Circuit Court for Montgomery County
Petition No.: 06-Z-16-027

CHILD ACCESS

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 592

September Term, 2017

IN RE: ADOPTION/GUARDIANSHIP OF K.L.

Graeff,
Leahy,
Beachley,

JJ.

Opinion by Leahy, J.

Filed: December 4, 2017

On January 26, 2015, the Department of Health and Human Services removed K.L.—who was just an infant at the time—from the legal and physical custody of her parents following allegations of domestic violence and child neglect. The next day, the Circuit Court for Montgomery County, sitting as the juvenile court, declared K.L., the child of Marcus L. ("Appellant" or "Father") and Ms. Karen M. ("Mother"), to be a Child in Need of Assistance ("CINA").[1] The juvenile court awarded custody of K.L. to the Montgomery County Department of Social Services (the "Department") for placement in foster care. Shortly thereafter, K.L. entered the foster care program and began living with a non-relative foster mother.

More than a year later, on October 27, 2016, the Department petitioned the court for termination of the parental rights after confirming, *inter alia*, that both parents remained unwilling to participate in the majority of recommended parental rehabilitation services, did not have stable housing, and were psychologically incapable of caring for their child. Both Father and Mother opposed initially, but then on February 10, 2017, Mother signed a consent order terminating her parental rights, conditioned on K.L.'s adoption by her current foster mother. On March 13, 2017, following a one day hearing, the circuit court granted the Department's petition over Father's objection, terminated his parental rights, and

[1] A "child in need of assistance" is one who requires court intervention because the child has been abused or neglected, or has a developmental disability or mental disorder; and his or her "parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Maryland Code (1973, 2013 Repl. Vol., 2017 Supp.), Courts and Judicial Proceedings Article ("CJP"), §3-801(f).

granted custody to the Department. Father presents the following questions for our consideration:

1. "Did the lower court err in terminating Appellant's parental rights?"
2. "Did the lower court err in refusing to place K.L. in the care of Appellant's aunt rather than granting guardianship to the Department?"

For the following reasons, we answer both of Father's questions in the negative and affirm the circuit court's judgment.

BACKGROUND AND FACTS

K.L.'s birth and the Department of Health and Mental Hygiene's initial involvement

Father met Mother in the summer of 2013. In early 2014, Father became aware that Mother was pregnant with his child. On June 12, 2014, Father was incarcerated on drug charges.[2] In October 2014, at approximately 31 weeks into her pregnancy, Mother gave birth to K.L., who weighed only two pounds, two ounces. K.L. suffered from several severe medical issues relating to her premature birth and underdevelopment. The following day, Mother tested positive for use of marijuana, although the meconium tested negative for substances. Mother reported to the hospital staff that she had smoked marijuana about three days prior to giving birth. Subsequently, Mother told Child Welfare Services ("CWS") that she had smoked regularly during her pregnancy with K.L.

[2] On April 2014, Father pled guilty to possession of marijuana with intent to distribute. On June 12, Father was sentenced to 1-60 days in prison to be served consecutive to the remaining jail time from a separate 2013 conviction for assault and possession of drug paraphernalia, as he was still on probation in April 2014 for the 2013 conviction.

On November 8, 2014, Father was released from prison and returned to his grandmother's residence. On December 11, while Father and Mother were driving to the hospital to visit K.L., they began to argue. At some point, the argument intensified. Father stopped the vehicle, ordered Mother to exit the vehicle, discarded her belongings onto the road and drove away. Mother then took a bus to the hospital to pick up K.L. When Mother arrived at the hospital, an altercation occurred between Mother and Father, resulting in security being called to escort Father from the premises. Father asserted that he was attempting to get his cell phone from Mother. The security guard asked Father to leave the hospital. After this incident, at the advice of CWS, Mother petitioned for a protective order against Father. A temporary order was granted, but was later dismissed because Mother did not appear for the final protective order. Mother maintains that CWS coerced her to seek a protective order, and would not have done so otherwise.

K.L.'s brief hospital stay

During the time that K.L. was in the hospital after her birth, Mother resided at her grandmother's home with her mother, D.M. On December 16, 2014, K.L. was discharged from the hospital. Mother took physical custody of K.L. and returned to her grandmother's home. Approximately one month later, K.L. returned to the hospital because she was experiencing respiratory problems. K.L. was diagnosed with acute rhinitis, and doctors advised Mother to suction K.L.'s nose. Doctors warned Mother to bring her immediately back to the hospital if K.L.'s condition subsequently worsened. Late in the evening on January 19, 2015, K.L.'s breathing worsened, but Mother was largely unresponsive to the issue and failed to understand the gravity of the situation. Early the next morning, D.M.

woke up Mother and told her to take K.L. to the hospital. Mother refused, so D.M. called 911 and also asked for police backup out of fear that Mother would not allow K.L. to be taken to the hospital. When EMS responders and police arrived, Mother became agitated and defensive. EMS responders informed Mother that K.L. could go into cardiac arrest if medical care was not rendered, and K.L. was transported to the hospital. At the hospital the next day, Mother and Father began arguing in the Emergency Room, but subsequently calmed down and resolved the issue.

Hospital employees became concerned for K.L.'s wellbeing when neither Father nor Mother came to visit her. They did not return to the hospital until January 26, and on that day, while in K.L.'s room, they began arguing once again. When the argument intensified, a security officer asked Father and Mother to quiet down. Father and Mother exited the hospital as they continued arguing, and Hospital employees reported that they "trashed" the room during the altercation. Later the same day, Mother was found "collapsed/unconscious" on the sidewalk outside the hospital and was subsequently transported to the Emergency Room. A discharge report from the hospital indicated that Mother had been assaulted, but Mother denies this, although she told several family members that Father had assaulted her. Later that day, CWS removed K.L. from the physical custody of Mother, and the legal custody of both parents.

The Shelter Care Order

The next day, on January 27, 2015, the Montgomery County Circuit Court, sitting as the juvenile court, issued an interim Shelter Care order and placed K.L. in the temporary care and custody of the Department for future placement in foster care "pending further

court order." The court also found that Father's home was not a viable resource for K.L. because of the allegations of serious domestic violence. The court granted a Shelter Care order after a hearing on February 2.

On February 24, a full adjudication and disposition hearing was held. The court found that efforts to prevent the removal of K.L. from the physical custody of her biological parents had failed, and found that Father was unable and unwilling to provide adequate supervision for K.L. The court ordered Father to visit K.L. twice per week, participate in individual therapy, receive a psychological evaluation, complete a substance abuse evaluation, participate in a bi-weekly urine analysis program, participate in an abused person's program because of the domestic violence allegations, and participate in parenting education.

On March 19, 2015, the Department issued a status report on K.L., reporting on K.L.'s health and any progress towards possible reunification. The report noted that neither parent had complied fully with the court's orders, and that K.L. should continue living in the current foster home. The report also noted that K.L.'s paternal great aunt, Ms. J., had expressed initial interest in becoming a resource for K.L., but the Department's attempts to obtain her fingerprints or an initial interview had failed. Ms. J. told Department workers that she could come the next day, but could stay for only approximately 45 minutes. Workers explained that K.L. would be unavailable for a visit that day, but requested that Ms. J. call back to reschedule a time that she would be available. Ms. J. failed to call to set up a visitation appointment. As of mid-July, 2015, the long-term permanency plan remained reunification of K.L. with her parents.

Issues concerning visitation

In late May of 2015, Father arrived for his scheduled visit with K.L. at the Rockville visitation house ("Visitation House"), and appeared frustrated and angry. Father began cursing and said that he was "tired of this." When asked what he was referring to, Father became angrier and accused the parenting educator of "twisting his words." Father sat down on the floor to play with K.L., and at one point, the parenting educator overheard Father say "kill them, kill them, kill them[,]" to K.L. When the educator attempted to explain to Father how a parent's emotions can adversely influence a child's mood and emotional development, Father laughed, ignored the educator, and continued to play with K.L. The parenting educator suggested to Father that he should feed K.L. Father initially refused, but eventually complied. When the visit ended, Father suggested that the parenting educator should stay with K.L. and subsequently exited the room. Two days later, Mother arrived two hours early for her scheduled visit with K.L. and seemed distraught. When Visitation House staff asked Mother if something was wrong, she began crying and indicated that Father had hit her that morning and threatened to kidnap K.L. Due to increasingly violent behavior from Father, as well as ongoing domestic issues between Mother and Father, the subsequent visits were moved to a different facility.

Permanency Planning Order and possible resources for K.L.

At the beginning of 2016, the trial court held a permanency planning hearing. The Department recommended the Permanency Plan remain the reunification of K.L. with her parents. Although the court did not change the permanency plan in its ensuing order, the court continued custody of K.L. to the Department after finding that neither Mother nor

Father had participated in many of the court-ordered instructions. During March of 2016, Father and Mother's second child, J.M., was born. Shortly thereafter, the court issued an interim shelter care order for J.M. and placed him in the temporary custody of the Department. Shortly thereafter, J.M. was declared CINA.

On April 1, 2016, Father was incarcerated on several charges stemming from various criminal transactions, the most serious being human trafficking by force, and has remained in jail through the present.

In a July 11 permanency plan review hearing order, the court changed the "Permanency Plan for [K.L.] [from] reunification with her biological parents[] . . . to custody and guardianship with" Father's mother, [C.A.]. The court ordered a home study of C.A.'s home. Accordingly, social workers from the Department visited C.A.'s home to determine if she could be a resource for K.L., and during the investigation, interviewed C.A. and her boyfriend. They also conducted an in-depth home safety study. The social workers determined that the home was not safe for K.L. to live in because the smoke detectors in the home did not function properly, the back door was glued shut, and it was unclear how often C.A. actually resided at the house. Additionally, C.A. had 25 traffic offense charges, a second degree assault charge, a past federal charge that "involved children being left in a car[,]" nine tax liens were brought against C.A., and "21 charges that were nolle prosequi in the last 10 years[,]" which presented "a major concern to the Department about [C.A.]'s judgment, willingness and ability to follow the law." In light of this investigation, the juvenile court changed the permanency plan from custody and guardianship of K.L. with C.A. to adoption by a non-relative. Finally, on October 27, 2016,

the Department petitioned the court for termination of both Father and Mother's parental rights. Both parents opposed the petition separately.

A few months later, in early January of 2017, Father's aunt, T.L., contacted the Department and expressed an interest in becoming a resource for K.L. T.L. maintains that Father had called her roughly a year earlier and apprised her of the situation, but she did not want to take K.L. away from C.A., whom she believed would be awarded custody of K.L. This was the first time that the Department learned that T.L. was a possible resource for K.L.

On February 15th, 2017, Father was sentenced to 20 years for human trafficking by force. Father was also sentenced to 10 years for "knowingly harboring, taking, placing or causing another to be placed in any place for prostitution," and another 10 years for second-degree assault. These convictions run concurrent to the 20- year sentence. [3]

Mother's conditional consent

On February 10, 2017, in a custody hearing on behalf of K.L. and J.M., Mother signed a consent order terminating her parental rights to both K.L. and J.M., conditioned both children being adopted by their current foster mother. Father appeared for the hearing and objected to the adoption of both children.

Appellant's non-participation in Department services

During K.L.'s 28 months outside of the physical custody of her parents, Father completed nearly none of the programs besides visitation. Father attended one half of a

[3] These convictions were affirmed on appeal.

two-part psychological evaluation but declined to attend the second half. During this limited evaluation, the psychologist noted that Father is "very narcissistic and self-focused[,] . . . was primarily concerned about how K[.L.] made him feel, and showed absolutely no empathy toward K[.L.]" Although the interview was truncated, the psychologist who performed the testing deduced that Father "appears to meet the criteria for Antisocial Personality Disorder and Major Depressive Disorder."

Additionally, Father did not participate in individual therapy, refused to submit to a substance abuse evaluation, and stated that he did not "feel like" submitting to a urine analysis. At no point did Father participate in any of these services. Father attended his orientation intake for the Abused Persons Program ("APP"), but stated that "[i]t is so BS. I got screwed over. . . . I don't belong there." Father never completed the program, despite repeated offers from the Department to help offset the cost of the sessions. Father also denied that any domestic violence had occurred, adding further that he "should be the victim[.]"

Early in the process, Father consistently participated in visits, at which parenting sessions occurred. During most visits, Father arrived agitated and performed "inspections" of K.L., appearing to never be fully satisfied with her appearance. Father has not visited his daughter since approximately December of 2015.

Termination of Parental Rights (TPR) hearing

On March 13, 2017, the trial court held a one-day hearing to determine whether to terminate Father's parental rights. Through counsel, Father argued that his rights as a

parent should not be terminated, and in the alternative, if his rights were terminated, that K.L. should be adopted by his aunt, T.L., because she was a relative.

K.L.'s foster mother, T.D., testified that she had been taking care of K.L. for two years and four months. She stated that she is a private professional counselor with her own practice and works about 30 hours per week and hires a nanny for about 32 hours per week. She lives with her 10-year-old adopted daughter, K.L., and K.L.'s younger brother, J.M. T.D. is also the guardian of an 18-year-old boy, who lives at the residence.

Ms. Tania Butler, the social worker associated with this case, testified that K.L. would not be safe with Father because of recurring domestic violence, the lack of a stable home environment, and Father's general failure to follow through with services that could rehabilitate him as a potential parent. Additionally, Ms. Butler noted that K.L. had developed a very strong bond with her foster family, and uprooting her from that environment could have detrimental effects on her development. On cross-examination, Ms. Butler admitted that when Father did visit K.L., both she and Father generally enjoyed the visits, and Father expressed concern for her wellbeing.

Father's aunt, T.L., testified that although she worked as a driver for Uber and Lyft at the time, she had "always wanted to do daycare" and would "do it full-time, just so that way [K.L. would not] have to be watched by someone else." But on cross- examination, T.L. testified that she had "not even met [K.L.] or [J.M.]" T.L. testified that while she knew that C.A. and Father were visiting K.L., she did not attend the visitations because of personal illness at the time. T.L. explained to the court that she did not offer herself as a resource for K.L. because she believed that C.A. would adopt the children.

On April 25, 2017, the circuit court granted the Department's petition for termination of Father's parental rights and granted guardianship of K.L. to the Department with the right to consent to adoption. As set forth and discussed further below, the circuit court authored an in-depth analysis of each factor of Maryland Code (1984, 2012 Repl. Vol.), Family Law Article ("FL"), § 5-323(d), and concluded (1) that Father was unfit to care for K.L., and (2) that it was in K.L.'s best interests for the Department to be appointed her guardian with the right to consent to adoption.

This timely appeal followed the circuit court's decision to terminate Father's parental rights and grant guardianship of K.L. to the Department rather than to T.L.

STANDARD OF REVIEW

Appellate review of a trial court's termination of parental rights is subject to three different, but interrelated standards: "(1) a clearly erroneous standard, applicable to the juvenile court's factual findings; (2) a *de novo* standard, applicable to the juvenile court's legal conclusions; and (3) an abuse of discretion standard, applicable to the trial court's ultimate decision." *In re Adoption/Guardianship of C.A. and D.A.*, 234 Md. App. 30, 45 (2017) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). Likewise, "[w]e review a trial court's custody determination for abuse of discretion." *Santo v. Santo*, 488 Md. 620, 625 (2016) (citing *Petrini v. Petrini*, 336 Md. 453, 470 (1994)).

An abuse of discretion is a decision that is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 313 (1997) (citations omitted). When the trial court bases its conclusion upon largely uncontroverted, verifiable

factual findings that are supported by sound legal principles, its decision should remain undisturbed absent a clear abuse of discretion. *See Davis v. Davis*, 280 Md. 119, 125 (1977). Our responsibility as an appellate court is not to reweigh the evidence and re-try the case to determine whether we might have reached a different conclusion, but "whether there was sufficient evidence–by a clear and convincing standard–to support the [factfinder]'s determination that it would be in the best interest of [the child] to terminate the parental rights of [the] natural father." *In re Adoption No. 09598*, 77 Md. App. 511, 518 (1989). In determining whether this evidentiary threshold is met, "we must assume the truth of all the evidence, and of all the favorable inferences fairly deducible therefrom, tending to support the factual conclusion of the trial court." *Id.* On review, we give due "regard to the opportunity of the trial court to judge the credibility of the witnesses[]" in drawing its conclusions. *Id.* (quoting Md. Rule 8–131(c)). This opportunity is "[p]articularly important in custody cases" and great respect must be accorded to findings of witness credibility. *In re Richard H.*, 128 Md. App. 71, 76 (1999).

DISCUSSION

I. Termination of Parental Rights

Father argues that the facts in the record do not support some of the conclusions articulated by the trial court in considering the factors enumerated in FL § 5–323(d). Specifically, Father avers that the trial court erred in: (1) relying on Father's psychological evaluation because it was incomplete; (2) failing to recognize that Father, but for his indigence, would have participated in several Department services; (3) attributing fault to Father for exposing K.L. to domestic violence; (4) penalizing Father for being absent from

K.L.'s life because of his numerous periods of incarceration; and, (5) asserting that "[t]here is no evidence that K[.L.] has any emotional ties/feelings for her father, . . . [as] K[.L.]'s foster mother is the only parent she has known over the last two (2) years." Father also argues that his parental rights were terminated improperly because the trial court determined that K.L. had been adopted by "better" parents and was well adjusted to her foster mother.

The Department argues, to the contrary, that the trial court reviewed the requisite factors thoroughly and drew its conclusions correctly as to Father's absence from K.L.'s life due to incarceration; his inability to care for K.L. physically or emotionally; his blanket refusal to participate in court ordered programs; and, Father's frequent engagement in domestic violence. Additionally, the Department argues that Father's current incarceration–which could potentially extend until K.L. is no longer a minor–prevents him from providing the long-term care that K.L. requires. Moreover, the Department asserts, even if Father were to be released while K.L. is still a minor, Father would need to rehabilitate himself as a parent, which he has largely refused to do up to this point.

As the Court of Appeals has explained, there is "no greater responsibility or more difficult problem than to decide a question respecting the custody of a child." *Hild v. Hild*, 221 Md. 349, 352 (1960). "The Supreme Court and [the Court of Appeals] have long protected the parents' right 'to make decisions concerning the care, custody, and control of their children' under the Fourteenth Amendment of the United States Constitution." *In re Adoption/Guardianship of Jayden G.*, 433 Md. 50, 66 (2013) (quoting *Troxel v. Granville,* 530 U.S. 57, 66 (2000)). Tradition has taught us that it is presumed that parents act in the

best interests of their children, and that for what children lack in maturity, experience, and capacity for sound judgment, their parents will make up. *See id.* at 67 (citations omitted). In TPR cases, the child's best interest, not the right to parent, is, and "'has always been the transcendent standard[.]'" *Id.* (quoting *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 112 (2010); *see also In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 709 (2011) ("In TPR cases, a parent's right to custody of his or her children 'must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect.'" (quoting *In re Adoption/Guardianship of Rashawn H.,* 402 Md. 477, 497 (2007))).

In evaluating whether to terminate a parent's rights to his or her child, the trial court must first determine whether the biological parent is unfit to care for the child. *In re Rashawn H.*, 402 Md. at 498. If the court determines that the biological parent is unable to satisfactorily care for the child, only then does the court determine whether the termination of the parent's rights is in the best interests of the child. *In re Adoption/Guardianship of Jayden G.*, 433 Md. at 95-96; *accord* FL § 5-323(b).[4] In making

[4] FL § 5-323(b) reads:

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

this determination, the trial court is required to analyze the statutory considerations contained in FL § 5-323(d), 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;
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> (ii) the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent; and
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> (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:
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> 1. the child;
>
> 2. the local department to which the child is committed; and
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> 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
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> (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;
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> (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 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; 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 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.

While the trial court is bound to faithfully consider each factor of FL § 5-323(d) individually, "it is not necessary that every factor apply, or even be found, in every case." *In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 737 (2014). What is in a child's best interests is not a formulaic solution, and should be determined on a case-by-case basis. *Taylor v. Taylor*, 306 Md. 290, 303 (1986). Additionally, it is not necessary that every factor be satisfied in order for the court to grant or deny a petition to terminate a parent's rights. *See In re Amber R.*, *supra,* 417 Md. 701, 715-19 (2011) (noting that although a parent may satisfy some of the requisite factors but fail on others, the decision to terminate parental rights based on the weighing of these factors remains within the discretion of the trial court).

In this case, the trial court performed a comprehensive analysis of the services offered to Father to achieve reunification with K.L. under FL § 5-323(d)(1); Father's efforts to amend his behavior so that K.L. could return home under FL § 5-323(d)(2); the existence and severity of aggravating circumstances such as criminal convictions and neglect under

FL § 5-323(d)(3); and K.L.'s feelings, adjustments, and best interests in her new placement with her foster mother under FL § 5-323(d)(4). The trial court explicitly found that:

> The Department has offered services to [Father] for an extended period of time, but he has been willfully absent. Specifically, he has been unavailable mentally and later physically unavailable. K[.L.] could never have been stable and secure in [Father]'s care and custody. K[.L.], by contrast, has thrived, as she is in a safe and consistent place. Her foster mother has adjusted her life and the lives of her other children to K[.L.]'s needs, which is all to the benefit of K[.L.]. A parent who willfully absents himself from any meaningful contact with the child over a period of time eventually removes himself as an option to parent his child, especially where the child's caregivers are willing to adopt.
>
> [Father] had and continues to be possessed of many barriers to Reunification, *inter alia*: issues attendant to his involvement with the criminal justice system, lack of stable housing, inability to take care of himself, and inability to provide a safe and stable home for K[.L.] after more than a year and a half of Department intervention not to mention his antisocial personality disorder diagnosis. The Court finds that [Father] is not a fit parent for K[.L.] and likely will not take the steps to become a fit parent in the foreseeable future. He is unfit because he has abandoned K[.L.] to her mother when she was clearly not able to be the Reunification resource, and to the child welfare system, with evidently no thought to maintaining any type of bond, relationship or even contact with K[.L.].
>
> K[.L.] is best served by having real permanency. She has a strong, loving relationship with the foster family, her brother J[.M.] and her foster-siblings.
>
> * * *
>
> Taking all of the above into consideration, the Court finds by clear and convincing evidence that [Father] is unfit, and that he poses an unacceptable risk to K[.L.]'s future safety. As such, it is in K[.L.]'s best interest that the parental rights of [Father] be terminated.

In addressing K.L.'s emotional ties to Father and his ability to care for her emotionally, the court noted that, at the outset of the case, Father frequently visited his daughter, and "showed real interest in [her]." Despite his initial willingness to visit his

daughter, however, the court observed that Father "showed no interest in engaging in the services . . . necessary to the resumption of his role as a father."

We conclude that the trial court's findings were not erroneous. First, we note that the psychological testing, while incomplete, was only incomplete because of Father's failure to appear for testing, despite scheduling three additional appointments in which Father neither appeared nor called to cancel. Regardless, the psychological evaluation rendered in this case and the weight that it should carry "is a question for the fact finder. 'The trier of fact may believe or disbelieve, accredit or disregard, any evidence introduced. We may not—and obviously could not—decide upon an appeal how much weight must be given, as a minimum to each item of evidence." *Walker v. Grow*, 170 Md. App. 255, 275 (2006) (quoting *Great Coastal Express, Inc. v. Schruefer,* 34 Md. App. 706, 725 (1977)) (internal citations omitted).

Second, the court's finding that Father had exposed K.L. to domestic violence is supported by the record pronouncedly. On numerous occasions, Father subjected Mother to brutal bouts of domestic violence which made K.L.'s residence within the home dangerous to her wellbeing. First, on the way to the hospital to visit their daughter, he made Mother get out of his vehicle and left her on the side of a road. Later, at the hospital, Father threatened to physically assault Mother in the presence of staff members. Next, while visiting their daughter in the hospital, Father and Mother became embroiled in a screaming match in K.L.'s room, which resulted in the room being "trashed" during the argument. Subsequently, the argument continued outside, and shortly thereafter Mother was found collapsed and possibly unconscious on the ground with injuries consistent with

a physical assault. Then, during a scheduled visit with K.L., Mother reported that Father had physically assaulted her and threatened to kidnap K.L. Due to the severity of the reports of domestic violence between Father and Mother, and the "safety for the other families at the Visitation House," the Department was asked to find another place for the visitations. Finally, the ongoing violence between Mother and Father became so severe that the criminal justice system was forced to intervene. On October 8, 2015, Father was found guilty of affray[5] due to an altercation between him and Mother. The vast array of domestic abuse incidents between Father and Mother—several occurring right in front of the child—provided more than enough support for the court's finding that K.L.'s presence in Father's care would be contrary to her safety and wellbeing.

Third, Father's argument that he did not participate in court-ordered services solely because of his indigent status and periods of incarceration, is meritless and incorrectly reflects the offer the Department made to assist in covering the costs of the sessions for the Abuser Intervention Program. As the July 2015 Department status report reflects, even when not incarcerated, Father declined to attend the Abuser Intervention Program after he decided that "he didn't need to be in the program."

Father's fourth contention that the court erred in finding that he willfully "absented himself" from K.L.'s life because of his incarceration is equally unavailing. Father cites and relies on *In re Adoption/Guardianship Nos. CAA92–10852 and CAA92–10853*, 103

[5] Affray is defined as "the fighting together of two or more persons, either by mutual consent or otherwise, in some public space, to the terror of the people." *Nottingham v. State*, 227 Md. App. 592, 602 (2016) (citation omitted).

Md. App. 1 (1994), for the notion "that incarceration of a parent does not *per se* justify the termination of parental rights." That case, however, is easily distinguishable from this one. In that case, the children's father had been arrested and incarcerated on drug distribution charges. *Id.* at 8. He was sentenced to two years of probation, and was required to complete a nine-month drug treatment program. *Id.* When the petitions to terminate the father's parental rights were heard, he was still in jail awaiting the start of his drug treatment program, which was scheduled to begin at the end of the month. *Id.* at 8-9. The trial court held that the father's incarceration was a "disability" under FL § 5-313(d)(i).[6] *Id.* at 9. In ruling that an incarceration was not a disability under FL § 5-313(d), and subsequently that a prison term does not *per se* extinguish a parent's right in his children, *id.* at 29-30, this Court held that because the father's "incarceration was temporary, and not permanent or long-term in nature as section (d)(1)(i) contemplates[,]" his prison term did not render him "consistently unable" to provide for his children for long periods of time. *Id. See also In re Adoption/Guardianship No. J970013*, 128 Md. App. 242, 252-54 (1999) (holding that

[6] At the time *In re Adoption/Guardianship Nos. CAA92–10852 and CAA92–10853* was decided, the applicable statute contained in the Family Law Article set forth several factors that courts were obligated to consider when making custody determinations after the child had "been adjudicated to be a child in need of assistance, a neglected child, an abused child, or a dependent child[.]" Maryland Code (1984, 1991 Repl. Vol.), FL § 5-313. Under § 5-313(d)(1)(i), courts were required to consider whether "the natural parent has a disability that renders the natural parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for long periods of time."

FL § 5-313 was subsequently amended and restructured, and became the modern FL§ 5-323. FL § 5-323(d)(2)(iii), however, is substantively equivalent to the old § 5-313(d)(1)(i), requiring a court to consider "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" when the grant of guardianship is nonconsensual.

while a prison term was not a disability, placing male child in "suspended animation" while father awaited a parole hearing during his 20 years to life sentence was not in the child's best interests because the father could not provide for the child in the long-term).

In this case, if Father serves his entire 20 year prison term for his human trafficking convictions, K.L. would be approximately 21-and-a-half years old upon his release. Additionally, as the trial court noted correctly, even if Father was released from incarceration, his "past failure to engage in [parental] services" demonstrates that "he would not benefit from further services, nor would he undergo a parental transformation sufficient to alter the trajectory of this case[]" to allow him to provide for K.L. for a long period of time.

Lastly, we address Father's contention that the trial court erred in terminating his parental rights "because [K.L.] could be adopted by 'better' parents[.]" Father cites *In re Yve S.*, 373 Md. 551 (2003), for the proposition that basing the continuation of placement in foster care on the child's progress in the child care environment was "not telling on the main issue" and thus erroneous. *Id.* at 593-94. In that case, a mother and her daughter resided in several states, including Maryland, over a period of several years. *Id.* at 561. When the mother relocated to Maryland, the Department received reports that the daughter was not being properly fed, and that she and her mother were homeless. *Id.* The daughter was placed into the Montgomery County foster care system shortly thereafter. *Id.*

The Department learned that the mother had been diagnosed with bipolar disorder and schizo-affective disorder. *Id.* Additionally, after a psychiatric evaluation, the daughter was diagnosed with several psychological disorders, including "chronic post-traumatic

stress disorder," and showed signs of possible physical and sexual abuse. *Id.* The daughter alleged that she had been molested by one of her mother's boyfriends. *Id.* The Department recommended that the mother receive mental health treatment and participate in parenting classes. *Id.* The mother complied, and the Department reunited the mother and daughter. *Id.* The next year, the Department agreed to the mother's petition to relocate to the Outer Banks of North Carolina, where the mother had leased a mobile home. *Id.* Shortly after the move, however, child welfare authorities in North Carolina felt it necessary to remove the daughter from the mother's care. *Id.* at 562. The mother had been evicted from her mobile home, and had left her daughter "in the care of a 'known sex offender,'" although there was a dispute as to whether the mother had known about the sex offender status at the time. *Id.* The daughter was returned to Montgomery County, Maryland and placed in foster care. *Id.* The mother then entered a service agreement with the Department and agreed to obtain mental health treatment and maintain stable housing and employment. *Id.* The mother obtained emergency treatment, and returned to Maryland the next year. *Id.*

The mother began attending regular mental health treatment sessions in Maryland, began working at a nursing home, and eventually established a stable home. *Id.* She also began regular visitation with her daughter, and in light of her progress, the Department recommended a change in the permanency plan from "TPR/adoption" to "'reunification' with her mother." *Id.* at 562-63. The foster care family, in a letter written to the court, "made a plea for the court to reject the Department's recommendation of reunification, arguing that [the mother], with her mental illness, could not raise a child with [the daughter's] needs. *Id.*

The juvenile court conducted a permanency planning hearing over four days. *Id.* at 563. A few days before the mother was to testify, she lost her job at the nursing home. *Id.* During the mother's testimony, she was visibly nervous, and a social worker assigned to the daughter testified that she believed that the mother was suffering from an impending manic episode. *Id.* at 563. A psychiatrist that had been treating the mother opined that a manic episode was not imminent. *Id.* at 563-64. The juvenile court ordered that the permanency plan pursue long term foster care. *Id.* at 564. At a review hearing nearly a year later, the prediction that the mother would suffer a manic episode had not materialized, and the mother had obtained steady employment making a higher salary. *Id.* The juvenile court ordered that the goal was to seek permanent foster care. *Id.* The mother appealed the court's decision.

After this Court affirmed, the Court of Appeals granted certiorari and reversed the juvenile court's decision. It held that protecting the child from future abuse or neglect is of utmost importance in a guardianship determination. *Id.* at 593-94. Addressing the child's adjustment and happiness with her foster parents, the Court explained:

> "The fact that [a parent] has a mental or emotional problem and is less than a perfect parent or that the children may be happier with their foster parents is not a legitimate reason to remove them from a natural parent competent to care for them in favor of a stranger."

Id. at 594 (quoting *In re: Barry E.*, 107 Md. App. 206, 220 (1995) (alteration in original). Additionally, the Court noted that the mother, through participation in Department ordered services, had evidenced that despite her past, she was stable, dependable, and capable of caring for her daughter. *Id.* at 603-08.

In the current case, Father's rights were terminated not because there was a "better" parent somewhere else, but because he had demonstrably failed to be a stable parent for his daughter. Unlike the mother in *In re Yve. S.*, who had built a stable home for herself and her daughter, had obtained a job to support herself and her daughter, and engaged in numerous Department-ordered services, Father has neglected to take affirmative steps to care for his daughter.

As the trial court noted in the instant case, since K.L. entered the Department's care, Father

> absented himself from his child's life through his actions; specifically, through acts of commission resulting in his incarceration and, during periods when not incarcerated, when he failed to present himself to Court and to the Department to be available for or to engage in services.
>
> * * *
>
> There is no indication in the record that [Father] could ever be ready for Reunification.
>
> No evidence exists to demonstrate that [Father's] situation might somehow improve with more time, and K[.L.] has already been in care for an extended period of time.

The record discloses that Father refused to accept that his history of domestic violence was a serious problem. His conscious decision to participate in domestic violence and serious criminal activity involving human trafficking and abuse, while declining to participate in the numerous rehabilitative problems that were offered to him, taken together, provided the court with ample evidence of his inability to be a parent to K.L. and thus conclude that K.L's best interests would be best served by terminating Father's

parental rights. *See In re Jasmine D.*, 217 Md. App. at 737. For the foregoing reasons, we discern no error and no abuse of discretion in the circuit court's termination of Father's parental rights.

II. Grant of Guardianship to a Non-Relative

A. Appellant's Standing to Challenge[7]

As we recently held in *In re Adoption/Guardianship of L.B. and I.L.*, 229 Md. App. 566 (2016):

> [O]nce an order terminating parental rights becomes final, the parent has no standing to challenge future matters regarding the child. In the situation where a parent challenges the termination of parental rights on appeal, however, we hold that the parent retains standing to raise on appeal an issue relating to "any portion of the process terminating her rights," including the child's placement with the Department. Once the termination of parental rights is affirmed on appeal, however, the order becomes final, and the parent no longer has standing to challenge decisions relating to the child, including the circuit court's order regarding placement of the child.

Id. at 599.

In the current case, Father did not consent to the termination of his parental rights. Because he opposed the granting of guardianship to the Department along with the termination of his parental rights, Father has standing to challenge her placement on appeal.

B. Granting Guardianship to a Non-Relative

Father argues that the trial court erred when it granted guardianship to the Department instead of to K.L.'s great aunt, T.L. In support of this contention, Father argues that various provisions of the Maryland Code display a preference for placing a child with

[7] During the TPR hearing, the Department briefly raised the contention that Father did not have standing to challenge the placement of K.L.

a relative over a non-relative if reunification with the biological parents is impossible. Father asserts that in light of this preference, appointing the Department as K.L.'s guardian with the right to consent to adoption was in error. While Father concedes that T.L. did not make herself available as a resource until January 2017, roughly 2 years after K.L. went into foster care, he argues that T.L. had meritorious reasons for not stepping forward that should have been considered. Additionally, Father asserts that T.L. was a qualified placement source, and her fitness as a potential parent should have been a factor in the placement analysis. Finally, while Father concedes that K.L. has formed a strong bond with her foster mother, Father argues that the Department did not prove sufficiently that K.L. could not form an equally strong bond with T.L. or that the bond she had formed outweighed the preference of placement with a family member.

In response, the Department argues that the primary concern in a guardianship hearing is the fitness of the parent, not the suitability of a relative with whom the child might be placed. In addition, the Department argues that although the capability of a possible resource may be of some relevance, it should not control the court's analysis and effectively abrogate the best interests of the child standard. Finally, the Department avers that even if a home study had been conducted and T.L. was found to be a suitable resource, K.L. had not established a relationship or emotional attachment with her, and uprooting K.L. from her placement with her foster family would be contrary to her best interests.

"When deciding a contested adoption case, a trial court must employ the 'best interest' standard." *In re Adoption/Guardianship No. 2633*, 101 Md. App. 274, 289 (1994). The determination is made at the time of the issuance of the order, not at the time of the

first hearing. *Id.* The trial court is to consider the best interests of the child, not the interests of the potential parent. *Id.* at 291. A critical factor in the custody inquiry—within the larger framework of what is in the "best interests" of the child—is the desire for permanency in the child's life. *See In re Jayden G.*, 433 Md. at 82-84 (analyzing the adverse effects that elongated time in foster care often occur with a lack of known familial permanency). In terms of permanency, adoption is considered the "next best thing" when reunification with a parent proves impossible. *Id.* 84-85. When considering the best interests of the child, the trial court should consider the bond that the child has formed with the potential guardians seeking custody. *See In re Adoption/Guardianship No. T00032005*, 141 Md. App. 570, 604-05 (2001) (finding that the child's emotional ties toward his biological mother seeking custody was an important factor for the court to consider, but it was not individually controlling).

Determining what the "best interests" of the child are in custody cases is a difficult task. *In re Richard H.*, 128 Md. App. 71, 76 (1999). As the Court of Appeals noted in *Taylor*, 306 Md. at 303:

> Formula or computer solutions in child custody matters are impossible because of the unique character of each case, and the subjective nature of the evaluations and decisions that must be made. At best we can discuss the major factors that should be considered in determining whether joint custody is appropriate, but in doing so we recognize that none has talismanic qualities, and that no single list of criteria will satisfy the demands of every case.
>
> We emphasize that in any child custody case, the paramount concern is the best interest of the child.

More recently, in *Petrini v. Petrini*, 336 Md. 453 (1994), the Court of Appeals, in interpreting *Taylor*, held that:

> While custody determinations must be made on a case-by-case basis due to the uniqueness of the fact patterns in such disputes, factors relied upon in past cases can be used to guide the trial court's decision-making process. In this regard, trial courts are endowed with great discretion in making decisions concerning the best interest of the child.

Id. at 468-69 (internal citations omitted). Therefore, in considering what is in K.L.'s best interest, trial courts apply a totality of the circumstances approach, considering each factor but realizing that no one factor will necessarily be dispositive of the inquiry.

Under FL § 5-534(c)(1), the local department with authority to place children in out-of-home placements shall, "as a first priority, attempt to place the child with a kinship parent."[8] However, "[i]f a kinship parent is located **subsequent** to the placement of a child in a foster care setting, the local department may, **if it is in the best interest of the child**, place the child with the kinship parent." FL § 5-534(c)(4) (emphasis added). In other words, as the trial court wrote in its memorandum of law, "[t]he Department may place a child who is already placed in foster care in a kinship placement *only if* it is in the best interests of the child to do so." (Emphasis in original). While placement of a child in the care of a relative is certainly preferable, it is still only one of several factors[9] in the court's

[8] A kinship parent, as defined by statute, is "an individual who is related by blood or marriage within five degrees of consanguinity or affinity under the civil law rule to a child who is in the care, custody, or guardianship of the local department and with whom the child may be placed for temporary or long-term care other than adoption." FL § 5-534(a).

[9] In divorce cases where child custody is contested, the court "may properly consider, among other things, the fitness of the persons seeking custody, the adaptability

determination of what is in the child's best interest, and is not the paramount consideration. *See In re: Richard H.*, *supra*, 128 Md. App. at 75 ("An agency is not required to recommend placement with a relative when such a placement is contrary to the child's best interest. A Department need only 'consider' placement with a relative.").

In *Richard H.*, a young boy was severely abused by his father before the Department intervened and placed him with his paternal grandmother. 128 Md. App. at 73. Unfortunately, due to abuse stemming from his grandmother's boyfriend, Richard was returned to his father. *Id.* After discovering another bout of intense and severe abuse, the Department placed Richard with a foster family. *Id.* at 73-74. The grandmother petitioned for custody and visitation. *Id.* at 73. The court denied the grandmother's petition for custody, but granted supervised visitation. *Id.* at 74. Specifically, in denying the grandmother's custody petition, the circuit court held:

> It's very clear to me that [the grandmother] and her daughter, very much love Richard. But it's also very clear to me that they are not able to provide for him at this time. They do not have[] what this young man needs. And this young man needs stability and he needs to be safe. . . . He will remain in foster care, the specialized foster care program that he's in now.

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of the prospective custodian to the task, the age, sex, and health of the child, the physical, spiritual and moral well-being of the child, the environment and surroundings in which the child will be reared, the influences likely to be exerted on the child, and, if he or she is old enough to make a rational choice, the preference of the child." *Hild, supra,* 221 Md. at 357. We have recognized that the *Hild* factors may be considered in the context of guardianship for CINA children. *In re: Richard H.*, 128 Md. App. 71, 76-77 (1999). However, the general rule when considering placement of a child in the context of a TPR hearing is the fitness of the biological parents to care for the child, not the potential suitability of a relative for the placement for the child. *In re Adoption/Guardianship of Cross H.*, 200 Md. App. 142, 152 (2011).

Id. at 78-79. This Court affirmed the trial court's decision, holding that the trial court was acting in Richard's best interest when it denied the custody petition. *Id.* at 79. As the trial court noted in this case, the analysis in *Richard H.* is not time-centric, but child-centric. What Richard needed was protection and stability. *Id.* at 78. While blood-relation is an important factor to consider, the paramount inquiry is what the child requires at the time of the order.

In the present case, the trial court addressed T.L.'s reasons for not stepping forward as a resource for K.L., and understood that she did not want to undermine her sister, K.L.'s paternal grandmother. As the trial court observed, however, while placing K.L. with a blood relative may have been in her best interest at one point, allowing "yet-undisclosed relatives [to] present themselves late in the CINA case, at the TPR case, and at subsequent CINA hearings following the denial of the TPR[]" places K.L. at the center of the conflict, and further delays permanency in a home.

In the trial court's written opinion, it evaluated what was in K.L.'s best interest at the time it rendered its order. As to her bond with her foster mother, biological brother, and foster siblings, the court found:

> Since January of 2015, when K[.L.] was placed in her current foster home, she has become very bonded with her foster mother, her brother J[.M.] and her foster siblings. There is no evidence that K[.L.] has any emotional ties/feelings for her father, which would be unlikely anyway as K[.L.] is still very young. K[.L.]'s foster mother is the only parent she has known over the last two (2) years. Given her tender years, it is unlikely that she has significant memory or knowledge of her father.

Regarding K[.L.]'s adjustment to the community and new home, the court found:

> K[.L.] has adjusted well to her community with the foster mother. Her community consists of the foster home, foster family and the foster parent's relatives. The foster mother testified that K[.L.] came into the foster home and was welcomed with security, safety and love. She continues to reside in that safe haven. As a result of the care and attention of the foster mother and her children, K[.L.] has thrived.
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> * * *
>
> K[.L.] resides with her foster mother and is surrounded by the foster family – a family whom she loves and who love her. This Court has already found at the Permanency Planning Hearing that K[.L.] would be subject to potential emotional, developmental and educational harm if she were to be removed from her foster home.
>
> * * *
>
> K[.L.] has thrived in her foster placement. The Social Worker testified about K[.L.]'s affection towards her foster parents and her growth overall, that all of her shelter, food, clothing, medical and emotional and safety needs are met in her placement.

Considering the totality of the circumstances in K.L.'s life, keeping in mind the importance of placement with a blood relative, the trial court found that

> T[.L.] might have been the best possible resource for K[.L.] at some time in [the] past. However, she is not such a resource now, in light of K[.L.]'s placement and development over the last two (2) years, and in light of K[.L.]'s relationship with her foster family. In addition, K[.L.]'s Shelter Care Hearing was held on February 2, 2015, so [T.L.] should have presented herself long before the March 2017 Hearing.

We conclude that the trial court sufficiently considered K.L.'s best interests when it granted guardianship with the Department as opposed with her great aunt, T.L. Much like the Court's decision in *In re Richard H.*, we look to K.L.'s best interests at the time of the order. While placement with a relative is an important consideration, it does not trump her needs for security and permanency. K.L. has not developed a bond with her great aunt;

she has yet to meet her. Uprooting K.L. from her foster family—which she has developed deep bonds with—to place her in a home with a woman she has never met would likely have lasting adverse effects on her development and would not be in her best interests. Therefore, we affirm the trial court's order, and hold that the trial court's award of guardianship to the Department with the right to consent to adoption was not an abuse of discretion.

JUDGMENT OF THE CIRCUIT COURT OF MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.