

Circuit Court for Baltimore City
Case No.: T15135009

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 614

September Term, 2017

IN RE:

ADOPTION/GUARDIANSHIP OF M.C.

Nazarian,
Shaw Geter,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: November 2, 2017

*This is an unreported opinion, and may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This is the second appeal from an order of the Circuit Court for Baltimore City terminating appellant's parental rights to child, M.C. In this appeal, appellant challenges the circuit court's findings of exceptional circumstances that made the continuation of a parental relationship detrimental to the child's interests without a finding of parental unfitness. Appellant is the father of M.C., born in July 2013. One month after her birth, M.C. was removed from the custody of her mother C.C., following allegations of neglect. The Department of Social Services placed M.C. in shelter care and on November 6, 2013, the Circuit Court for Baltimore City declared her a Child in Need of Assistance (CINA). M.C. has had six foster care placements since 2013.

When M.C. was born, appellant was incarcerated. According to him, he did not become aware of her existence until 2014. Appellant then began working with the Department to obtain custody of M.C. He participated routinely in supervised visits with her at the DSS office. However, he repeatedly refused to cooperate with the Department in their attempts to provide reunification services or to verify adequate housing and employment. In May 2015, the Department filed a petition to terminate his parental rights.

The Termination of Parental Rights Hearing (TPR Hearing) was held in August of 2016 and, on October 26, 2016, the court issued its order terminating appellant's parental rights, finding it was in the best interests of M.C.. Mother had conditionally consented to guardianship and thus was not a party to the proceeding. Father appealed and this Court vacated the order, finding "the circuit court committed reversible error because the court failed to make the required determination regarding either parental unfitness or exceptional circumstances." We ordered the case be remanded. At the second TPR Hearing, the circuit

court found exceptional circumstances existed that made the continuation of a parental relationship detrimental to the child's interests and thus, terminated appellant's parental rights. Appellant brought this timely appeal and presents us with the following question:

Did the juvenile court err in concluding that exceptional circumstances existed to warrant terminating appellant's parental rights in M.C.?

For reasons to follow, we answer the question in the negative and affirm the judgment of the circuit court.

BACKGROUND

M.C. was born in July of 2013 to C.C., who at the time was in the foster care system. M.C.'s father, Mr. G. (appellant) was incarcerated when M.C. was born, for violating his probation on a second degree rape conviction. He claims he was unaware that C.C. was pregnant or that M.C. had been born. In August of 2013, M.C. was placed in shelter care by the Baltimore City Department of Social Services (the Department or DSS),¹ following allegations of neglect by C.C.. On November 6, 2013, the Circuit Court for Baltimore City declared M.C. a child in need of assistance (CINA).² Because appellant's identity remained unknown to the court and the Department, he was not notified of the hearing.

¹ After being removed from her mother's custody, M.C. was placed in five separate foster-care placements before being placed with her current, pre-adoptive foster family on July 10, 2014.

² Maryland Code, Courts and Judicial Proceedings Article § 3-801(f) defines a "child in need of assistance" as "a child who requires court intervention because: 1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and 2) The child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs."

Subsequently, appellant learned of M.C.'s existence and attended a review hearing held in June of 2014.

Brenda Baskins, the assigned DSS case worker, had been working with C.C. since March of 2012. Baskins first met appellant at the June review hearing, where he stated that he wanted to become a resource for M.C.. Appellant requested a DNA paternity test, as well as visitation, pending the outcome of the test. Appellant commenced bi-weekly supervised visits with M.C., accompanied by C.C.. In December of 2014, DNA testing confirmed appellant's paternity. The Department then offered appellant services relating to housing, employment, and furniture. He responded that "he did not need services," and "indicated that he was not the problem, but the mother was the problem."

In January of 2015, at the request of appellant, Baskins conducted an inspection of the paternal grandmother's house where appellant resided. The home passed inspection, but Baskins made recommendations regarding minor repairs and cleaning clutter out of the room where M.C. would be sleeping. Baskins told appellant, "the sooner that he could get it repaired the child could at least start visiting the home." Thereafter, appellant never communicated to the Department that the requested accommodations were made.

On March 4, 2015, appellant entered into a service agreement with the Department, where he agreed to: 1) supervised visits with M.C.; 2) provide verification of his employment; 3) provide verification of his parole conditions and contact information for communication between his parole officer and the Department; 4) "[resolve] all criminal issues by clearing his background record immediately"; and 5) further housing inspections. Appellant partially complied with the Agreement: he maintained weekly supervised visits

“for the most part”; he did not initially provide employment documentation, but eventually submitted pay stubs and contact information regarding his jobs at a poultry warehouse and taxi service;³ he provided a consent of release but provided no contact information for his parole officer; and orally informed DSS of his status as a sex offender, but failed to provide any written documentation.

In May of 2015, the parents stopped visiting M.C. together as there were allegations by both regarding threats and assaults against each other. No criminal charges were ever filed. The Department attempted to have appellant enter into a second service agreement, which included the previous terms, and additionally asked him to agree to: 1) expungement; 2) referral to the ex-offender America Works program; 3) engaging with a supportive relative; 4) Domestic Violence counseling; and 5) parenting classes. Appellant adamantly declined to enter into another service agreement, stating that he did not need any assistance from the Department. The Department filed a TPR petition on May 26, 2015. Appellant was not offered any additional services by the Department after November of 2015.

On March 8, 2016, in response to appellant’s indication that he had acquired his own housing, the Department conducted a home assessment. The home was owned/leased by appellant’s girlfriend. During the inspection, the case worker noted repairs were needed: “glass on screen door [and] holes in the ceiling and walls (bathroom-living room).”

³ This is the sole incidence of appellant providing employment information to the Department. Notably, he did not provide any documentation of employment after his 2016 incarceration. Further, despite claiming that he drove for a sedan service, there is evidence he did not possess the proper Maryland Driver’s License.

The case worker also requested a copy of the lease. Appellant never provided the requested information, nor did he advise that the repairs had been made.

One of the conditions of appellant's probation was completion of a sex-offender program. He failed to attend the required sessions. As a result, he was found guilty of violating his probation, and incarcerated from May 5, 2016 to July 28, 2016. Appellant did not inform M.C.'s case worker of his release.

The first TPR Hearing was conducted on August 3, 2016, in the Circuit Court for Baltimore City. Mother had conditionally consented to the termination of her parental rights. Disposition was held *sub curia* to await the results of appellant's violation of probation case. On October 26, 2016, after receiving a report that appellant had completed the program as required and that his violation of probation was favorably resolved, the court issued an oral ruling. The court summarized the testimony of the witnesses and the applicable law and held that "termination of [appellant's] parental rights is in the best interests of [M.C.]." The court awarded limited guardianship to the foster family. Appellant noted a timely appeal, filing a Consent Motion to Vacate Court Order and Remand Case for Further Proceedings.

On appeal, this Court held the circuit court committed reversible error in its termination of appellant's parental rights because "the court failed to make the required determination regarding either parental unfitness or exceptional circumstances." We vacated the court's order and remanded the case for a further hearing. The second TPR Hearing was held on May 8, 2017 and, at the conclusion, the court ruled:

The Court finds that the State has proven by clear and convincing evidence 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.

Thereafter, appellant brought this timely appeal.

ANALYSIS

In “termination of parental rights cases, the standard of review is whether the trial court, in making its determination, abused its discretion or made findings of fact that were clearly erroneous.” *In re Adoption/Guardianship of Harold H.*, 171 Md. App. 564, 570 (2006) (internal citations and quotations omitted). “[T]he greatest respect must be accorded the opportunity [the trial court] had to see and hear the witnesses and to observe their appearance and demeanor.” *In re Adoption/Guardianship No. J970013*, 128 Md. App. 242, 248 (1999) (internal citations omitted). Thus, the circuit court's determination is accorded “great deference.” *Id.* at 248.

Did the juvenile court err in concluding that exceptional circumstances existed to warrant terminating appellant's parental rights in M.C.?

Appellant argues the circuit court erred in finding exceptional circumstances existed to warrant terminating his parental rights. He contends the court “failed to presume that a focus on reunification was in M.C.'s best interests,” and that the court “did not conclude that M.C. would suffer harm if the parental relationship was continued.” Further, he contends the court “improperly shifted fault from the Department after it ceased providing services to him, in dereliction of its duty to work toward reunification.” He argues that he was blamed “for not receiving the services that the Department refused to offer him.” Conversely, the Department contends that the court properly exercised its discretion in

finding that exceptional circumstances existed that made the continuation of a parental relationship detrimental to M.C's best interests.

Section 5-323(b) of the Family Law Article of the Maryland Code provides that a juvenile court may grant guardianship of a child, without the consent of the parents and over the child's objection:

[I]f, 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[.]

In making such a determination, the court must "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: the child; the local department to which the child is committed; and 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 interest 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 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...;

(iii) the parent subjected the child to: chronic abuse, chronic and life-threatening neglect, sexual abuse, or 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 minor offspring of the parent; the child; or 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: community, home, placement, and 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.

Family Law Article of Maryland Code, § 5-323(d).

Appellant contends that the court improperly focused on whether the foster parents were better suited for custody without giving preference to him as the father. He argues “the court never explained why its findings were sufficient to overcome [his] Constitutionally-protected right to remain in a relationship with his daughter.” He further asserts the court “did not conclude that M.C. would suffer harm if the parental relationship were continued.” We disagree.

In its written opinion and order at the conclusion of the case, the circuit court began by acknowledging the following:

The Court has recognized and [given] full appropriate weight to the fundamental right of the parents, as indeed they must, but they all recognize as well that the right of the parents is not absolute and that it must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect.

* * *

To justify a TPR judgment, therefore, the focus must be on the continued parental relationship, not custody. The facts must demonstrate an unfitness to have a continued parental relationship with the child, or exceptional circumstances that would make a continued parental relationship detrimental to the best interest of the child. The terms are the same, but their meaning and what must be shown are quite different.

* * *

As the statute requires and as we have recently expounded in *Rashawn*, in making those determinations, a juvenile court must consider and make specific findings with respect to the relevant statutory factors under FL section 5-323(d), and, “mindful of the presumption favoring a continuation of the parental relationship, determine expressly whether those findings suffice either to show an unfitness...or to constitute an exceptional circumstance that would make a continuation of the parental relationship detrimental to the best interests of the child.

The circuit court then summarized the evidence, reviewed the statutory factors, and made its determinations therefrom. As we see it, the court carefully set out the parameters of its evaluation and the statutory requirements. It properly recognized the presumption in favor of the continuation of parental relationships but found that the evidence of exceptional circumstances warranted that it was in the best interest of M.C. to terminate appellant's parental rights. The court held, in accordance with the factors:

The child has been in the care of the Department since one month after birth and has been in their custody since that time [child is now 3 years old].

* * *

The child was assumed by caretakers at the age of 1 year old.

* * *

[Appellant] has not actively been [in] the child's life since birth...The father has seen the child through visits conducted at the Department. According to the Medical Service Division, the father and child bonding is more so of a "friend" than a parent child relationship. The child is almost 4 years old and the Court believes the child could become acclimated with father and adjust. However, father's resistance to any assistance and services from the department in the past, [led the Court to find] that there is a great likelihood based on past behavior of the father, he would not make himself available to services to make a transition from [M.C.'s] current caretaker to the father and would be harmful and/or detrimental to the child's emotional well-being.

* * *

[T]he child is well adjusted to [the] current placement with the caretaker and the community she lives in. This adjustment is beneficial to the child and based on the testimony has had a positive effect emotionally on the child. As reported in the court medical Bonding Evaluation dated 5/17/2017, the current caretakers do not want the child to fall by the wayside and since she has come to them, "they do not want to let her go"; and wish to adopt her as soon as possible.

* * *

The child has been in the care of the caretakers for most of her life and the current caretakers have formed a strong emotional tie to the child. According

to the current caretaker in the court medical report dated February 24, 2016, [the] child is adjusting well, and in line with developmental milestones. The child gives and receives affection.

* * *

[F]ather appears to be genuine about his desire to have his child. The Court finds that father's intensity through words is at a high level but his actions fall short. Father indicated during testimony that he [wished] to have his child, however, his actions outside of visitation and compliance with the Department's request is contrary to his desire to have his child. The safety and welfare of the child is in question because of the failure of the father to adhere or enter into service agreements; as well as his non-compliance with probation when he is aware that his failure to successfully complete probation could result in a period of incarceration up to 14 years. Father had not obtained gainful employment or adequate housing.

* * *

[Appellant] was non-compliant with his probation after being allowed several attempts to become compliant with the conditions of probation... The Court is concerned that the father's non-compliance with probation that could result in a violation and receiving 14 years places the stability of the child in jeopardy. The lack of responsibility and understanding that he must be compliant with conditions either through the Courts or with the Department is concerning. The father was found not to be in violation of his probation and the VOP was dismissed and was continued on probation. The Court was also made aware that the father successfully completed the Special Offender's Clinic on October 18, 2016.

* * *

According to the Court Medical Report dated March 3, 2016, Dr. Zajdel in her summary of findings and clinical recommendations noted that [appellant] does seem to be making positive changes in his life, but continues to live in his mother's home and has a history [of] financial instability. For these reasons it remains unclear whether he is able to provide a safe, secure and consistent rearing environment for [M.C.] at this time and in the foreseeable future. The Court finds that [the child's] future in the custody of father would be unstable and uncertain.

* * *

[M.C.] has been out of father's care since birth. The child has limited exposure to father. Father has yet to provide a stable environment for the child; demonstrated a stable employment or financial ability to provide for

the welfare of his child. Although father appears genuine in his desire to have his child, his actions do not support his words. The Court is concerned that father's lack of compliance with probation in a case that he is facing 14 years of incarceration, even though father was continued on probation, it was after 3 attempts to get him in compliance. That lack of effort of the father's part does not lend to the stability and certainty that a child needs, nor would it be in the best interest of the child. The child is currently in a loving home and has made milestones and [is] adjusting well. During testimony father provided an address but no lease or any indication that he currently has adequate housing. Father testified that he does not have employment.

* * *

Contrary to appellant's assertions, the court gave consideration to how M.C "could be reunified with her dad." The court painstakingly detailed the testimony of the witnesses and concluded that appellant had made minimal efforts towards reunification and refused to cooperate with the Department to obtain services needed to benefit himself and the child. It concluded, "(t)he safety and welfare of the child is in question because of the failure of the father to adhere or enter into service agreements; as well as his non-compliance with probation." The court further noted that Mr. G. had not obtained gainful employment or adequate housing. In fact, while appellant refused services, he expressed no plan regarding how he would support his child. He did not demonstrate that he had obtained stable employment, the financial resources, or the appropriate housing needed to provide for the welfare of M.C.. Thus the court found there was "a great likelihood based on past behavior of the father, he would not make himself available to services to make a transition...and would be harmful and/or detrimental to the child's emotional well-being." The court then concluded that "it remains unclear whether he is able to provide a safe, secure and consistent rearing environment for (M.C.) at this time and in the foreseeable future...the

child's future in the custody of father would be unstable and uncertain." These factual findings by the court were fully supported by the evidence and were not clearly erroneous.

Appellant next suggests that the court improperly focused on M.C.'s "bond with the foster parents and the passage of time." He likens the present case to *In re Adoption/Guardianship of Alonza D.*, where the Court of Appeals held that the passage of time and bond with a foster caretaker alone did not constitute exceptional circumstances warranting the termination of parental rights. 412 Md. 442, 468 (2010). However, in the present case, the court's determination was not based solely on the passage of time but rather on the myriad of circumstances where appellant repeatedly failed to take necessary action. The court's analysis was appropriately child focused. *See In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 114 (2010) (holding that the factors in section 5-323 (d)(4) of the Family Law Article "address termination of parental rights from the point of view of the child's circumstances"). Its evaluation of M.C.'s emotional ties or lack thereof, her feelings about severance, and conclusion that transitioning M.C. to her father would be harmful and/or detrimental to her emotional well-being are supported by the record. The contrasts noted by the court regarding bonding and the passage of time were simply factors together with other circumstances that established that the continued relationship would be detrimental to M.C.'s best interests.

Finally, appellant argues the court "found that the Department did not assist the father with reunification efforts in analyzing fitness, and was wrong when it failed to integrate its finding into the exceptional circumstances analysis." The Department does not dispute that services were not provided to Father after November 2015. The court

further held, “the extent, nature, and timeliness of services offered by the department to facilitate reunion of the child and parent were reasonable up until 11/2015 and those services were offered to address both the root causes and the effect of the problem, namely housing, employment, parenting and counseling; but after 11/2015, the Department’s failure to offer services to the father were unreasonable.” The Department’s position is that appellant refused all services offered to him except visitation. Appellant contends he was willing to parent but denied the opportunity. The record belies this assertion.

The failure of the court to include in its findings that the Department’s lack of assistance is not error. The exceptional circumstances found by the court surpassed the Department’s inaction. Here there was ample evidence that the child’s best interests, could not have been served by continuing a relationship with the father. As this Court stated in *In re Adoption of K’Amora K*, 218 Md. App. 287, 310 (2014):

[T]he circuit court neither overreacted nor abused its discretion in terminating Mother’s parental rights. The court faced the reality that sending K’Amora to live with Mother would have uprooted her from the safe and stable (and only) family environment she had known. The exceptional circumstances alternative is meant to cover situations, such as this, in which a child’s transcendent best interest are not served by continuing a relationship with a parent who might not be clearly and convincingly unfit.

Such is the case here. For these reasons, we affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**

