contrary to the safety or well-being of the child or sibling(s), or otherwise not in the child's best interest." 110 Code Mass. Regs. § 7.101(4) (2009). The mother claims that "[g]iven the children's clear bond to each other as reflected in . . . visitation records, separating them is not in their best interests,"[15] and she seeks a remand for further proceedings on what plan would further the children's best interests. Similarly, Ansel argues that approval of the department's plan for him to be adopted by his foster family was contrary to 110

[15] In support of this assertion, the mother cites generally to two trial exhibits comprising 369 pages of records. This does not constitute an adequate "citation[] to the . . . part[] of the record on which the appellant relies." Mass. R. A. P. 16 (a) (9) (A), as appearing in 481 Mass. 1629 (2019). See also Mass. R. A. P. 16 (a) (7), as appearing in 481 Mass. 1629 (2019) ("each statement of fact shall be supported by page references"). In any event, we find no reference in the records to any "bond" between the children.

Code Mass. Regs. § 7.101(2) (2009), which requires the department to give priority to placement with a kinship family, "consistent with the best interests of the child."

The judge, however, made detailed, careful findings about both the department's adoption plans and the mother's proposal that either her sister or John's mother be considered as adoptive parents for one or both children. The mother's proposals were made just before trial; both the sister and John's mother presented several atypical issues; and the department had not yet fully evaluated the suitability of either of them as a potential adoptive parent, let alone whether it was in the children's best interests to remove them from their long-time foster parents and place them together with the sister or John's mother. Moreover, the judge observed that, although the mother had proposed those two relatives as adoptive parents, at trial she "focused on return of each and both of the children to [herself], and did not advance any evidence as to a permanent placement nominee." The judge thus found that "adoption by the pre-adoptive parents with whom he/she is now living serves the best interest of each child." This was not an abuse of discretion; the judge made no "clear error of judgment in weighing the factors relevant to the decision such that the decision falls outside the range of reasonable alternatives" (quotation and citation omitted). L.L. v. Commonwealth, 470

Mass. 169, 185 n.27 (2014). See Adoption of Ulrich, 94 Mass. App. Ct. 668, 679-680 (2019) (no abuse of discretion in declining to place siblings in same adoptive home, where they had longstanding and successful placements in separate foster homes).

Just before oral argument in this case, the mother and Ansel moved to expand the record to include evidence that, sometime after trial, both children's preadoptive placements had been "disrupted" and might no longer be viable. The department and Caroline opposed the motion. We deny the motion, because the proffered material is irrelevant to the issue now before us: whether, based on the evidence at trial, the judge abused his discretion in approving the department's adoption plans. See Adoption of Willow, 433 Mass. 636, 644 n.8 (2001); Adoption of Ulrich, 94 Mass. App. Ct. at 680; Adoption of Scott, 59 Mass. App. Ct. 274, 277 (2003). Posttermination developments that affect the department's progress in implementing an adoption or other permanency plan should be addressed at the permanency hearing mandated by G. L. c. 119, § 29B. See Adoption of Nate, 69 Mass. App. Ct. 371, 375 (2007).

4. Posttermination and postadoption visitation. The mother argues that the judge abused his discretion in ordering only six posttermination visits with the children each year, and, once they were adopted, only four visits per year. The

mother argues that this was a sharp reduction from the number of her pretermination visits -- weekly, or fifty-two per year -- and that the judge did not adequately explain how the reduction furthers the children's best interests.

We evaluate this argument in light of the principle that "[t]he purpose of such contact is not to strengthen the bonds between the child and his biological mother or father, but to assist the child as he negotiates, often at a very young age, the tortuous path from one family to another." Adoption of Vito, 431 Mass. 550, 564-565 (2000). Moreover, any order for postadoption visitation is an "intrusion . . . on the rights of the adoptive parents, who are entitled to the presumption that they will act in their child's best interest." Adoption of Ilona, 459 Mass. at 64-65. Accordingly, the frequency of visitation between a parent and a child in foster care will often be reduced (if not eliminated entirely) once parental rights have been terminated. We know of no mathematical formula for determining the appropriate frequency of such visits; much must be left to the judge's discretion.

Here, in closing arguments, the mother's counsel told the judge that, if her rights were terminated, "there's no number that she's going to be happy with," and "she wants as much visitation as you'll give her." "She would like weekly visitation. She would like daily visitation. But if I throw in

a number of four or six or what we typically throw out in [c]ourt, then I'm going to be triggering her and making her angry, and that's not part of what I want to do today." In light of these statements, and the mother's failure to argue to the judge that more than six annual posttermination visits and four annual postadoption visits were warranted for any particular reason (let alone one based on the children's best interests rather than the mother's wishes), the judge did not abuse his discretion in not explaining in more detail how he arrived at the numbers of visits that he ordered.[16]

Ansel, for his part, argues that the judge abused his discretion in not ordering posttermination or postadoption visitation between him and Caroline. But the judge concluded that "[s]ince the children will[] in all likelihood be visiting simultaneously with mother, per the court's order, a separate order of sibling visitation has not issued. This does not preclude children's counsel from pursuing an order in the future, if it serves the best interest of the child." Ansel fails even to acknowledge this reasoning, let alone explain why it was an abuse of discretion. We conclude that it was not.

[16] On appeal, Ansel joins in the mother's argument that the judge was required to explain his visitation decision in more detail. Ansel made no argument to the judge about posttermination visitation, however, and thus the issue is waived. Even if it were not, we would reject it for the same reasons as we do the mother's argument.

5. Abuse of discretion motion. Finally, Ansel argues that the judge should not have denied the mother's "abuse of discretion" motion, filed in late 2018, for an order requiring the department to remove him from his foster home on the ground that it was unsafe. See Adoption of West, 97 Mass. App. Ct. 238, 243 (2020) ("A claim of inadequate services can be raised by a so-called 'abuse of discretion' motion"). So far as we can tell from the record before us, Ansel did not join in or argue in favor of the motion, and thus it is doubtful whether he has standing to appeal from its denial.[17] Moreover, it is unclear what relief Ansel seeks, or we could order, in light of our determination that the judge did not abuse his discretion in approving the department's plan for Ansel to be adopted by his foster family. See Adoption of Talik, 92 Mass. App. Ct. 367, 374-375 (2017) (noting but not deciding question whether mother's appeal from denial of abuse of discretion motion, which had challenged child's pretrial placement, was moot).

Passing over those questions, we see no abuse of discretion in the judge's denial of the motion. See Adoption of Talik, 92 Mass. App. Ct. at 375 (applying abuse of discretion standard in reviewing judge's action on such a motion). The motion asserted that the foster mother had endangered Ansel by bringing him to

[17] The mother, on appeal, makes no argument with respect to the motion.

the beach without applying sunscreen, causing him to suffer a severe sunburn, and then failing to bring him to a doctor until several days later. After trial, the judge found that the foster mother had admitted that she had neglected to apply sunscreen on the day in question, and that the mother's concern was warranted. The mother filed a 51A report against the foster mother, and the department's investigation disclosed that a doctor had determined that the burn was a second degree (not third degree) burn. The adoption worker also noted that the child was very fair-skinned and that she had seen no other incidents of sunburn. The department therefore screened out the report.

On appeal, Ansel appears to challenge the judge's credibility determinations in connection with this incident.[18] As we have explained supra, such determinations were within the judge's discretion. See Care & Protection of Three Minors, 392 Mass. at 711. Assessing the credibility of a witness is "quintessentially the domain of the trial judge" and is "close to immune from reversal on appeal except on the most compelling of showings," Johnston v. Johnston, 38 Mass. App. Ct. 531, 536 (1995) -- a showing that Ansel has not made here. Moreover, in

[18] Ansel also mentions other, earlier injuries that he suffered while in the foster mother's care. But these were not the subject of or mentioned in the abuse of discretion motion, and so we decline to consider them here.

ruling on the motion, the judge was entitled, if not required, to consider not solely the sunburn incident but also Ansel's overall best interests, as to which the judge found that Ansel was "doing well in his current setting." We therefore decline to disturb the judge's denial of the mother's abuse of discretion motion.[19]

Decrees affirmed.

By the Court (Neyman, Sacks & Lemire, JJ.[20]),

Joseph F. Stanton

Clerk

Entered: May 12, 2021.

[19] Nothing we say regarding that motion is intended to preclude further exploration of the suitability of Ansel's placement, to the extent appropriate, in a G. L. c. 119, § 29B, permanency plan hearing or other applicable procedures.

[20] The panelists are listed in order of seniority.