Circuit Court for Baltimore County
Case Nos. C-03-JV-23-000301
C-03-JV-23-001158
C-03-JV-23-001161

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 14

September Term, 2024

IN RE: A.W., J.W., & C.W.

Tang,
Kehoe, S.,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: September 16, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

Appellant Jy.W. ("Mother") appeals an order entered by the Circuit Court for Baltimore County, sitting as a juvenile court, which granted the petition of the Baltimore County Department of Social Services (the "Department") to terminate Mother's parental rights in relation to her natural children, A.W. (born March 2020), J.W. (born March 2022), and C.W. (born January 2019), who previously had been adjudicated children in need of assistance ("CINA").[1,2] In her timely appeal, Mother[3] asks us to consider three questions, which we have consolidated into the following:

[1] Pursuant to Md. Code, § 3-801(f) of the Courts & Judicial Proceedings Article ("CJP"), a "child in need of assistance" means "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."

In a previous appeal, Mother challenged the juvenile court's adjudication of J.W. and C.W. as CINA; this Court affirmed the juvenile court's orders. *See In re: C.W., J.W., and C.J.*, case numbers 1451, 1452, 1453, consolidated, September Term, 2023 (filed April 12, 2023). Mother also appealed the juvenile court's December 2023 permanency plan review order, which changed the children's plan from reunification with Mother to a concurrent plan of reunification and adoption by a non-relative. *See In re: J.W., and C.W.*, *and A.W.*, case numbers 2048, 2049, and 2050, September Term, 2023. Because the Department, shortly thereafter, filed the guardianship petitions at issue in this matter, which the juvenile court granted, Mother moved to stay the appeal in the CINA matter on the ground that our resolution of the TPR appeal could render the CINA appeal moot. We granted Mother's motion pending further order.

[2] Mother is also the parent of C.J. (born April 2017). C.J.'s CINA case was closed when custody was granted to her father. C.J. is not involved in this appeal and is discussed only as relevant to the W. children.

[3] Mother claims not to know the identity of any of the children's fathers. The fathers were deemed to have consented to the TPR, and none is a party to this appeal.

> Did the juvenile court err or abuse its discretion when it terminated Mother's parental rights to A.W., J.W., and C.W.?[4]

For the reasons that follow, we affirm the juvenile court's order.

FACTS AND LEGAL PROCEEDINGS

Background of the Department's Involvement with the W. Family

The Department became involved with the W. family shortly after C.W.'s birth in 2019, when he experienced poor weight gain due to limited caloric intake. The Department noted concerns of Mother's medical neglect of the child and of her mental health and cognitive processing limitations.[5] C.J. and C.W. were removed from her care and placed in the foster home of Mr. and Ms. S.

A psychological evaluation at the time, during which Mother presented as manic, determined that she suffered from Bipolar I disorder, mild intellectual disability with a low level of cognitive functioning, and evidence of turbulent, narcissistic, and paranoid

[4] The questions as posed by Mother are:

> 1. Did the court commit error when it terminated Ms. W's parental relationship with her children?
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> 2. Did the court err by ignoring the presumption to keep the parental relationship intact and shifting the burden to Ms. W to demonstrate her fitness as a parent?
>
> 3. Did the court use improper considerations in determining credibility of the witnesses?

[5] Mother was assessed as having a full-scale IQ of 60-65, "which is in the extremely low range."

personality traits.[6] Due to her susceptibility to poor judgment, the evaluator believed that Mother would require "close and constant supervision" if C.W. were returned to her care. The evaluator also recommended ongoing mental health treatment and medication adjustment by a psychiatrist.

Mother gave birth to A.W. in March 2020. She regained custody of C.J. and C.W. from November 2020 through January 2021, but she then was involved in a domestic violence incident with her partner, which necessitated her hospitalization. Mr. and Ms. S., C.J. and C.W.'s former foster parents, agreed to provide care for C.J., C.W., and A.W. while Mother was treated for her injuries. Within days, Mr. and Ms. S. reported to the Department that A.W. was not well.

A.W. was taken to Johns Hopkins Hospital in an unresponsive state, where he was diagnosed with severe dehydration, possible failure to thrive, and bilateral leg fractures that were suspected to be non-accidental (although no maltreater was identified). Mother was "combative and argumentative" in working with the Department, and she did not follow the hospital's medical recommendations.

A.W. was transferred to Mount Washington Pediatric Hospital to receive treatment for feeding issues. Hospital staff attempted to work with Mother, but two feeding trials were unsuccessful because Mother left the hospital and did not comply. Due to her lack of compliance, A.W. required the insertion of a gastrostomy tube to address his nutritional

[6] At the time of the evaluation, Mother was residing in a homeless shelter and had maintained employment for only very short periods of time.

deficits.

The Department facilitated two Family Team Decision Making ("FTDM") meetings to express the importance of complying with A.W.'s medical treatment, but Mother attended only one of the meetings. Mount Washington Pediatric Hospital staff noted ongoing concerns of A.W.'s safety in Mother's care due to her mental health, mood swings, emotional dysregulation, non-compliance, and lack of engagement in A.W.'s overall care.

As a result, A.W. was sheltered with the Department on February 25, 2021, and placed in foster care with the J. family, where he has since remained. A.W. was adjudicated CINA in April 2021. In Ms. J.'s care, A.W. was able to have the gastrostomy tube removed and to learn to eat and drink completely by mouth.

Although the Department continued to express concern about Mother's ability to care properly for A.W., C.J. and C.W., they were returned to Mother's care, under a trial home visit.

Mother underwent another psychological evaluation, to determine her parenting capacity, in October 2021. The evaluator noted that Mother's limited intelligence, parenting skills, and knowledge of parenting practice placed her at high risk for dysfunctional parenting and neglect. The evaluator recommended that Mother participate in parenting training, continue mental health care treatment, and find a trained parent mentor to assist her in caring for a child with special needs.

After J.W.'s birth in 2022, the Department continued to express concerns about Mother's parenting of the children without Department oversight. Despite those concerns, the CINA cases relating to C.J. and C.W. were closed, and those children were reunified

with Mother in March 2022. Mother's supervised visits with A.W., who remained in foster care, were consistent and raised no major concerns for the Department at the time.

On August 4, 2022, however, C.J., C.W., and J.W. were sheltered again over concerns of Mother's mental health following a visit with A.W. wherein she became agitated and aggressive with one of the two supervising social workers—cursing loudly, hitting the walls of her apartment, and frightening the children—after the social worker questioned her about a mattress on the floor of the living room. One of the social workers left the visit due to Mother's escalating aggression and agitation. The second social worker continued to try to deescalate Mother's behavior and threatened to end the visit if Mother did not calm down. Mother failed to comply and pushed C.W. to the floor. When the social worker tried to leave with A.W., Mother blocked the door and threatened to drop four-month-old J.W., whom she was holding, onto the floor and to blame any resulting injuries on the social worker. The social worker contacted the police for assistance in leaving Mother's home.

C.J., C.W., and J.W. were placed in foster care with the S. family; C.J. and C.W. were happy to return to the foster home they had lived in previously. After the children were sheltered, Mother remained argumentative with the Department and unable to demonstrate sound judgment. Despite receiving mental health services, she struggled to maintain healthy coping skills when triggered. And, even after completing several parenting classes, the Department remained concerned about her ability to provide care for the children. Additionally, Mother remained unemployed and without sufficient means to provide for the children. C.J., C.W., and J.W. were adjudicated CINA in October 2022.

A.W. remained in foster care with Ms. J., with whom he shared a "secure attachment." The Department reported that Ms. J. provided excellent care to A.W., who was in good health and meeting all developmental milestones, and ensured that his needs were met.

After a December 2022 psychiatric evaluation, the evaluator recommended that Mother take medication and mood stabilizers to address her bipolar symptoms, but Mother declined, insisting that she was not ill and that "DSS and everyone are making up lies against her." The Department believed that Mother's consistent compliance with medication management, in conjunction with therapy, was necessary for her to improve.

In January 2023, the Department reported to the juvenile court that Mother had not been receiving care from a psychiatrist for her bipolar disorder, although she had been engaged in several supportive services including in-home parenting support, therapy, and parenting classes. Mother agreed to obtain a comprehensive psychiatric evaluation.

On April 26, 2023, the Department filed the guardianship petition relating to A.W., J.W., and C.W. The petition detailed that the Department believed it to be in the children's best interest for the Department to be granted guardianship with the right to consent to adoption or a long-term care option short of adoption because Mother was unable to provide the care and support required by the minor children, and it was unknown whether she would be willing to consent to the termination of her parental rights. Mother objected to the petition.

In June 2023, the Department received a message from S.W., who identified herself as Mother's adoptive mother. S.W. expressed a desire to be considered as an adoptive

resource for C.W., A.W., and J.W.

The Department was open to exploring S.W. as a resource, but explained to her that it had already filed a TPR petition relating to the children. The Department also felt it "important to note" that C.W. and J.W. were "very bonded" to and were thriving with their foster family. And, A.W., who had been in the same foster home since he was 11 months old, was also very bonded to his foster parents, referring to them as "Mommy" and "Dada." For those reasons, the Department believed it would be detrimental for the children to be removed from their placements and placed with S.W., whom the children had only met for the first time a few months before.[7]

Mother remained unemployed and received housing via a Department of Human Services voucher. Mother had participated in mental health therapy and was reportedly "highly motivated with an investment to excel in many of her life domains," but the Department continued to be concerned about her unstable moods and erratic behavioral responses, "which could pose a risk in her caring for young children who are unable to self-protect."

Toward the end of 2023, the Department remained concerned about Mother's parenting abilities. Although Mother's visits with A.W. were consistent, the child exhibited "limited bonding" with Mother, instead playing only with his siblings, which concerned the Department. The Department also noted that A.W. was "always emotional when he

[7] By October 2023, Mother advised the Department that she no longer wanted to involve her family in the matter, and she did not want the children to transition into their care.

must leave his foster mother for an hour visit with [Mother]."

During several visits with the children, Mother, who had been instructed that J.W. was not to drink "thin liquids" due to swallowing problems that could cause him to aspirate, nevertheless gave the child apple juice (a thin liquid) instead of the approved thickened liquid. Mother gave him the thin liquids "on the sly," by hiding J.W. behind her jacket, and smirking while she did so. Mother also played very loud music during visits so the supervising social worker could not hear what she was saying to the children and obstructed the social worker's view of the children. When the social worker attempted to discuss her concerns with Mother, she was met with hostility. As a result, on November 30, 2023, the Department suspended Mother's visitation with the children until the next court hearing.

TPR Hearing

Evidence Presented

The juvenile court held a three-day TPR hearing on February 28 and 29, 2024, and March 1, 2024. At the start of the hearing, which took place over Zoom, the Department sought to have Mother appear on camera, but her attorney claimed that Mother's camera was not working. When the Department asked if the court would delay the proceedings if the Department sent a cab for Mother to appear in person or on camera at the Office of the Public Defender, Mother indicated she would not get in a cab and refused to go to the courthouse that day. The juvenile court agreed to put Mother under oath and have her swear that she was then alone in a room, warning that it would later consider "whatever inferences, by her refusal to appear with the request that we've made of her, that I deem appropriate[.]"

The Department called Mother as its first witness. Mother claimed that the Department had never advised her what she had to do to have her children returned to her care. She acknowledged that she was then unemployed, but said she was looking for a job. She claimed that every time she obtained employment, she lost it "because of DSS."[8]

Regarding the August 2022 visitation incident with the two social workers, Mother said that she had "exploded" when the Department social worker "assaulted" her by throwing things at her. Mother denied having threatened to drop J.W. and to blame the Department for any injuries or preventing the social worker from leaving the apartment.

Mother also denied having given J.W. apple juice, a thin liquid, during a visit in 2023. Instead, she said she brought the apple juice for her other children but that J.W. got ahold of the straw, and instead of "snatching it out his mouth," Mother gave him a toy to get the juice away from him. She did, however, admit to having become confrontational with another social worker who supervised a visit shortly before the hearing, claiming that the worker had threatened her.

Mother acknowledged that she had been diagnosed bipolar but was not taking any medication. She said that she had left therapy because "they wasn't doing anything to help

[8] The juvenile court permitted the Department's attorney to question Mother as a hostile witness when she refused to answer direct questions. Throughout her testimony, Mother was argumentative and disrespectful toward counsel and the court. At one point, when the court asked her to turn off the television she was watching, she responded, "Sorry but you don't control my house." The court replied that "I do control how you testify. Turn off the T.V." Even with that admonition, Mother only turned the television down. And, with no explanation, she did not log back in to the virtual proceedings until well after the court resumed the hearing following the lunch break.

[her]."

A.W.'s Department foster care social worker, Lela Kaidbey, testified as to the reasons for A.W.'s removal from Mother's care and provided details about Mother's visit with A.W. on August 4, 2022, which necessitated police intervention and led to the removal of the other three children. After that incident, Ms. Kaidbey continued, the Department had asked Mother to seek mental health treatment and to obtain a psychological evaluation. Mother, however, "was adamant that she didn't have mental illness" and refused to participate in the evaluation with the Department's recommended provider, instead suggesting a psychologist who worked with the Office of the Public Defender.

Because Mother did not obtain the court ordered mental health treatment, in September 2022, the Department had recommended that the children remain in foster care. The Department again referred Mother for a psychiatric evaluation and mental health treatment after she had completed a "not comprehensive" psychological evaluation and continued to refuse to follow the evaluator's recommendation of medication. Through June 2023, Mother remained non-compliant with the Department's recommendations. Ms. Kaidbey noticed no improvement in her behavior.

Ms. Kaidbey also enumerated the reasonable efforts made by the Department, including housing resources, referrals to mental health treatment, providing almost $3000 to restore Mother's electricity, transportation to Mother's medical appointments and visits with the children, and FTDMs.

According to Ms. Kaidbey, the Department continued to recommend that the children remain in foster care until Mother received mental health treatment. The

Department also recommended that she obtain employment, demonstrate an ability to use coping skills, and cooperate with the Department by maintaining regular contact and staying aware of A.W.'s medical history.

Department adoption social worker Gina Malphrus, accepted by the juvenile court as an expert in social work, testified that in September 2022, the Department recommended that the children's permanency plan of reunification add a concurrent plan of adoption by a non-relative based on Mother's "limited progress towards reunification." The Department had expressed concern about Mother's intellectual disability and mood issues that impaired her capacity to provide consistent care for the children.

Ms. Malphrus explained that after the visits during which Mother attempted to give J.W. thin liquids, the Department suspended her visitation with all the children due to safety concerns, which also included her tendency to obstruct the supervising workers' view of the children, play loud music so the workers could not hear what she was saying to the children, and use the children's car seats improperly and unsafely.

Ms. Malphrus reported that A.W. was thriving in the J.s' care and was securely attached to and bonded with them. He was, she said, very comfortable in their home and community. In Ms. Malprhus's view, it would be "incredibly distressing and detrimental to him to be removed from this placement." Similarly, Ms. Malphrus continued, J.W. and C.W. were content and comfortable in the S. home, with a secure attachment to the S. family members.

Ms. Malphrus said she would have safety concerns if the children were returned to Mother, due to Mother's history of cognitive issues and significant mental health concerns

and her refusal of medication for those diagnoses. In Ms. Malphrus's professional opinion, a continued lack of permanence would be increasingly detrimental to the children as they got older. She did not believe there were additional services that could be offered to Mother that would help her attain reunification.

Mr. S., C.W. and J.W.'s foster father, testified that the children were thriving in the S.s' care, making good progress on physical growth and education. C.W., usually funny, often exhibited a change in behavior on the nights before visitation with Mother, which he did not like to attend, except to see his siblings. J.W., because of an oral aversion to solid food and a dysphagia diagnosis requiring thickened liquids, requires specialist care, which is "somewhat more complex" than C.W.'s.

Mr. S. said that he and his wife were adoptive resources for C.W. and J.W. and that the children call them "Mom" and "Dad." He promised to continue sibling visits with A.W., to which A.W.'s foster mother was very receptive. Mr. and Ms. S. did not maintain much of a relationship with Mother for a number of reasons, but mostly because she had falsely accused them of abuse.

Ms. J., A.W.'s foster mother, testified that A.W. had been in her care continuously since he was approximately 11 months old, more than three years. When he came to her, he was a "really sick kid." Ms. J. had to learn to feed him through his gastrostomy tube, the only way he was fed. After several months, however, she was successful in getting him to eat and drink. He was, at the time of the hearing, "very healthy." He was "extremely adjusted" to the J.s' home and considers Mr. and Mrs. J. to be "Mom" and "Dad."

Ms. J. said that she and her husband were adoptive resources for A.W. While Ms. J.

agreed with Mr. S. that continued contact between A.W. and his siblings was "definitely a must," she had not had contact with Mother in approximately a year because she believed Mother to be "very dishonest" and "not trustworthy."

S.W., Mother's adoptive sister, testified that she had been a family support worker with the Department and found out through her employment that the W. children had entered foster care in 2021. Until then, she had "no idea that they even existed," having not spoken to Mother in approximately seven years, after Mother left home and cut ties with her family.

Although no one at the Department approached her about being a resource for the children, S.W. offered herself as a resource, as did her mother (Mother's adoptive mother, also named S.W.). S.W. claimed that no one at the Department wanted to consider her or her mother as resources.

When the elder S.W. heard from her the younger S.W. that the W. children were in foster care, she decided to start the process of trying to become a resource to them, even though she had not spoken to Mother since she was 18 years old. S.W. accompanied Mother to several visits with the children until the thin liquid incident with J.W. in 2023, after which she thought it would be in Mother's and the children's best interest that she not return. At the TPR hearing, however, the elder S.W. testified that she was still interested in being a resource for the children.

The juvenile court also accepted into evidence an October 2023 psychiatric evaluation of Mother, which diagnosed her with "significant cognitive, emotional, and behavioral issues." The evaluator noted that Mother's "significant intellectual disability

and substantial mood issues. . .[impacted] her capacity to consistently provide care and custody of minor children" and that "diagnosed conditions will not ever remit and will continue for the rest of her life." The evaluator further recommended that Mother not have unsupervised visitation with the children.

Juvenile Court's Ruling

The juvenile court, in summarizing the witnesses' testimony and assessing their credibility, noted that Mother, "[t]o put it kindly, she was a poor witness" who "couldn't even give her testimony undivided attention," instead watching TV while testifying and refusing to come to the courthouse or to turn on her camera on Zoom. The court found that Mother was highly emotional, cursed repeatedly at the attorneys asking questions, refused to answer questions, and showed no respect for the attorneys or the court. During the hearing, Mother displayed "explosive anger and paranoia," dovetailing with the issues noted in her psychological evaluations. The court further found Mother to have "extremely low intelligence" and "significant mental illness" that remained untreated.

The juvenile court went on to find, by clear and convincing evidence, that Mother was an unfit parent and that exceptional circumstances existed to terminate her parental rights. As the court pointed out, none of the witnesses called by Mother suggested that she was either a good mother or a fit parent, so the court had "literally no evidence to suggest that she is." On the other hand, the children, who suffered from significant health and safety issues when taken into the Department's custody, were then healthy and safe in their foster homes, which to the court, spoke volumes.

The services offered to Mother, the juvenile court found, were appropriate and

timely. Mother had, however, ignored the counseling offered to her "on a continuous basis." The only obligation Mother had fulfilled, pursuant to the one service agreement she had signed, was attending visitation and remaining in contact with the Department. She had done nothing else to adjust her circumstances—instead refusing mental health treatment and asking the children's foster parents not to be in contact with her—to facilitate having the children return home. The court did not believe that additional services would bring about a lasting adjustment so the children could be returned to her care.

And, the juvenile court continued, Mother was argumentative with Department personnel, and "pretty much everybody else, and has been extremely difficult to deal with." Therefore, the court found "the real issue here" to be Mother's behavior, alienation of anyone who might help her, and refusal to get care relating to her bipolar diagnosis or even admitting to the fact that she is mentally ill.

The juvenile court ruled that the best interest of the children was to terminate Mother's rights and place the children in the care and custody of the Department, with the expectation that adoption would follow, because their return to Mother would pose "an unacceptable risk to their future safety." The court therefore granted the Department's petition and terminated Mother's parental rights (and those of the unknown fathers of the children) and granted the Department guardianship with the right to consent to adoption or a long-term care arrangement short of adoption.

Mother filed a timely notice of appeal.[9]

[9] After a subsequent guardianship review hearing on May 16, 2024, the juvenile (continued)

DISCUSSION

Standard of Review in TPR Proceedings

Termination of parental rights decisions are reviewed under three different but interrelated standards: clear error review for factual findings, *de novo* review for legal conclusions, and abuse of discretion for the juvenile court's ultimate decision. *In re Adoption/Guardianship of C.A. and D.A.*, 234 Md. App. 30, 45 (2017). It is for this Court to decide only whether there was sufficient evidence from which the juvenile court could reasonably have determined, by clear and convincing evidence, that terminating parental rights was in the best interest of the child. *Id.* at 46.

In other words, "when the appellate court views the ultimate conclusion of the [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion." *Davis v. Davis*, 280 Md. 119, 126 (1977). And, "[w]here the best interest of the child is of primary importance, 'the trial court's determination is accorded great deference, unless it is arbitrary or clearly wrong.'" *In re Adoption/Guardianship Nos. 2152A, 2153A, 2154A in the Circuit Court for Allegany County*, 100 Md. App. 262, 270 (1994) (quoting *Scott v. Dep't of Social Services*, 76 Md. App. 357, 382 (1988)).

Termination of Mother's Parental Rights

court found that the children were well-adjusted and attached to their pre-adoptive parents. The court therefore changed the children's permanency plan to adoption by a non-relative.

"Parents have a fundamental right under the Fourteenth Amendment of the United States Constitution to 'make decisions concerning the care, custody, and control of their children.'" *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 48 (2019) (quoting *Troxel v. Granville*, 530 U.S. 57, 66 (2000)). Moreover, "there is 'a presumption of law and fact[ ]that it is in the best interest of children to remain in the care and custody of their parents.'" *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 216 (2018) (quoting *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 495 (2007)).

Nevertheless, parental rights are not absolute, and the presumption in favor of preserving those rights may be rebutted "by a showing that the parent is either unfit or that exceptional circumstances exist that would make the continued relationship detrimental to the child's best interest." *Id.* at 217 (quoting *Rashawn H.*, 402 Md. at 498). "When it is determined that a parent cannot adequately care for a child, and efforts to reunify the parent and child have failed, the State may intercede and petition for guardianship of the child pursuant to its *parens patriae* authority." *C.E.*, 464 Md. at 48. "The grant of guardianship terminates the existing parental relationship and transfers to the State the parental rights that emanate from a parental relationship." *Id.*

Before terminating parental rights, the juvenile court must consider the factors set forth in Md. Code, § 5-323(d) of the Family Law Article ("FL"), while giving "primary consideration to the health and safety of the child[.]" If, after considering those factors, the 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," the

court may terminate the parental relationship and grant guardianship of the child to the Department. FL § 5-323(b).

FL § 5-323(d) provides:

> [I]n 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
> (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 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 ... or by a physician or psychologist ... [;]

(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.

FL § 5-323(d).

The role of the juvenile court 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.

Rashawn H., 402 Md. at 501.

The juvenile court, after summarizing all the evidence presented at the TPR hearing, found as follows:

> **FL § 5-323(d)(1)(i):** The Department offered counseling services to Mother, which she ignored "on a continuous basis." She was argumentative with everyone the Department enlisted to help her, but the court found that the Department had nonetheless "bent over backwards in the service department," trying to help Mother. The court found the services provided by the Department to be appropriate and "maybe above appropriate in this case."
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> **FL § 5-323(d)(1)(ii):** The court found that the Department consistently made "every effort" to facilitate reunion of the children with Mother.
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> **FL § 5-323(d)(1)(iii):** Pursuant to the one service agreement that Mother had signed, the only obligation Mother fulfilled was attending visitation with the children.
>
> **FL § 5-323(d)(2)(i):** The court found that Mother had done nothing to adjust her circumstances to make it in the children's best interest to be returned to her care. She refused the offered counseling services until the eve of trial. And, while she visited with the children and kept in contact with the Department, Mother had caused problems with both of sets of foster parents, telling them not to talk to her and causing them to find her untrustworthy.
>
> **FL § 5-323(d)(2)(ii):** Mother did not contribute financially to the children's care, but the court acknowledged that, given her mental health diagnoses and

lack of employment opportunities as a result, she could not be expected to do so.

FL § 5-323(d)(2)(iii): Noting that Mother's intellectual disability was of concern, the court found the "real issue" to be her volatile behavior and refusal to obtain treatment for her bipolar diagnosis. Mother's lack of acknowledgment of any mental illness led to her failure and inability to care for the children and to put the children "last on her list." The Department adduced evidence of several instances of Mother's poor behavior with the children that rendered them unsafe with her, and two witnesses had stated that the children's safety was at risk in her presence. Moreover, Mother had alienated anyone who could help her with these issues.

FL § 5-323(d)(2)(iv): All three children had been in the Department's care for well over 18 months. There was no evidence that any additional service would bring about a lasting adjustment so the children could be returned to her care and Mother had presented "no game plan that says here's how we're going to make it all better."

FL § 5-323(d)(3)(i): The court found that "[n]eglect clearly was happening here." There was "plenty of evidence" of the feeding issues with the children, which caused the Department's intervention in the first place. The court found the record to be "replete with the neglect," which was caused by Mother's mental illness. The neglect was "unquestioned" and "an absolute fact."

FL § 5-323(d)(3)(ii)-(v): The court found no evidence of Mother's drug use, chronic abuse or neglect, convictions, or loss of parental rights of an older child, although her older child, C.J., had been removed from her care in the past.

FL § 5-323(d)(4)(i): The court found that the children felt "great affection for each other" and for their respective foster parents, while the testimony was "a little fractured" as to their opinions about Mother. The children were clearly bonded to their foster parents, who loved and cared for them and improved their medical conditions to the point that they were thriving, while Mother had permitted their medical issues to persist.

FL § 5-323(d)(4)(ii): The court found that the children were adjusted to the communities surrounding their foster homes and were thriving there. Their

> homes were nice and appropriate and full of love and caring. All the children were doing well in their placements, and the foster parents were pre-adoptive resources.
>
> **FL § 5-323(d)(4)(iii):** Due, in part, to the children's young ages, the court could not speak to their feelings about severing their relationship with Mother.
>
> **FL § 5-323(d)(4)(iv):** The court found that the evidence presented at the hearing established that the children were "well adjusted and doing well where they are, extremely well, coming from a place where they did extremely poorly. And there's no reason they wouldn't do poorly again, if they were put back in [Mother's] care." Therefore, in the court's view, terminating Mother's parental rights will have a positive impact on the children, particularly as it would do away with their uncertainty and lack of permanence. Indeed, the court concluded, given the children's ages and secure adjustment to their foster homes, the impact of *not* terminating Mother's parental rights would be detrimental to their well-being.

After considering the required factors, the juvenile court found, by clear and convincing evidence, that "the best interest. . . of these children. . . is to terminate any parental rights of [Mother] and to place these children in the care and custody of the Department, for what I expect is an adoption. I do think that the return of these children to their parent's custody poses an unacceptable risk to their future safety." The court further found that Mother was an unfit parent and that exceptional circumstances exist to overcome the presumption that the children's best interests would be served by continuing the parental relationship.

The juvenile court did not err in finding that Mother did not participate in services, engage in counseling, or fulfill any service obligation other than visitation.

Despite Mother's argument that the juvenile court clearly erred in some of its factual findings, we are unpersuaded by her claims. Mother first suggests that the court improperly

found that she had not participated in services the Department offered and that she had not engaged with the counseling portion of those services in a timely manner. That finding, however, is well supported by the record.

Although Mother remained in contact with the Department and was consistent in visitation with the children, the evidence was clear that she continually refused to: (1) accept her mental health diagnoses; (2) take recommended medications for those diagnoses, instead insisting nothing was wrong with her; (3) remain committed to therapy, instead leaving therapy providers who she said were not helping her, being discharged from therapy for missing too many appointments, and failing to make an appointment with a new therapist until literally the middle of the first day of the TPR hearing; and (4) assist in the provision of her therapy treatment plan and records to the Department after repeated requests. Moreover, the therapy that Mother did participate in was not found to have ameliorated any of her mental health issues or the concerns that led to the children's removal from her care. Therefore, the court's finding that Mother had ignored "the counseling services aspect" of her service agreement is not clearly erroneous, even though she did receive some therapy.

And, accepting as accurate the court's determination that Mother's engagement with mental health services was lackluster, we cannot say that the court clearly erred in finding that Mother's only real commitment to her service obligation was her visitation with the children. Her visits were consistent, but even so, Mother was noted to be disrespectful to and combative with the supervising social workers, and visitation was halted after she gave J.W. thin liquids "on the sly" after repeatedly being warned about the danger in doing so.

And, while Mother had engaged in some supportive services on her own, such as parenting classes and engagement with an independent community support worker who helped her find resources, none of those efforts improved her ability to resume custody of the children or work cooperatively with the Department. As the Department notes in its brief, Mother's "mere participation did not equate to fulfilling her service obligations."

The juvenile court did not err in finding that the Department made reasonable efforts to promote reunification.

We also cannot say that the juvenile court erred, as Mother claims, in finding that the Department made reasonable efforts to promote Mother's reunification with the children. While a CINA proceeding requires the juvenile court to make ongoing findings of the reasonableness of the Department's efforts, a guardianship proceeding requires the juvenile court only to examine "the extent, nature, and timeliness of services offered" by the Department to facilitate reunification and whether the Department and the parents have "fulfilled their obligations." FL § 5-323(d)(1).

Here, the court did make findings that the Department had made "every effort" to provide reunification services to Mother and had perhaps even gone "above appropriate" in doing so. That finding is borne out by the evidence that the Department provided Mother with housing vouchers (the only resource she had for stable housing in light of her lack of employment), paid her delinquent electric bill of almost $3000, set up multiple psychological and psychiatric evaluations and therapy services, provided transportation services to visits and appointments, supervised visits with the children (sometimes with not one but two social workers), scheduled in-home parenting classes, considered and

approved S.W. as a resource for the children, and maintained communication with Mother via conversation rather than email or text, to account for Mother's cognitive disability and low reading level.

It was Mother who failed to fulfill her obligations toward reunification, by continually refusing to accept her mental health diagnoses, declining to take prescribed medication, refusing to sign a second service agreement and releases for treatment records, and becoming combative with the Department workers and foster parents. Mother does not specify any additional services that could have facilitated reunification, and the Department's expert witness, Ms. Malphrus, testified at the TPR hearing that she was aware of none.

The juvenile court did not err in not considering placement of the children with relatives before terminating Mother's parental rights.

We also find no merit in Mother's contention that the juvenile court erred in declining to consider placement of the children with her relatives before terminating her parental rights in favor of adoption by non-relatives.

"[A] CINA permanency hearing and a TPR hearing are seeking to resolve related, but, ultimately distinct issues." *C.E.*, 464 Md. at 64. "The purpose of CINA proceedings is to provide for the care, protection, safety, and mental and physical development of CINA children; conserve and strengthen the child's family ties; remedy the circumstances that required the court's intervention; and achieve a timely, permanent placement for the child consistent with the child's best interests." *Id.* (cleaned up). "A TPR, conversely, is initiated once the Department is seeking to terminate the existing parental relationship." *Id.* As we

have explained, "the appropriate focus of [a] TPR hearing [is] not the potential suitability of [a relative] as a placement for [the child]—as this [is] an issue properly addressed in the CINA case—but rather, the fitness of [the parents]." *In re Adoption/Guardianship of Cross H.*, 200 Md. App. 142, 152 (2011).

Any argument that Mother's relatives should be considered as resources should have occurred during the CINA proceedings, but Mother did not raise the issue then, nor did she ever suggest her adoptive mother or sister as resources for the children. Moreover, in the TPR case, as the juvenile court found, Mother waived any right to have her relatives considered as a resource for the children when she specifically prohibited the Department from speaking to them about the children or considering them as resources.

And, in any event, the evidence presented at the TPR hearing showed that the elder and younger S.W. had not had any contact with Mother in approximately seven years and were not even aware that the children existed until their case coincidentally came across the younger S.W.'s desk while she worked for the Department. Those facts are in stark contrast to the close bond the children have all formed with their respective foster families, with whom they have lived for the majority of their short lives, and who have a demonstrated record of providing excellent and loving care. On this record, we cannot conclude that the juvenile court erred in not considering whether placement with a relative was in the children's best interest.

The juvenile court did not improperly shift the burden of proving fitness as a parent to Mother.

Next, we disagree with Mother when she avers that the juvenile court improperly shifted the burden of proving her lack of unfitness as a parent to her, instead of leaving the burden of persuasion on the Department. The court did not, as she claims, require her to demonstrate that she was not unfit.

Indeed, the court specifically advised the Department that "you have the burden" and went on to give a detailed analysis of the overwhelming evidence of Mother's unfitness to have the care and custody of the children, which included her own witnesses' failure to testify that she was a good or fit parent, but also her argumentative and disrespectful testimony, her cognitive deficits and untreated mental illness, her frequent displays of explosive anger toward Department workers during visitation, her placing the children in danger by giving J.W. thin liquids that could cause him to aspirate fluid into his lungs and failing to secure the children safely in their car seats, and the evaluating psychiatrist's conclusion that her impaired judgment made it unsafe for Mother to have even unsupervised visitation with the children. Only after all those findings did the court comment that Mother's evidence had not demonstrated that she was a fit parent, which we perceive as nothing more than a reinforcement of the conclusion that the Department had clearly and convincingly proven her to be unfit, and none of her adduced evidence rebutted that conclusion.

The juvenile court did not improperly assess the credibility of the witnesses at the TPR hearing.

Finally, we find no merit in Mother's assertion that the court improperly assessed the hearing witnesses' credibility in rendering its decision to terminate her parental rights.

Despite acknowledging that this Court must give deference to the juvenile court's assessment of the witnesses' credibility,[10] Mother claims that the juvenile court found the Department's witnesses the more credible, partly because the court was able to view them on Zoom and found them well-groomed and professional. Because she did not appear on camera during the hearing, Mother continues, the court found her to be a poor witness who did not care about her children because it was unable to evaluate her appearance or watch how she reacted to the proceedings. When she became emotional, she said, the court "belittled the misunderstandings of a parent with cognitive limitations[.]"

In our view, the juvenile court properly assessed the demeanor and background of each witness. *See In re Adriana T.*, 208 Md. App. 545, 563 (2012) ("Demeanor-based credibility is a witness' outer appearance and mannerisms while testifying before the fact finder. Credibility is at issue in any case concerning testimonial evidence.") (citations omitted). The fact that the court found the Department's witnesses to be more professional was based as much on their education and licensure, which Mother and her witnesses did not share, as their appearance on camera. As far as Mother's own credibility, the court exhibited no bias in drawing negative conclusions about her lack of commitment to reunifying with the children from her unwillingness to appear on camera or to accept a cab

[10] *See, e.g., Scott v. Dep't of Social Services,* 76 Md. App. 357, 382 (1988) (quoting *Cecil County Dep't of Social Services v. Goodyear,* 263 Md. 611, 622 (1971)) (In a case involving termination of parental rights, "'the greatest respect must be accorded the opportunity [the juvenile court] had to see and hear the witnesses and to observe their appearance and demeanor.'").

ride to appear in person and her extremely argumentative behavior and lack of respect toward the court and counsel, which underscored her demonstrated inability to control her emotions. The juvenile court noted Mother's lack of respect for counsel; her lack of respect for the court by frequently cursing and "dropping F bombs" during her testimony; and her refusal to turn her television off. It was well within the juvenile court's discretion to consider Mother's demeanor on the stand as corroboration of other evidence regarding her unfitness as a parent. Contrary to Mother's assertion, the juvenile court did not base those conclusions on her cognitive deficits or the court's perception of her appearance.

Conclusion

The juvenile court's findings were supported by ample evidence from which it could conclude that Mother was unfit and that exceptional circumstances made the continuation of Mother's parental relationship detrimental to the best interests of the children. The court did not err or abuse its discretion in its factual findings or in its ultimate determination that the termination of Mother's parental rights was in the best interest of each child.

ORDER OF THE CIRCUIT COURT FOR BALTIMORE COUNTY, SITTING AS A JUVENILE COURT, AFFIRMED; COSTS TO BE PAID BY APPELLANT.