UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1567 & 1996

September Term, 2014

CONSOLIDATED CASES

IN RE: ADOPTION/GUARDIANSHIP OF
DEVON W. AND PARIS W.

Wright,
Reed,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: June 30, 2015

Devon W. and Paris W. are the youngest biological children of Mr. W. and Ms. S. During the course of their young lives, the boys have developed an intense fear of their father. Mr. W. suffers from anger control issues and the boys have witnessed the physical abuse of their mother at his hands. Despite these instances of domestic violence, Ms. S. has always returned to her relationship with Mr. W., which concerned the Washington County Department of Social Services (the "Department").

The children were declared CINA[1] in 2012 and committed to foster care at that time. The Department filed petitions for the termination of parental rights (the "TPR petitions") on behalf of the children on May 22, 2014. The Circuit Court for Washington County granted the TPR petitions on from the circuit court's grant of the Department's petitions and present three questions for our review.

Ms. S. asks the Court the following question, [2] which we have rephrased:

> Whether the circuit court erred when it determined Ms. S. did not timely file her objections to the petition for termination of parental rights and did not permit her to participate in the associated proceedings.

[1] A CINA is a child who requires court intervention because the child has been abused or neglected, or has a developmental disability or mental disorder, and whose parents, guardian, or custodian cannot or will not give proper care and attention to the child and the child's needs. Md. Code Ann., Cts. & Jud. Proc. § 3-801(f).

[2] Ms. S. originally presented the following question to the Court:

> I. Did the court err in refusing to permit Appellant to participate in the TPR proceeding when she testified she filed her objection in a timely fashion?

Mr. W. asks the Court several questions,[3] but we believe they are better expressed as two questions:

> I. Whether the circuit court erred in its consideration of the statutory factors in § 5-323 of the Family Law Article ("FL") of the Maryland Code (1984, 2012 Repl. Vol.);
>
> II. Whether the circuit court did not make the necessary factual findings under FL § 5-323.

We answer all questions in the negative, and, as we shall explain, hold that the circuit court correctly granted the Department's TPR petitions. Accordingly, we affirm the judgment of the circuit court.

[3] Mr. W. originally presented the following three questions to the Court:

> I. Did the trial court err by not addressing the factors enumerated in the Statute (Md, Family Law Sec. 5-323) and to making the specific consideration and findings as to the specific statutory factors?
>
> II. Did the trial court err by its implicit finding that reasonable efforts to reunify the children with their parents had been made by the Department, where the foster care worker stated that she had no contact with father, very little with mother, had offered neither of them services, and where court-ordered therapy for the children had been delayed for nearly 18 months at the outset of the case?
>
> III. Did the trial court err in finding the evidence sufficient to terminate the parents' rights, where examination of the required factors would indicate that the parents would prevail on most?

FACTUAL AND PROCEDURAL BACKGROUND

Mr. W. and Ms. S. have been in a relationship for more than twenty-one years, and much of it has been unstable. Both Mr. W. and Ms. S. have children from prior relationships; Mr. W. has four children,[4] and Ms. S. has an adult child, Brittany. Together, Mr. W. and Ms. S. have three children: an adult child named Brandon, and the two minor children who are at the heart of this appeal, Devon W. and Paris W. (a.k.a. "Dylan").

Mr. W. is, by all accounts, a fear-inspiring individual. He claims to suffer an uncontrollable anger that stems from years of childhood physical, mental, and sexual abuse at the hands of his father. This anger has affected numerous individuals, from strangers to Ms. S. and his children. For example, he testified to having engaged in "at least" thirty fistfights as an adult, and further stated he had served several terms of incarceration for assault. Mr. W. has also injured his children severely in the past. For example, in an incident where his oldest son, Randy Jr., struck Mr. W. in his testicles, Mr. W. responded by picking up and squeezing Randy Jr. with such force that he ruptured his son's appendix.

Ms. S. has frequently borne the brunt of Mr. W.'s anger. He has forced Ms. S.' head through a window and made her sleep outside. When she was pregnant with Dylan, Mr. W dragged her down the stairs, and in other instances, choked and punched her in the

[4] The record only contains the names of three of those children, who are now adults: Randy, Jr., Betty, and Jason.

face. Indeed, Dylan has spoken of Mr. W. with an "intense fear," and Mr. W. has stated he has no intention of seeking help to manage his anger problems.

Although Ms. S. frequently sought the assistance of the Department and numerous domestic violence organizations, she often reconciled with Mr. W. They even reconciled after she moved out of the State to escape his abusive behavior. As a result of Ms. S.' pattern of reconciliation, the Department chose not to provide Ms. S. with housing assistance after she reported a domestic violence incident in January 2012—the incident that ultimately led to this appeal.

Devon is the older of the two minor children. Devon, along with his brother Dylan, has been living with his foster mother Shantell D. in North Carolina since 2012. Devon is adamant that he wants no relationship with his biological parents, and is unequivocal in his desire to remain with Ms. D. and be adopted by her. When the boys were placed in Ms. D.'s foster care in early 2012, Devon remained so fearful of his father that he would sleep under his bed on the second floor of the home. He explained he did this because he feared his father would enter the window of the bedroom and kill him.

The younger of the two minor children, Dylan, is grappling with personal and academic challenges. He is described as a reserved child who is less talkative than his brother. Per his therapist, Dylan struggles with verbal expression and is receiving school assistance for a potential language disorder. Despite his reserved nature, Dylan has stated he is happy in his foster home and wishes to remain there. When Devon slept under the bed in Ms. D's Maryland home, Dylan frequently slept next to his brother. Dylan has also

repressed memories of his parents after their 2013 phone calls; his therapist believes the repressed memories may be a method of coping.

Ms. D. relocated to North Carolina from Maryland in June 2012, and it was only after they moved that Devon grew comfortable enough to sleep in his bed rather than under it. Nevertheless, when Ms. S. was permitted telephone visitation with Devon and Dylan, she still sought to have the children speak with Mr. W, explaining that "You are upsetting him" and "I don't know why you won't talk to him." After these calls, the boys not only refused to speak with Ms. S., but they experienced a regression in their well-being.

In 2013, the boys also had occasional phone calls with their older brother Brandon. But, like the phone calls with Ms. S., those were also damaging to their personal progress. Brandon mentioned their parents on several occasions and how they both loved and missed Devon and Dylan, which upset the boys.

As the TPR case proceeded, the boys' travel to Maryland for matters related to the circuit court case became necessary. The stress and anxiety related to the travel, however, manifested itself in physical symptoms. Before and after traveling to the State, Devon experienced two incidents of bedwetting—a particularly unusual occurrence for him. Dylan also presented symptoms before the trip, such as bedwetting and diarrhea, and on the return trip, he soiled himself and Ms. D. had to make frequent rest stops for him.

The parents' relationships with their daughters are also significantly damaged. Ms. S. and, in particular, Mr. W. have been accused of the sexual abuse of their daughters. In 2005, Mr. W. was convicted of the fourth-degree sexual abuse of his daughter Betty, and

of contributing to the delinquency of a minor. Seven years later, in 2012, both parents were incarcerated on March 24, 2012, for charges arising from the child sexual abuse of Brittany after revelations of the abuse came to light in a CINA hearing earlier that year. Brittany testified at the 2014 TPR hearing that Mr. W. had started sexually abusing her when she was five years old and that he threatened to kill her if she were to tell anyone of the acts. She further testified Mr. W. had used physical objects in the abuse. In addition, Brittany testified to Ms. S.' participation in the sexual abuse. Brittany recounted one incident where Ms. S. watched her as she was forced to engage in oral sex on Mr. W. In another incident, Ms. S. made Brittany watch her and Mr. W. engage in sexual intercourse when she was seven years old.

Mr. W. and Ms. S were incarcerated for the majority of 2012. The State *nol prossed* Ms. S.' charges and she was released in early January 2013. Mr. W. was acquitted at trial and released in February 2013. After the charges were resolved, the parents attempted to reconnect with Devon and Dylan through phone visitation, but as noted, the children were not receptive to the parents' overtures.

After the children were declared CINA following the May 24, 2012, hearing, the Department filed its TPR petitions for Devon and Dylan on May 22, 2014. Ms. S. was served with the petitions a week later on May 29, 2014. The circuit court held a hearing on the petitions on August 25, 26, and 28, 2014. The State initially argued Ms. S. failed to file timely her objections to the TPR petitions, and the circuit court heard Ms. S.'s testimony with regard to her filings. The court determined her testimony was not credible, and, as a result, found the failure to file was a deemed consent to the termination

of her parental rights and that she could not participate in the case as a party. The court then considered Mr. W's case on the merits and determined the best interests of the children demanded his parental rights be terminated. A judgment was entered on October 16, 2014.

Mr. W timely noted his appeal on October 27, 2014, and Ms. S. timely noted her appeal on October 28, 2014.

DISCUSSION

A. Parties' Contentions

Ms. S. argues she was deprived of her liberty interest in parenting her biological children. She contends the circuit court erred when it found she had not timely filed her objections to the TPR petitions. Existing Maryland case law, she explains, allows a biological parent represented by counsel who has received proper notice to participate in TPR proceedings notwithstanding a late-filed objection. *See In re Adoption/Guardianship Nos. T00130003 & T00130004* (*In re Latisha W. & Dontae W.*), 370 Md. 250, 262 (2002). Participation depends on 1) if the late filing was the result of an exceptional circumstance of such a compelling nature that it would implicate fundamental fairness if the parent were not permitted to participate; and 2) if the late filing was the product of duress or misrepresentation such that the decision not to object was not a product of free will. *Id*. Ms. S. argues that, in addition to the circumstances outlined in *In re Latisha W. & Dontae W.*, her case presents a novel third circumstance: whether a genuine dispute exists that a biological parent has properly filed an objection. She then explains her case meets these existing and novel criteria. She states the absence of her timely filed

objections presents an exceptional circumstance; that her vigorous challenge of this case supported the fact that she had timely objected to the petition; that her in-court testimony was corroborated by her adult son Brandon's affidavit; and that both her attorney and Mr. W.'s attorney stated in court that she had timely filed her objections. Accordingly, she argues the evidence supports the fact she timely filed her objections, and that the circuit court violated her constitutional rights when it precluded her from participating in the proceedings.

Mr. W., despite maintaining the position he should not be reunited with the children, argues in his brief that the circuit court erred in granting the TPR petitions and that the children ought to be reunited with Ms. S. He contends the circuit court did not properly consider and address the factors in FL § 5-323(d), and that the evidence presented does not support the court's factual findings under the statute. Moreover, Mr. W. argues the circuit court erred when it did not find the Department had not made reasonable efforts toward reunification in the CINA case, as per *In re James G.*, 178 Md. App. 543 (2008).

With regard to Ms. S.' contentions, the State argues that the issue is far simpler than what Ms. S. would have this Court believe. According to the State, the issue was ultimately a question of Ms. S.' credibility. The circuit court did not find credible Ms. S.' testimony regarding the filing of her objections and the State argues that this Court must defer to those findings. Moreover, the State explains the facts do not support Ms. S.' position. She did not contest service of the petitions and show cause orders, admitted that she understood she would have to file objections, and did not claim she lacked an

opportunity to file those objections. The State concludes Ms. S. could not credibly demonstrate she timely filed her objections, and, accordingly, the circuit court did infringe on Ms. S.' liberty interests in her children and her rights to due process when it excluded her from the TPR proceedings.

The State then turns to Mr. W.'s contentions and explains the circuit court properly considered all the § 5-323(d) factors and made the required findings. It further argues that *James G.* is inapplicable here because the § 5-323(d) does not specify that a court must consider the Department's reasonable efforts. Rather, the statute requires a court to evaluate the Department's provision of services as part of its overall assessment of the applicable factors. The State explains that the circuit court did consider the Department's provision of services, among other factors, while making sure to consider the best interests of the children.

B. Standards of Review

We review a juvenile court's decision to terminate parental rights using three different, though interrelated, standards. *In re Adoption of Ta'Niya C.*, 417 Md. 90, 100 (2010). First, we examine the factual findings of the circuit court for clear error, pursuant to Maryland Rule 8-131(c). *Id.* Second, if there was error as to matters of law, further proceedings will be required in the circuit court unless the error was harmless. *Id.* Finally, if the ultimate conclusion of the circuit court was based on sound legal principles and upon factual findings that are not clearly erroneous, we will not disturb the circuit court's decision absent an abuse of discretion. *Id.*

C. Analysis

i. Filing of Objections

Although Ms. S. seeks to characterize the present case as a factual dispute regarding her filing of objections, we agree with the State that the case ultimately turns on Ms. S.' credibility. If the circuit court accepted Ms. S.' testimony, the circuit court had the power to deem the objections timely filed. But it did not find Ms. S. to be credible and we are bound to examine that determination with deference to the circuit court.

The right to raise one's children is a fundamental liberty interest that courts treat with the utmost of care. *See In re Adoption/Guardianship No. 10941*, 335 Md. 99, 112–113 (1994) (*Ivan M.*) (discussing the place parental rights occupies in the legal culture). The importance of this interest requires that "[t]he welfare and best interests of the child . . . be weighed with great care against every just claim of an objecting parent." *Walker v. Gardner*, 221 Md. 280, 284 (1960). That interest, however, must cede to the best interest of the child. *See Ivan M.*, 335 Md. at 113–14 ("[T]he controlling factor in adoption and custody cases is not the natural parent's interest in raising the child, but rather what best serves the interest of the child."). Accordingly, when the State seeks to deprive parents of this liberty interest, due process requires they be provided with fundamentally fair procedures. *In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 491 (1997).

Maryland Rule 9-107 allows any party with a right to participate in an adoption or guardianship proceeding to file a notice of objection to the adoption or guardianship. *See* Md. Rule 9-107(a). The Rule provides that objections "shall be filed within 30 days after the show cause order [issued per Md. Rule 9-105] is served." *Id.* 9-107(b)(1). If a parent

does not file her objections within the 30-day period, § 5-320 of the Family Law Article ("FL") of the Maryland Code states that she will have consented to the grant of guardianship "by fail[ing] to file a timely notice of objection after being served with a show-cause order[.]" FL § 5-320(a)(1)(iii)(1)(C). The circuit court will treat a case where the parent has failed to file a timely objection as though it were uncontested, absent extraordinary circumstances. *See In re Latisha W. & Dontae W.*, 370 Md. at 261 ("[A] [c]ircuit [c]ourt has no authority to accept a late-filed objection but must treat the case, as to the non-objecting parent, as though it were uncontested.").

Our court system entrusts trial judges with a significant amount of discretion to conduct the proceedings before them. *See Sumpter v. Sumpter*, 436 Md. 74, 82–83 (2013). This discretion is rooted in the trial judge's unique position as the figure closest to the proceedings, with "a perception and understanding of the legal environment in which the case is temporarily mired." *Id.* at 83 (quoting *St. Joseph Med. Ctr., Inc. v. Turnbull*, 432 Md. 259, 275 (2013)). At the crux of this grant of discretion is the expectation that it is "exercised consistent with the spirit of the law while subserving the ends of justice and fairness to the parties." *Sumpter*, 436 Md, at 83 (quoting *St. Joseph Med. Ctr.*, 432 Md. at 275). Accordingly, because of the discretion granted to trial judges, we review their actions only for an abuse of discretion. *Sumpter*, 436 Md. at 82–83.

As the individual presiding over the TPR proceedings, the circuit judge was vested with the discretion to take testimony from Ms. S. regarding her motion for leave to file objections to the Department's petition. This is precisely what is envisioned by "subserving the ends of justice and fairness to the parties[,]" particularly where such a

significant liberty interest is at stake. *See St. Joseph Med. Ctr.*, 432 Md. at 275. The circuit judge properly took testimony from Ms. S. regarding her filing of the objections, and, as the factfinder in this matter, "[j]udging the weight of evidence and *the credibility of witnesses* and resolving conflicts in the evidence [were] matters entrusted to the sound discretion of the trier of fact." *In re Timothy F.*, 343 Md. 371, 379 (1996) (emphasis added); *accord In re Caya B.*, 153 Md. App. 63, 77 (2003).

The circuit judge properly heard and assessed Ms. S.' testimony regarding the filing of the objections. The determination that her testimony lacked credibility is supported by the record. When pressed for specifics as to what occurred on the date of filing, Ms. S. could only respond with vague or hedged responses. She could not recall the exact date she filed the objections, stating only that she believed it to be either June 20 or June 27 of 2014, or what time of day she filed her objections. She could only state she may have completed the filing at mid-morning.

Nor could Ms. S. remember when she was served with the show cause order. She further stated she could not produce a copy of the objections she claimed to have filed timely, or recall what they were called, or even explain why she chose not to make copies of the objections.

We do not begrudge Ms. S.' inability to recall the minute details of filing the objections. Rather, the challenges to Ms. S.' credibility arise from her inability to remember basic details regarding the filings, which, as the Department's attorney rightfully argued to the circuit judge, was something Ms. S. should have remembered given its importance to her argument.

FL § 5-320 does not grant the circuit court the discretion to accept late-filed objections. *See In re Adoption/Guardianship No. 93321055*, 344 Md. at 490, 495. Underlying this lack of discretion is the legislative concern that, in TPR cases, children be placed in permanent homes expeditiously. *Id.* at 495. Only a demonstration of extraordinary circumstances will allow a circuit court to overcome this legislatively imposed constraint on its discretion. *In re Latisha W. & Dontae W.*, 370 Md. at 261. Simply, Ms. S. was unable to proffer a credible explanation for why she could not demonstrate that her objections were timely filed. The circuit court had nothing but her vague and uncertain testimony, plus the affidavits she and her son Brandon submitted, from which it could assess whether there existed extraordinary circumstances to permit her to file objections. Moreover, the circuit court took judicial notice of the procedures of the clerk's office, something courts are permitted to do. *See, e.g.*, *In re Vy N.*, 131 Md. App. 479, 484 (2000) (taking judicial notice that circuit court clerks will receive date-sensitive filings after clerk's office has closed for the day). The court took judicial notice of the clerk's procedures and explained that, in the court's experience, documents may be misfiled, but they are never mis-docketed. And the court undertook its due diligence in this regard, working closely with its clerk's office to determine the objections could not be found in any of the files. The docket reflected this absence of filed objections.

The circuit court properly exercised its discretion and, in fact, acted with great prudence in receiving Ms. S.' testimony, considering the affidavits, and taking judicial notice of the clerk's procedures, given the significance of the liberty interest at stake. But, Ms. S. could not credibly demonstrate any extraordinary circumstances or that she did

indeed timely file her objections. The circuit court acted according to its discretion as trier of fact and did not err when it determined Ms. S. could not participate as a party to the proceedings.

ii. Grant of the TPR Petition

As to Mr. W.'s argument that the circuit court failed to consider properly the factors in FL § 5-323(d), we are not persuaded. Although the circuit court did not engage in a rigid and ordinal evaluation of the factors, the substance of its analysis conforms to the considerations the statute requires a court to discuss. We do not prioritize form over substance and, therefore, require a circuit court to engage in an incantatory evaluation of the factors. *See In re Adoption/Guardianship of Darjal C.*, 191 Md. App. 505, 532 (2010) (quoting *S. Easton Neighborhood Ass'n, Inc. v. Town of Easton*, 387 Md. 468, 495 (2005)). Accordingly, we hold the circuit court did not err in granting the Department's petition.

Consistent with the liberty interest parents have to raise their children free from interference by the State is the existence of a rebuttable presumption in favor of the parents. *See In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 494–95 (2007). The presumption exists to balance this liberty interest with the best interests of the child. *Id.* at 495. That presumption is rebuttable only upon the showing that the parent is either unfit or that there exist exceptional circumstances rendering the parent's continued custody harmful to the child's best interest. *Id.* Given the significance of the interest at stake, the showing of unfitness or exceptional circumstances must be made by clear and

convincing evidence. FL § 5-323(b); *accord Darjal C.*, 191 Md. App. at 530 (quoting *Rashawn H.*, 402 Md. at 499).

The § 5-323(d) factors serve as both guidance for and limitations on the circuit court when it considers whether the termination of parental rights would serve the child's best interest. *Darjal C.*, 191 Md. App. at 530. The solemn task of determining whether the termination of parental rights is warranted requires the court to consider the relevant statutory factors and to make "specific findings based on the evidence with respect to each of them[.]" *Id.* at 531. If the court *expressly* determines its factual findings sufficiently demonstrate unfitness or exceptional circumstances requiring the termination of parental rights, and it does so by "articulat[ing] its conclusion as to the best interest of the child[,]" then we will determine the court engaged in a proper balancing of the parent's rights with the child's best interests. *Id.* at 531–32 (quoting *Rashawn H.*, 402 Md. at 501).

Accordingly, § 5-323 embodies, at its core, a balancing of interests—the parents' rights are balanced with the best interests of their children. But the statute does not stack the deck against the parents either. The State must be able to demonstrate its agents, whether it is the Department or other social support agencies, provided a reasonable level of services to the parents that would provide them with the tools or assistance necessary to address the problems that resulted in the State's intervention in the parent-child relationship. *Rashawn H.*, 402 Md. at 500–01. That responsibility, however, is balanced with "its duty to protect the health and safety of the children[,]" particularly where the parent remains unable or refuses to care for the children properly. *Id.* The State need not,

for example, find employment for the parent, find and pay for stable housing for the family, or cure, or otherwise lessen, any disability preventing the parent from caring for the child. *Id.* at 500.

To conduct this balancing inquiry properly, § 5-323(d) provides four sets of factors a court must consider when evaluating a TPR petition. The first set of factors considers the services offered by the local social services department to promote reunification of the child and parent. They are listed as follows:

> (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

FL § 5-323(d)(1). In the present matter, the court's opinion made sure to include factual findings relevant to each of the (d)(1) factors. Those findings demonstrated the Department's 15-year involvement with the family, including its most recent provision of a safety plan for Ms. S. following the January 2012 domestic violence incident that led to this appeal. The court's findings also discussed the Department's efforts at reuniting the children with their parents, and highlighted in particular the efforts made by the children's second foster worker, Ms. Hoffman. Furthermore, as noted, the court discussed the Department's safety plan for Ms. S., as well as her subsequent violation of the plan when she failed to keep Mr. W. away from the children. The circuit court properly considered the (d)(1) factors.

At this juncture, we note that we are unpersuaded by Mr. W.'s argument that the Department failed to make reasonable efforts toward reunification. Before a local social services department may seek to terminate parental rights, it must first make "reasonable efforts" toward reunification. *See James G.*, 178 Md. App. at 595–97 (discussing cases where local departments failed to make reasonable efforts *before* seeking termination of parental rights). In Mr. W.'s and Ms. S.'s appeal of the circuit court's CINA determination, we explained in our opinion that "[u]nder FL § 5-525(d)(1), the Department is required to make reasonable efforts in support of a permanency plan of parental reunification" that is established pursuant to Maryland Code (2006, 2013 Repl. Vol.), Courts & Judicial Proceedings Article ("CJP") § 3-823(e)(1). *See In re Devon W. & Paris W.*, No. 625, Sept. Term 2013, slip op. at 17 (filed Nov. 15, 2013) (citing *James G.*, 178 Md. App. at 570) (internal quotation marks omitted). This standard is case-specific, however, meaning the Department is "not required to offer reunification efforts under every set of circumstances[,]" particularly if those efforts would be "futile." *Id.* at 18 (citations omitted). We discussed in *James G.*, for instance, the *Ivan M* case, where the Court of Appeals held that, even if the local department had failed to make reasonable efforts, it would have been "futile" given the overwhelming evidence of the mother's unfitness as a parent. *James G.*, 178 Md. App. at 592–93 (citing *Ivan M.*, 335 Md. at 117–19).

Much more pertinent to the present case was the discussion in *James G.* of our opinion in *In re Ashley E.*, 158 Md. App. 144 (2004). *See James G.*, 178 Md. App. at 593–94. In *Ashley E.*, we determined the local department had made reasonable efforts

toward reunification of the four siblings in its care with their mother. *Id.* at 593 (discussing *Ashley E.*, 159 Md. App. at 146). Despite these reasonable efforts, we determined that a change of plan from reunification to the termination of parental rights was wholly appropriate because the mother had failed to protect her children from sexual abuse in her household, did not comply with service agreements, and did not take responsibility for the trauma they experienced. *James G.*, 178 Md. App. at 593–94 (discussing *Ashley E.*, 159 Md. App. at 146–50, 155–56, 165–66).

In our previous opinion in this case, we determined reasonable efforts were "futile" because both of the parents were incarcerated during the relevant period. *See In re Devon W. & Paris W.*, slip op. at 18–19. Now, however, we determine that the futility arises from the failures of the parents. First, Mr. W. has explicitly stated he does not wish to have rights to the children, and has stated Ms. S. should be reunited with the boys. Yet, Ms. S. demonstrated a failure to abide by the Department's services agreement by allowing Mr. W. back in the home with the children. Moreover, as in *Ashley E.*, the evidence demonstrates that Ms. S. did not protect Brittany from sexual abuse at the hands of her father. The Department did in fact provide reasonable services, but, even if it had not, it would not have made a difference given the derelictions of the parents.

Turning back to the § 5-323 factors, the second group listed in subsection (d)(2) examines the results of the parents' efforts to change such that the children could be returned to the parents' home. The several factors listed under (d)(2) are:

> (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

FL § 5-323(d)(2). The circuit court's opinion is replete with findings that demonstrate the court's consideration of these factors, and are demonstrative of the lack of progress the parents have made. The opinion noted the parents did not have contact with the children while they were incarcerated, and upon their release, the circuit court suspended visitation because it determined it would not be in the children's best interest. In addition, the opinion extensively discussed the existence of parental disabilities. For instance, examples of Mr. W.'s anger issues permeate the opinion—a disability that some of our sister state appellate courts consider as a factor for terminating parental rights. *See, e.g.*, *In re A.J.E.*, 130 P.3d 612, 617 (Mont. 2006) (holding mother's failures to utilize lessons from anger management classes rendered her unfit to parent); *People ex rel. P.K.*, 711 N.W.2d 248, 255, 257 (S.D. 2006) (holding trial court erred in not terminating father's rights due to his failures to eliminate conditions leading to removal of children, which included refusal to follow through on anger management recommendations). The opinion also recounts the testimony of the Department's expert witness, Dr. Carlton Munson, who

stated Ms. S. presents symptoms of depression and paranoia. The opinion does not, however, discuss the provision of additional services because Mr. W. has stated he does not wish to be reunited with the children. The opinion did discuss the testimony of Ms. Hoffman, in which she stated the parents were inconsistently following up on their service agreements, and that Ms. S. has not followed up with the Walnut Street Clinic for mental and physical health services.

The third group of factors entails aggravating circumstances that affect the parents' caregiving, ranging from considerations of child abuse to substance abuse. Section 5-323(d)(3) lists several factors, specifically whether

> (i) the parent has abused or neglected the child or a minor and the seriousness of the abuse or neglect;
> (ii) 1. A. on admission to a hospital for the child's delivery, the mother tested positive for a drug as evidenced by a positive toxicology test; or
>
> B. upon the birth of the child, the child tested positive for a drug as evidenced by a positive toxicology test; and
>
> 2. the mother refused the level of drug treatment recommended by a qualified addictions specialist, as defined in § 5-1201 of this title, or by a physician or psychologist, as defined in the Health Occupations Article;
> (iii) the parent subjected the child to:
>
> 1. chronic abuse;
> 2. chronic and life-threatening neglect;
> 3. sexual abuse; or
> 4. torture;
>
> (iv) the parent has been convicted, in any state or any court of the United States, of:
>
> 1. a crime of violence against:
>
> A. a minor offspring of the parent;
> B. the child; or
> C. another parent of the child; or

> 2. aiding or abetting, conspiring, or soliciting to commit a crime described in item 1 of this item; and
> (v) the parent has involuntarily lost parental rights to a sibling of the child

As with the (d)(2) factors, the opinion contains several findings based in the evidence that Mr. W. has harmed several children, including his own. The court discussed at the outset of the opinion Mr. W.'s prior convictions for the fourth-degree sexual offense and contribution to the delinquency of his daughter, Betty. The court also extensively considered and discussed Mr. W.'s alleged sexual abuse of Brittany. Although Mr. W. was acquitted of the charges, the court found Brittany's testimony credible and described the abuse as "horribl[e]."

The final group of factors considers the children's feelings, adjustment, and well-being. Section 5-323(d)(4) lists a quartet of factors:

> (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.

The circuit court made certain to discuss all of these factors as well and in depth. The court found the children have no emotional ties with their biological parents, stating explicitly "[t]he Court finds that the children have no bond or emotional ties whatsoever toward Mr. W." Conversely, the court also stated the children have an excellent and

loving relationship with their half-sister, Brittany. It also considered the children's relationship with their older brother Brandon, noting the boys initially wanted contact with their brother, but became upset when Brandon attempted to convey birthday wishes from Mr. W. and Ms. S. The court further discussed Ms. D.'s role as foster mother, and explained that both boys were happy and engaged in her home and wished to be adopted by her. The court also highlighted Ms. D.'s active role as foster mother, explaining that the Department is in regular contact with Ms. D. Ultimately, the court found and concluded that the children wished that the parental rights of Mr. W. and Ms. S. be terminated, and that the best interests of the children would be served by terminating the biological parents' parental rights. The court explained that doing so would allow the children to "be able to continue with and conclude their counseling and achieve some normalcy in their lives."

Our review of the court's opinion and the record, as detailed *supra*, demonstrates the circuit court more than adequately considered the necessary factors in FL § 5-323(d). There certainly existed clear and convincing evidence that the continuation of a parental relationship between the boys and Mr. W. and Ms. S. was not in the children's best interests. Moreover, the opinion contained factual findings relevant to the four categories of § 5-323(d) factors and, regardless, it is not necessary that every factor apply or is even found in each case. *See In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 737 (2014). Ultimately, the court concluded—and we agree with the court's findings and

conclusion—that Mr. W. and Ms. S. were unfit to remain in a parental relationship with the children.

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