UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2665

September Term, 2015

IN RE: ADOPTION/GUARDIANSHIP OF S.J.

Krauser, C.J.,
Leahy,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: August 2, 2016

Appellant J.J., the father of appellee minor child S.J., appeals from a judgment of the Circuit Court for Harford County, sitting as a juvenile court, granting the petition of appellee Harford County Department of Social Services to terminate J.J.'s parental rights of S.J. Appellant presents the following question for our review, which we have rephrased as follows:[1]

> Did the circuit court abuse its discretion in terminating appellant's parental rights of S.J.?

We shall answer this question in the negative and affirm.

I.

On December 17, 2014, the Circuit Court for Harford County, sitting as a juvenile court, granted the petition of the Harford County Department of Social Services ("the Department"), to terminate appellant J.J.'s parental rights of his daughter, S.J.[2] Appellant noted an appeal to this Court, and in an unpublished opinion filed on June 10, 2015, we vacated the judgment and remanded to the circuit court because the court had not made an express finding of parental unfitness or the existence of exceptional circumstances required

[1]The question, as posed by appellant, is:

> "Did the court err by terminating parental rights where there was insufficient evidence of parental unfitness or exceptional circumstances required to justify ending the legal relationship between the father and child?"

[2]Appellee S.J.'s mother, B.D., did not object to the court terminating her parental rights and she is not a party to this appeal.

for the termination of parental rights. *In re: Adoption/Guardianship of S.J.*, No. 2251, Sept. Term 2014 (June 10, 2015) (hereinafter *S.J. I*). Upon remand, after an evidentiary hearing, the circuit court granted the Department's petition in a Supplemental Memorandum Opinion, finding both parental unfitness and exceptional circumstances sufficient to terminate appellant's parental rights to S.J.

We recite the facts as set out in our prior opinion in this matter:

> "[S.J.] was born on December 21, 2007. Appellant is [S.J.]'s father and [B.D.] is her mother. On March 24, 2011, the juvenile court declared [S.J.] to be a Child in Need of Assistance ('CINA'), and committed her to the custody of [the Department], placing her in foster care. On June 28, 2012, [the Department] filed a petition to terminate appellant and [B.] D.'s parental rights, which, after a hearing, the court granted on December 17, 2014.
>
> The following evidence was presented at the termination of parental rights ('TPR') hearing. On December 21, 2007, [S.J.] was born drug-exposed and premature. She entered foster care immediately, where she remained until November 16, 2010, at which time appellant took custody of her. In December 2010, [S.J.] developed a severe rash that had spread over her body in the course of five days. Appellant took her to Upper Chesapeake Medical Center where she was admitted for an infection. During [S.J.]'s initial stay, hospital staff encountered problems with appellant and [B.D.], including the fact that they had left [S.J.] alone, despite her young age, that appellant failed to help change and feed [S.J.], and [B.D.] had left [S.J.]'s fifteen-year-old sister, [Sh.], alone in the room with [S.J.], which was against hospital policy. Barbara Mitchell, an investigator with [the Department], received a referral to investigate allegations of medical neglect of [S.J.]. On December 17, 2010, the hospital discharged [S.J.] to her parents' custody.

On February 6, 2011, Mercy Medical Hospital contacted the Harford County Sheriff's Office to investigate a suspected case of medical neglect. [S.J.]'s rash had resurfaced and appellant had sent her and [Sh.] on a bus, alone, to the hospital. Detective Vazquez arrived at the hospital and observed that the rash had covered parts of [S.J.]'s body and there was a strong body odor permeating her hospital room. [B.D.] was in the room and told the officer that [S.J.]'s rash never cleared up since her previous hospital visit and that she had not been bathed because of the rash. In February 2011, [the Department] requested authority to place [S.J.] in foster care, which the juvenile court granted.

Renee Little, a foster care worker, placed [S.J.] with foster parent, Kelly S. During the four months that Ms. Little was [S.J.]'s foster care worker, appellant visited [S.J.] only once. On that visit, [S.J.] was excited initially to see appellant, but soon became frightened. Appellant stated that [S.J.] became defensive and refused to engage with him because the social workers were involved. At an adjudication hearing on March 9, 2011, Ms. Little encouraged appellant to contact her to schedule additional visits, but he failed to do so without explanation.

On April 15, 2011, appellant attended a psychological evaluation with Dr. Nelson G. Bentley, which [the Department] provided. Dr. Bentley determined that appellant was unable to follow through with necessary tasks and that he had difficulty taking care of himself. He concluded, however, that although there were a number of concerns with appellant's ability to parent [S.J.], reunification was a possibility if appellant cooperated with [the Department] and followed recommendations. One of the recommendations was to participate in an anger management program, which appellant never completed.

From June 2011 to May 2012, Katelyn Salmon was [S.J.]'s foster care manager. She offered reunification services to appellant, including supervised visits with [S.J.]. Ms. Salmon noted that appellant visited [S.J.] inconsistently and that he

would cancel and miss visits on several occasions. Ms. Salmon observed that appellant spent a lot of time during a visit on his phone and would interact minimally with [S.J.]. Appellant also liked the fact that [S.J.]'s foster mother was present at the visits so that she could take [S.J.] to the bathroom when necessary.

From July 2012 to March 2014, appellant visited [S.J.] on four occasions, even though [the Department] offered twenty monthly visits. On September 3, 2013, appellant visited [S.J.] at a Chik-Fil-A restaurant where he brought [B.D.] and three of [S.J.]'s siblings. A [Department] social worker testified that appellant and [B.D.] were very 'hostile and argumentative' during the visit, which made [S.J.] upset to the point where she was clinging to the worker's legs and hiding behind her. On another occasion at a [Department] playroom, there was minimal contact between [S.J.] and appellant. The social worker testified that [S.J.] 'appears to know who he is, but they don't really have a lot of interaction.' Appellant never inquired about [S.J.] in between the sporadic visits.

In addition to the supervised visits, [the Department] offered appellant several additional services notwithstanding the fact that he never asked for special services or classes. [The Department] provided transportation services, an anger management program, parenting classes, a substance abuse evaluation and financial assistance. Appellant, at times, refused to use the taxi provided, never completed the anger management program and tested positive for alcohol. As indicated, appellant attended a psychological examination with Dr. Bentley and he completed parenting classes.

On June 28, 2012, [the Department] filed a petition for guardianship seeking to terminate appellant and [B.] D.'s parental rights to [S.J.]. On July 30, 2012, appellant filed a written objection to the termination of his parental rights. [B.] D. did not object. On September 19, 2012, [S.J.], through her counsel, filed a response supporting [the Department]'s petition that 'it is in her best interest . . . for the Department of Social

> Services to obtain guardianship with the right to consent to adoption and/or long-term foster care.'
>
> On December 17, 2014, after a three day hearing, the juvenile court issued an order granting [the Department]'s petition for guardianship seeking to terminate appellant's parental rights to [S.J.]."

S.J. I at 1-5 (internal footnotes omitted). As noted, appellant appealed that judgment, and we vacated and remanded it. *S.J. I*.

At the remand hearing, Deborah Diodoardo, a worker with the Department, testified that S.J. had resided with the same foster family since November 2013, and that family had expressed a desire to adopt S.J. Ms. Diodoardo stated that S.J. had ceased attending therapy because she no longer needed it, and she participated in an after-school Boys and Girls Club, as well as soccer, basketball, and dance classes. Ms. Diodoardo noted that she spoke with appellant and B.D. following a January 2015 court proceeding, but the entire conversation was about the court process, not about S.J. Appellant never called to inquire about S.J. Additionally, Ms. Diodoardo noted that appellant had moved to Baltimore, but he had not provided a current address to the Department. Ms. Diodoardo testified that, through his attorneys, appellant had requested visitation with S.J., but the Department refused his requests, maintaining that visits would be detrimental to S.J. She also noted that appellant had not provided financial assistance to S.J., nor had he sent any gifts or letters to her.

On January 19, 2016, in a Supplemental Memorandum Opinion, the circuit court granted the Department's petition, in which the court found that appellant was both unfit, and exceptional circumstances existed such that it was in S.J.'s best interests to terminate appellant's parental rights. The court stated as follows:

> "This Court will incorporate its earlier Opinion as if fully set forth herein. In addition, additional testimony was taken on December 30, 2015, which went to the issue of exceptional circumstances. Since the March 2014 trial, *the Department's case has gotten even stronger as to the issue of exceptional circumstances* in that [S.J.]'s adjustment in her current placement has flourished. She has been discharged from school-based therapy, as she is no longer in need of the same. She is enrolled in soccer, basketball and dance classes. She attends the Boys' and Girls' Club after-school program and she is doing well in school. Most importantly, her bonding with her foster parents has continued to grow over her two years with them, and they are now an adoptive resource.
>
> Since the March 2014 hearing, *there has been no contact by [appellant], and thus no visitation*; however, the Department has resisted all visitation. [Appellant] has requested visitation through his counsel, but that has been denied by the Department. There was also a hearing in front of Magistrate Hart, who denied his request. Exceptions were heard, but no decision has yet been rendered. Accordingly, the current lack of contact cannot be held against the father, *but based on his prior track records, one has to wonder how much visitation he would have exercised had he been granted the same*.
>
> The Department has opposed the visits, based on the Court's ruling, [appellant]'s sporadic contact before the hearing, his lack of contact for two years, and their feeling that contact at this point would be disruptive to [S.J.]. In addition, appellant has

paid no support and *more importantly, has sent no cards, letters, notes or gifts to or for [S.J.]*.

From this Court's earlier findings and the positive developments in [S.J.]'s placement since the earlier hearing, this Court *finds by clear and convincing evidence that [appellant] is unfit to remain in a parental relationship with [S.J.] and that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to [S.J.]'s best interests such that terminating the rights of [appellant] is in her best interests*.

As to the finding of unfitness, there was no showing of abuse; however, there was evidence of neglect and very poor harmful judgment. He allowed a 14-year-old to take a 3-year-old [S.J.], who was severely ill, on a bus to Baltimore City to meet with the natural mother in order to go to an emergency room. This was partially related to [appellant]'s own financial and physical limitations, but also reflects on severely poor judgment that endangers the health and safety of his child. As found in the CINA decision, [appellant]'s inability and lack of follow-through with medical care caused [S.J.]'s severe eczema to continue to deteriorate and require hospitalization. There was also testimony of [S.J.]'s saturated diaper. [Appellant] has no judgment or awareness of the concerns raised by having a drug-abusing mother with whom [S.J.] has no connection being a presence in his household. His other children's lack of school attendance reflected his inability to monitor children and his inability to follow through with the Board of Education to shorten suspensions. Despite being told what to do in Service Agreements and despite advice and direction from Dr. Bentley, he failed to complete an anger management program, initially failed to attend the parenting class, and failed to improve his cooperation with the [Department] so that he could reunite with [S.J.].

Most dramatic was his failure to maintain contact with [S.J.] and his lack of effort in that regard. In addition, his personality

disorder was described by Dr. Bentley. Accordingly, not only does he have the physical limitations described in the earlier Opinion, but mental limitations, as well, that have contributed to his inability to properly care for and maintain contact with [S.J.]. Dr. Bentley testified to [appellant]'s inability to follow through with things, and such inability has led to his failure in completing basic requirements under the Service Agreements. This serves as an impediment to having [S.J.] return to his care. His inability to comply with the service agreements so as to try to improve his suitability to be a nurturing parent was dramatic. Equally so was his anger and hostility that has been shown throughout this case, both in his dealings with [the Department] and in court.

As cited herein above, this Court has found by clear and convincing evidence that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to [S.J.]'s best interest *such that terminating the rights of [appellant] is in her best interests. This finding is a much stronger case for the Department, even than the unfitness, and is based not only on [appellant]'s deficiencies mentioned in this and the incorporated Opinion, but also through [S.J.]'s adjustment and progress in her current placement*, which is now an adoptive resource. There is some overlap between the deficiencies of [appellant] as have been discussed and this finding of exceptional circumstances; however, there are additional factors.

We are fast approaching the five-year anniversary of [S.J.] coming into care on February 9, 2011. Obviously, we are well beyond the 18-month target of returning [S.J.] to her natural parent. Due to [appellant]'s lack of cooperation, effort, temperament and ability, there has been no progress toward a lasting parental adjustment to warrant a return of [S.J.] to his care. There is no ascertainable time to even gauge when that could happen. In fact, it does not appear that it ever could. During this time, *other than lip service through counsel, [appellant] has been nothing less than horrible in attempting to*

> *maintain any relationship with [S.J.] through his lack of support, gifts, letters and contact. He has made no inquiry about her and has been an abject failure in exercising visitation facilitated by the Department*.
>
> Coupled with [appellant]'s disengagement is the lack of connection by [S.J.] to her biological family. She has no connection to her mother, and the incident at the Chik-Fil-A in September 2013 was a demonstration of the lack of connection to her mother and siblings. As to the few visits by [appellant], they were marked by minimal interaction, with [appellant] spending this precious time with his child playing on his phone by himself.
>
> On the other hand, [S.J.] wants to stay with her current foster family. She has bonded with them and their four children, three of whom are adopted. She is referred to as their child and sister. [S.J.] refers to the foster parents as 'Mom' and 'Dad,' and she refers to the other children as her siblings. She has been a part of this family for two years, and she has flourished, as already mentioned on page 2 of this Supplemental Opinion. Her foster parents were deemed to be an adoptive resource in March 2014. They equivocated at that time as to whether they would adopt or not after just four months of the placement; however, they now unequivocally want to adopt [S.J.].
>
> For the reasons stated both in the Memorandum Opinion dated November 24, 2014[,] and in this Supplemental Memorandum Opinion, this Court finds by clear and convincing evidence that [appellant] is unfit to remain in a parental relationship with [S.J.] and that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to [S.J.]'s best interests such that terminating the rights of [appellant] is in her best interests." (Emphasis added).

The court also denied appellant's request for visitation, finding that visitation would not to be in S.J.'s best interests.

This timely appeal followed.

II.

Before this Court, appellant argues that the trial court erred in granting the petition to terminate his parental rights. Appellant argues that the court's finding that he is unfit to retain parental rights of S.J. was not supported by the evidence because if he were truly unfit, the Department would have removed the other four children in his custody also. Appellant argues that although the court listed a variety of his shortcomings and deficiencies as a parent, the court did not explain how those shortcomings make him unfit to maintain a legal relationship with S.J. Appellant challenges the court's finding of exceptional circumstances. He contends that the court based its findings inappropriately on the fact that S.J. has been doing well in foster care for an extended period of time, and his failure to spend time with S.J. was because the Department blocked his requests for visitation.

Appellee Department and appellee S.J. argue that the court exercised its discretion appropriately in terminating appellant's parental rights of S.J. The Department argues that the court conducted the proper analysis of appellant's fitness or exceptional circumstances, and the best interests of S.J. in making its determination. The Department argues that appellant neglected S.J. during the 11 weeks she lived with him, and failed to show any interest in her well-being over the intervening 5 years.

III.

In a termination of parental rights proceeding, a parent's right to custody of his or her child "must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect." *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 709 (2011) (quoting *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 497 (2007)). We presume that it is in the best interest of a child to remain in the care and custody of the parent. *See In re Adoption of Quintline B.*, 219 Md. App. 187, 201 (2014), *cert. denied* 441 Md. 218 (2015). This presumption may, however, be rebutted by showing that "(1) the parent is deemed unfit, or extraordinary circumstances exist that would make a continued relationship between parent and child detrimental to the child and (2) the child's best interests would be served by ending the parental relationship." *In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 734 (2014). In termination of parental rights cases, the best interest of the child is the ultimate governing standard. *Quintline B.*, 219 Md. App. at 201; *see also* Maryland Code (1984, 2012 Repl. Vol.), § 5-323(b) of the Family Law Article ("FLA") (in order to terminate parental rights juvenile court must find parental unfitness or exceptional circumstances by clear and convincing evidence).

In considering these interests, the court must analyze the factors as set forth in FLA § 5-323(d).[3] In its December 17, 2014 Memorandum Opinion, the circuit court conducted

[3]Maryland Code (1984, 2012 Repl. Vol.), § 5-323(d) of the Family Law Article, lists the factors a juvenile court must analyze in determining the best interests of a child, as follows:

> "(d) Except as provided in subsection (c) of this section [which is inapplicable in this case], 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

(continued...)

[3](...continued)

(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;

(ii) 1. A. on admission to a hospital for the child's delivery, the other 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 or 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 a 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; and

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

(continued...)

a thorough analysis of the facts as they related to the statutory factors. This Court noted that the circuit court's reasoning contained sufficient facts for the court to consider whether to terminate appellant's parental rights to S.J. *See S.J. I* at 11.

The Court of Appeals has explained the role of the circuit court in a termination of parental rights case as follows:

> "The court's role in TPR cases is to give the most careful consideration to the relevant statutory factors, to make specific findings based on the evidence with respect to each of them, and, mindful of the presumption favoring a continuation of the parental relationship, determine expressly whether those findings suffice either to show an unfitness on the part of the parent to remain in a parental relationship with the child or to constitute an exceptional circumstance that would make a continuation of the parental relationship detrimental to the best interest of the child, and, if so, how. If the court does that—articulates its conclusion as to the best interest of the child in that manner—the parental rights we have recognized and the statutory basis for terminating those rights are in proper and harmonious balance."

[3](...continued)

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."

In re Adoption/Guardianship of Cross H., 200 Md. App. 142, 155 (2011) (quoting *Rashawn H.*, 402 Md. at 501). In reviewing a decision of the circuit court, sitting as a juvenile court, ordinarily we apply three different levels of review. *In re Shirley B.*, 419 Md. 1, 18 (2011). First, we review the circuit court's factual findings to determine whether they are clearly erroneous. *Id.* Second, we determine *de novo* whether the court erred as a matter of law, in which case further proceedings will be necessary unless we determine that the error is harmless. *Id.* Finally, we review the circuit court's ultimate conclusion for an abuse of discretion. *Id.* An abuse of discretion occurs "where no reasonable person would take the view adopted by the [trial] court." *Fontaine v. State*, 134 Md. App. 275, 288 (2000) (quoting *Metheny v. State*, 359 Md. 576, 604 (2000)).

Here, appellant challenges the ultimate conclusion of the circuit court to terminate his parental rights. Accordingly, we review this decision for abuse of discretion. A court abuses its discretion where "the decision under consideration [is] well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Jasmine D.*, 217 Md. App. at 734 (quoting *Shirley B.*, 419 Md. at 19). Stated another way, "[u]nder the abuse of discretion standard of review, we will only disturb a court's ruling if it 'does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.'" *In re*

Adoption of Jayden G., 433 Md. 50, 87 (2013) (quoting *King v. State*, 407 Md. 682, 697 (2009)).

We hold that the circuit court did not abuse its discretion in terminating appellant's parental rights. The fact that appellant regained custody of his four other children is a factor to consider, but is not dispositive in S.J.'s case. We recognize that courts may reach different conclusions under FLA § 5-323(d) as to different children of the same parent. *See In re Adoption of Ta'Niya C.*, 417 Md. 90, 116 (2010).

We agree with appellant that the "[p]assage of time, without explicit findings that the continued relationship with [the parent] would prove detrimental to the best interests of the children, is not sufficient to constitute exceptional circumstances." *In re Adoption/Guardianship of Alonza D., Jr.*, 412 Md. 442, 463 (2010). Without more factors, S.J.'s time in the care of foster parents would be insufficient *alone* to support a finding of exceptional circumstances. In this case, however, the court made an explicit finding that a continued relationship with appellant would be detrimental to S.J.'s best interests, relying on additional factors in its finding of exceptional circumstances. The court noted with particular interest appellant's "abject failure" in exercising visitation or staying in contact with S.J.

Appellant has not convinced us that the court failed to take into account that his lack of visitation between the March 2014 trial and the December 2015 remand hearing was due to the Department resisting his requests for visits. The court clearly took this into

consideration. The court called his requests "lip service," and noted that appellant was "nothing less than horrible" in maintaining a relationship with S.J., in that he never called, wrote a letter, or sent her a gift. The court made findings as to appellant's lack of visitation when the Department was facilitating visits and his "minimal interaction" with S.J. at the visits he attended. This Court has recognized that "[it] has long been established that a parent's past conduct is relevant to a consideration of the parent's future conduct." *In re Priscilla B.*, 214 Md. App. 600, 625 (2013) (quoting *In re Adriana T.*, 208 Md. App. 545, 570 (2012)).

The court did not abuse its discretion in terminating appellant's parental rights to S.J.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.