Circuit Court for Baltimore County
Case Nos.: C-03-JV-23-000306 & 307

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 206

September Term, 2024

IN RE: E.L. and E.E.L.

Friedman,
Ripken,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: November 13, 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 its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

The Circuit Court for Baltimore County, sitting as a juvenile court, terminated the parental rights of Ms. J. ("Mother") and Mr. L. ("Father") as to their two minor children, E.L. and E.E.L. The parents appeal separately but raise the same arguments – that the circuit court erred in terminating their parental rights because they had made much progress in the several months before their rights were terminated, and the Department of Social Services for Baltimore County failed to provide adequate reunification services.

We shall affirm the judgments of the juvenile court.

BACKGROUND FACTS

2018

On February 26, 2018, E.L. was born to Ms. J. and Mr. L., an unmarried couple.[1] At the time of birth, both E.L. and Mother tested positive for prescribed methadone, and Mother also tested positive for benzodiazepines, cocaine, heroin, suboxone, and tetrahydrocannabinol ("THC"). E.L. was treated for about a month in the neonatal intensive care unit ("NICU") for withdrawal symptoms and then discharged to Mother, who was residing at Safe Harbor, a substance abuse treatment program for new mothers. About two weeks later, Mother was discharged from the program because of her inability to care for her child and refusal to participate in substance abuse treatment. Because Father was then incarcerated for possession of a controlled dangerous substance and was unavailable to care for E.L., the Department of Social Services for Baltimore County (the "Department") placed six-week-old E.L. under a shelter care order with his maternal great aunt, Ms. L.

[1] Mother and Father have an older child together, who is in the custody and guardianship of that child's paternal grandmother. That child is not subject to this appeal.

E.L. was subsequently declared a child in need of assistance ("CINA") [2], and Ms. L. was granted custody and legal guardianship of him.

2021

On October 21, 2021, about three and a half years after E.L.'s birth, E.E.L. was born to Mother and Father. Both E.E.L. and Mother tested positive for cocaine, fentanyl, and prescribed methadone, with Mother again testing positive for THC. Father was incarcerated at the time of E.E.L.'s birth.[3] E.E.L. remained in the NICU for more than two weeks for respiratory issues and severe withdrawal symptoms. At about that time, Temiloluwa Kolawole became the family's assigned social worker for the Department. E.E.L. was found to be a CINA and committed to the custody of the Department, which placed him in foster care upon his release from the NICU until he could be placed with Mother in a mother-baby substance abuse treatment program. Under the CINA order, both parents were granted liberal supervised visitation with E.E.L., according to the guidelines of Mother's treatment program and Father's penal institution. Among other things, Mother was ordered

[2] A "child in need of assistance" is "a child who requires court intervention because: (1) [t]he child has been abused, has been neglected . . . ; and (2) [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Md. Code Ann., Courts & Judicial Proceedings Article ("CJP") § 3-801(f). "CINA" is the acronym for "child in need of assistance." CJP § 3-801(g).

[3] During the years between E.L.'s and E.E.L.'s birth, Father was in and out of prison. In November 2018, Father was arrested for possession of a controlled and dangerous substance, theft, and second-degree assault. In February 2019, Father was arrested for first- and second-degree attempted murder, armed robbery, reckless endangerment, and possession of a dangerous weapon with the intent to injure. Mother was the victim in that case. At E.E.L.'s birth, Father was serving a five-year sentence for fourth-degree burglary, second-degree assault, and possession of paraphernalia.

to comply with recommended treatment program(s) and maintain contact with the Department; Father was to provide releases.

Around the time E.E.L. was released from the NICU, E.L. was re-entering foster care as his legal guardian, Ms. L., advised the Department that her adverse health conditions would not permit her to continue to care for E.L. E.L. was subsequently placed in foster care while the Department explored options for placing him with Mother.[4] At this time, Mother did not have a relationship with E.L. and had not seen him for three years.

On December 10, 2021, Mother entered a mother-baby substance abuse treatment program at Chrysalis House where E.E.L. joined her. However, because Chrysalis House accepted no more than a mother and one child, the Department continued to look for a treatment program that would accept Mother and both children.

2022

On January 25, 2022, Mother and E.E.L. transitioned to Brentwood, a mother-baby substance abuse treatment program that would allow Mother to have both E.L. and E.E.L. live with her. This was short-lived because, within nine days of placement, Brentwood discharged Mother from the program because of her inability to keep E.E.L. safe. Specifically, Mother was frequently observed falling asleep while holding E.E.L.; once lost track of E.E.L. and did not know where to find him; and during a virtual psychiatric evaluation, Mother's screen went black while E.E.L. could be heard crying in the

[4] Because neither parent disputes that the Department followed the correct procedures, we need not recount that Ms. L.'s guardianship of E.L. was rescinded and E.L. was placed in foster care pursuant to a shelter care order, after which he was again declared a CINA.

background, and when a facility staff member entered Mother's room as requested by the psychiatrist, E.E.L. was found alone in his bouncy chair on Mother's bed. Although the program recommended that Mother enter an inpatient psychiatric hospital, Mother refused. Because she was not amenable to the proposed discharge plan, Mother left the program for a shelter and E.E.L. entered temporary foster care.

About a month later, near the end of February 2022, E.L. was placed in foster care with a different maternal great aunt, Ms. R.J., who hoped to care for both children. Once E.L. was in her care, however, she determined that she could not manage both children. Four-month-old E.E.L. was subsequently placed in foster care with Ms. K.W. The children have remained in these foster care placements ever since. During this time, Mother signed a service plan with the Department.

From the date of the children's foster care placements until the end of 2022, the Department made efforts to reunite Mother with her children. The Department twice referred Mother to a family recovery support program and once to Home Builders – both intensive reunification programs. She was dismissed from each of the programs for lack of compliance. The Department scheduled a hair follicle test for the end of March 2022, but Mother rescheduled for the next day and then did not show up. The Department referred her to many inpatient psychiatric providers near her home. Mother, however, self-enrolled in other programs from which she was unsatisfactorily discharged as she continued to deny her need for substance abuse treatment. During this time, the Department had more limited contact with Father, who was incarcerated, but Ms. Kolawole had reached out to Father's mother a few times, who had contact with Father, and to Father's DOC case manager, who

expressed concern about in-person visitation taking place at the facility. Ms. R.J. facilitated some virtual visits between Father and E.L.

During 2022, Mother missed seventeen and attended nine visits with the children, with the Department providing her with bus passes and cab services. During one of the visits, Mother was slurring her words, sweating profusely, fell asleep while feeding E.E.L., and appeared to be intoxicated. Ms. Kolawole was also concerned about Mother's comprehension as Mother would forget their conversations, and even when Ms. Kolawole wrote down certain information as requested by Mother, she still would not understand or retain the information. The Department eventually paused visitation until Mother agreed to a two-day before visit confirmation because of her frequent no-shows, considering that the children were being transported to and from visits from long distances, Baltimore County and Harford County.

Following a hearing, a permanency plan order was issued in September 2022, providing for the children's reunification with parents. Pursuant to the order, parents were ordered to, among other things, provide releases, obtain and maintain employment, stable housing, and submit to substance abuse treatment.

Near the end of 2022, Dr. Aaron Noonberg, Ph.D., specializing in clinical psychology and neuropsychology, completed a court ordered "fitness to parent" evaluation of Mother. During Dr. Noonberg's evaluation, he noted that she fell asleep more than fifty times, and when awake, she frequently slurred her words and appeared intoxicated. He administered a cognitive test that resulted in an IQ of 57 but noted that the results were unreliable due to having to wake Mother up dozens of times during the test. She stated that

she had multiple sclerosis, and Dr. Noonberg diagnosed her with post-traumatic stress disorder, unspecified bipolar disorder, unspecified anxiety, and severe opioid use disorder. He concluded in his report that Mother "cannot safely and reliably be responsible for a child or anyone else at this time[.]"

2023

Following a permanency plan review hearing in early February 2023, the court changed both children's permanency plan from reunification to reunification concurrent with adoption by a relative for E.L. and a non-relative for E.E.L.[5] Around this time, Father was released from prison and ordered to serve the remainder of his prison sentence in home detention. Upon his release, he quickly contacted Ms. Kolawole and provided contact information for his case manager and signed release forms. Although the Department wanted to facilitate in-person visits between Father and the children, due to the conditions of his release (home detention and daily scheduled substance abuse groups), the Department set up virtual visits instead. About ten days following his release, however, Father tested positive for illegal substances and was reincarcerated. He remained so until September 2023.

[5] At the permanency plan review hearing, the juvenile court ordered visitation for Mother to be supervised and liberal, and Father was to contact the Department. Both parents were required to gain employment and stable housing, a mental health evaluation, random drug testing, and parenting classes, a hair-follicle test, a fitness to parent evaluation, and sign release forms.

Mother did not have contact with the Department or her children from November 2022 until the middle of February 2023, when she contacted the Department and sought bus passes to visit her children but then did not appear for visits.

In April 2023, the Department filed petitions for guardianship and to terminate the parental rights of parents, both of whom filed objections. About this time, Mother self-enrolled in Priceless Hearts, a drug-addiction inpatient treatment program. Although the Department confirmed her enrollment, they could not confirm her progress or treatment plan because Mother did not sign required releases until September 2023.

Mother did not resume visitations with the children until early September 2023, with the Department assisting with cab rides. Ms. Kolawole observed that during the visits, Mother was often overwhelmed, was unable to provide care for both children at the same time, and had difficulty doing minor tasks, in one instance spending over twenty minutes to change a diaper. Both children expressed initial confusion about who Mother was and her role in their lives.

Around this time, Father was released from prison, and he again immediately contacted Ms. Kolawole. He lived with his mother; obtained employment; enrolled in ARTS, an addiction and recovery treatment program; and signed release forms. Through the ARTS program, Father attended group meetings four times a week; individual therapy every other week; and participated in medication management and psychiatry services. The Department initially found scheduling visits between Father and the children logistically challenging because there were allegations of intimate partner violence, and the Department did not want to remove the oldest child from school for the visits. It was finally

arranged for Father to visit each child separately, but not on days of Mother's visits. The Department supervised the visits between Father and E.L. while E.E.L.'s foster mother, Ms. K.W., supervised the visits between Father and E.E.L. It was noted that when Father's visitations resumed, E.E.L. began exhibiting unusually aggressive behavior, biting and hitting children and throwing objects. In November, E.E.L. was suspended for a week from his daycare due to his behavior. Although the Department did not have a formal service plan with Father, Ms. Kolawole testified that he had "quite a good understanding of what was required of him" and that was why, when he was released from prison, Father enrolled in substance abuse treatment and mental health programs, and found employment and stable housing.

2024

When Ms. Kolawole left the Department near the end of January 2024, Gina Malphrus became the family's case worker and children's adoption social worker. At that time, Mother was still enrolled at Priceless Heart. Although Mother eventually signed a release form, Priceless Heart never provided the Department with the requested information. Mother, however, was reportedly doing well in the program, and Mother felt the program was helping her.

Prior to Ms. Kolawole's departure, Father was in compliance with the ARTS program, but she had concerns about Father's lack of understanding of child development and that he appeared "easily confused." Although he was responsive to taking a parenting class, she did not refer him to any classes. E.E.L.'s foster mother, Ms. K.W., also expressed concerns about Father's understanding of child development, as he often looked to her for

direction about what to do during visits. She noted that she occasionally needed to repeat instructions for him. She noticed that he asked the same questions in short periods of time and had to be repeatedly reminded to supervise E.E.L. – for example, on several occasions, he left E.E.L. at a dining table by himself; Father did not notice when E.E.L. ran away while they were standing in line at a restaurant; and on another visit, Father wore an exposed knife on his belt where E.E.L. could reach it.

March 2024 – TPR Hearing

On March 27 and 28, 2024, the juvenile court held a two-day contested hearing on the merits of the Department's petitions for guardianship. Both of the Department's assigned licensed social workers testified: Ms. Kolawole, who was involved from November 4, 2021, until she left the Department on January 23, 2024, and Ms. Malphrus, who was involved after Ms. Kolawole's departure. The parties stipulated that Ms. Kolawole was an expert in social work, child welfare, and neglect, and Ms. Malphrus was an expert in social work, child welfare, and adoptions. Additionally, both parents and foster mothers, Ms. K.W. and Ms. R.J, testified at the hearing. The Department's records for both children were admitted as business records with no objection.

Ms. Malphrus testified about the children's current situation. E.L. was six years old and has been living with his foster mother, Ms. R.J., his maternal great aunt, for the past two years. Ms. Malphrus testified that E.L. is "doing great" and appears to be comfortable in the home. She described the interactions between Ms. R.J and E.L. as "warm, genuine," and "very positive." E.L. attends kindergarten and has an individualized education plan and receives weekly speech services. He sees several medical specialists, including a

pediatric gastroenterologist and a dermatologist. He also receives occupational therapy to address his delayed gross motor skills. He was evaluated and referred for therapeutic services at Kennedy Krieger and diagnosed, *inter alia*, with ADHD, anxiety disorder, and attachment disorder.

Ms. Malphrus testified that E.E.L. was two and a half years old and had been with his foster mother, Ms. K.W., almost since birth. Ms. Malphrus described him as a "very happy" child with "incredibly high energy[.]" She testified that E.E.L. is "comfortable" in his foster home and wants "to be as close . . . as possible" to his foster mother. He attends a local community day care, receives Infants and Toddlers services, and attends bi-weekly speech therapy for treatment of a significant (twenty-five percent) speech delay. He exhibits some behaviors that he and his foster mom are working on – they participate in parent-child interaction therapy so she can help him learn how to manage his behavior. He was diagnosed at birth with reactive airway disease and has been diagnosed with adjustment disorder, which are monitored by his primary care physician and his current therapist, respectively. E.E.L.'s foster mother testified that she and E.E.L. are "very bonded," he calls her "mommy," and he "likes routine . . . . That's where he feels secure."

Ms. Malphrus testified that, since her engagement, both parents had scheduled weekly, supervised visitations with the children. Of the nine visits scheduled with Mother, she attended only three. The Department canceled once because the child was ill; Mother canceled once because of an emergency dental visit; and Mother missed four visits. According to Ms. Malphrus, the visits go well and are closely supervised in a small room – the visits initially took place in a larger room, but Mother had trouble managing both

children and requested a smaller room. Ms. Malphrus has observed, however, that even in the smaller room, Mother still struggles to manage both children at the same time, and also noted that it takes Mother a very long time to do minor tasks. Father visits each child separately and had eight visits scheduled with E.L., of which he attended five, and nine visits with E.E.L., of which he attended four – the Department had canceled one of the visits with E.E.L. because the child was ill. Father visits E.L. at a Department facility with the Department support staff supervising, and he visits E.E.L. in the child's community with the foster mother supervising. Father has not provided the Department with verification of employment, nor has he provided verification of his mental health and substance abuse treatment programs.

Ms. Kolawole testified that Mother had not been able to address her substance abuse issue when not in an intensive inpatient facility and noted that all visitations have been supervised. Mother was given a spreadsheet prepared by E.L.'s foster mother containing E.L.'s doctor appointments, but Mother never appeared for any of them. The Department provided Mother with a taxicab to attend an appointment, but she failed to appear for the cab. It is unclear whether Father was given the spreadsheet, but he also had not participated in any of the children's doctor appointments.

Ms. Malphrus opined that both children's needs are being addressed effectively by their respective foster mothers. When asked whether there were services that the Department could offer to the parents that could bring about lasting change in the near future so that the children could be placed with the parents, Ms. Malphrus replied there was not. She opined that, in the circumstances, it was in the best interests of both children that

the parents' rights be terminated so they can be adopted. She testified that Mother remains in a residential treatment facility, and Father has been incarcerated throughout the majority of the children's lives. She opined that neither parent has demonstrated that they can care for their children, communicate effectively, or remember things of concern. She opined that it is "very emotionally traumatic" for the children not to have permanency, which is critical for healthy development and growth.

Both parents' testimony focused on their achievements in the several months preceding the TPR hearing. Mother testified that, although she has abused drugs for about twenty-five years and has been in about ten different programs for substance abuse, in the past year she has maintained stable housing, attended intensive outpatient behavioral health and substance abuse treatment through Priceless Heart, and tested "clean" on every drug test. She introduced into evidence lab results between December 18, 2023, and February 5, 2024, showing that she tested negative for illegal drugs. Through Priceless Heart, she has stable housing, to which she contributes $100 a month; daily individual therapy; and has completed a parenting class and taken a second parenting class but has not yet passed that test. She also introduced a letter from her psychiatrist stating that she has been a client since enrolling at Priceless Heart in March 2023 and she was last seen in March 2024; she is scheduled for bi-weekly appointments, which she attends regularly; her prognosis is "good"; and the program recommends that she continue at her current level of care and work toward continued stabilization of her substance abuse recovery and mental health disorders. Mother does not have a car but she recently found employment with Honeygrow, a restaurant chain, where she will begin training. She admitted that she had not provided

the Department any documentation regarding her employment. She currently is taking gabapentin, Seroquel, clonidine, Adderall, methadone, Topomax, and clonazepam.

Father admitted that while incarcerated, he had two or three virtual visits with E.L. but had no contact with E.E.L. He testified that since his release from prison, he has maintained stable housing – upon his release he lived with his mother and in the last month, he began renting a basement, two-bedroom apartment for $750 a month. He admitted that he failed to advise the Department of his move to the apartment. Within a month of his release from prison, he began employment with a roofing company but admitted that he never provided verification of his employment to the Department, although it was requested. He testified that his wages vary depending on the weather, but he averages about $2,800 a month before taxes. The court admitted into evidence his 2023 W-2 form showing $4,060 in wages. He stated that he did not ask to attend his children's medical appointments because he did not know if he had the time, stating that between working and taking substance abuse classes "it's hard." He testified that he has ADHD and bipolar disorder and takes his prescribed medications of suboxone and Zoloft on a regular basis. He testified that he graduated from the ARTS drug treatment program but was still involved with the program for mental health treatment and medication management. He testified that he feels bonded to his children. He understood that his children had "a lot of disabilities" but testified that he did not "think it's really disabilities. I just think they need more attention. They need – they need a father and a mother. They're so confused. That once they get that, you know, it will all work out."

In closing, both the Department and children's attorney argued that, although the parents have made some progress toward reunification, particularly in the recent several months, it was in the interest of both children to terminate their parents' rights because their progress was insufficient to meet the children's needs. After hearing evidence and argument, the juvenile court agreed. Ruling from the bench, the court summarized the testimony, finding credible the testimony of the social workers and the foster mothers. The court found that each of the children have "significant issues" and the foster mothers, who have no other persons in the house besides themselves and the child, are effectively managing the children's needs. The juvenile court then addressed each of the factors in Md. Code Ann., Family Law Article ("FL") § 5-323, concluding that the Department had met its burden by clear and convincing evidence that the parents were unfit to remain in a parental relationship with their children. The court further found, perhaps gratuitously, that exceptional circumstances existed that made it contrary to the best interest of the children to continue the parental relationship. The court subsequently entered a written order reflecting its ruling from the bench.

Both parents separately appealed the juvenile court's order. We shall provide below additional facts where necessary to address the questions raised.

DISCUSSION

Standard of Review

We apply "three different levels of review" to a juvenile court's findings in a CINA proceeding. *In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 733 (2014). We apply the clearly erroneous standard to factual findings; reviewing matters of law for

error, unless the error is harmless; and apply the abuse of discretion standard to the juvenile court's ultimate conclusion. *In re Ashley S.*, 431 Md. 678, 704 (2013) (citing *In re Yve S.,* 373 Md. 551, 586 (2003)). "Abuse of discretion has been said to occur where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *Alexis v. State*, 437 Md. 457, 478 (2014) (cleaned up). *See also In re Shirley B.*, 419 Md. 1, 19 (2011) ("'[Q]uestions within the discretion of the trial court are much better decided by the trial judges than by appellate courts, and the decisions of such judges should only be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred.'" (quoting *In re Yve S.*, 373 Md. at 583)).

TPR Law

"When the State petitions to terminate parental rights without a parent's consent, the court's paramount consideration is the best interests of the child." *In re Adoption/Guardianship of H.W.*, 234 Md. App. 237, 247 (2017). FL § 5-323 governs nonconsensual termination of parental rights and gives a juvenile court the right to terminate a parent's rights when either of two circumstances exist:

> 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.

FL § 5-323(b) (emphasis added). "[U]nfitness and exceptional circumstances are two separate inquires[,]" and either one may serve as an independent basis for an order terminating parental rights. *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 54 (2019).

The statute lists factors that a juvenile court must consider before determining a parent is unfit or exceptional circumstances exist, but the statute states that the juvenile court "shall give primary consideration to the health and safety of the child" when considering whether terminating a parent's rights is in the child's best interests. FL § 5-323(d). The statutory factors a court shall consider include:

> (1) (i) all services offered to the parent before the child's placement . . . ; (ii) the extent, nature, and timeliness of services offered . . . ; 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 . . . 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.

FL § 5-323(d). "[A]lthough the juvenile court must consider every factor in FL § 5-323(d), it is not necessary that every factor apply, or even be found, in every case." *In re Jasmine D.*, 217 Md. App. at 737. In addition to the above statutory factors, a juvenile court "may consider [other] parental characteristics [such] as age, stability, and the capacity and

interest of a parent to provide for the emotional, social, moral, material, and educational needs of the child." *In re H.W.*, 234 Md. App. at 248-49 (quotation marks and citations omitted).

Juvenile Court's Ruling

Here, the juvenile court analyzed each of the above four statutory factors. As it must, the court began by noting that the children's health and safety was its primary consideration. Regarding the first factor, the court noted that there were essentially no social services agreements between the Department and the parents. The court found that the Department had provided reunification services to the parents from the outset, and the services that proved the most helpful were visitation and transportation, noting that Father's incarceration during most of the children's lives caused him to receive fewer opportunities for services but that his incarceration was within his control, particularly his re-offending.

As to the second factor, the court found both parents have been absent for a significant period of the children's lives, but they have had more recent contact with their children, although even that contact has not been regular or consistent. The court noted that neither parent had made any financial contribution to the welfare of the children, nor had the Department asked them to do so. The court noted that both parents had "significant" disabilities due to substance abuse and mental health issues that prevented them from properly caring for their children for extended periods of time. The court noted that, during Mother's testimony, she had difficulty understanding and answering the questions, "slurred" her words, and appeared extremely tired, all of which worsened as the hearing went on. The court noted that Father was better at understanding and responding to

questions than Mother, but it was "not to say" his understanding and responses were good. The court added that both children's foster mothers testified that the children had very rigorous schedules and significant needs. Mother was still not independently taking care of herself and while Father was able to do so, between work and counseling sessions, he had little time for much else. The court noted that the statutory period of additional services had passed (eighteen months from the date of placement), but regardless, the experts, who the court found credible, testified that no additional services would bring about lasting parental adjustment within a reasonable time frame.

As to the third factor, the juvenile court found that both children had suffered prenatal abuse as they tested positive for substances at birth. The court noted there was "loose" testimony about "significant" domestic violence, but Mother refused to testify about it and little factual evidence was presented. The court understandably reached no conclusion on that question.

As to the fourth factor, the court found that the children had strong emotional ties to their foster mothers and community and are happy and doing "well" in their current homes despite having "significant issues." The court expressed concern about uprooting the children, who were doing well in their homes and community.

After weighing all of the above factors, the juvenile court found that termination of their parental rights was in the best interest of the children because the parents were unfit and exceptional circumstances existed.

Father's Appeal

Father argues that the juvenile court erred in terminating his parental rights because the Department did not make reasonable efforts toward reunification. Specifically, he argues that the Department never presented him with a service agreement; never offered rehabilitative services while incarcerated or services to address any alleged parental shortcomings, such as inadequate understanding of child development and cognitive concerns; and never offered services for past substance abuse, housing, or employment. He also argues that the juvenile court abused its discretion in finding him unfit or that exceptional circumstances existed to terminate his parental rights where he had made recent gains, pointing out that he has stable housing and employment, completed his substance abuse program, was addressing his mental health issues, and had good visits with his children, particularly where termination of his parental rights would mean that the children would not grow up in the same household.

We are not convinced that the Department failed to fulfill its reunification efforts for Father under the circumstances. While a CINA proceeding requires a juvenile court to make ongoing findings of the reasonableness of the Department's efforts, a guardianship proceeding requires a 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). When a parent is incarcerated for an extended period of time, a court may determine that "any provision of services toward reunification would have been futile" because "no amount of services

would have alleviated th[at] primary obstacle[.]" *In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. 30, 54-55 (2017)

The juvenile court was unwilling to fault Father's incarceration against the Department for the purposes of providing services where Father has been essentially incarcerated for nearly all of his children's lives, except the preceding six months. We do not disagree with this conclusion. The evidence also supports not faulting the Department for not providing additional services to Father relating to housing, employment, and treatment, for soon after his release from prison the second time, he found housing, employment, and enrolled in a substance abuse treatment program. The Department cannot be faulted for not providing services where none were needed.

The most useful service the Department did provide was visitation, but in the three months prior to the TPR hearing, Father missed almost half of the scheduled visits with his children. Father also did not attend any of his children's medical appointments and in his testimony suggested that he did not because it was too difficult given his full-time employment and the effort required to maintain his sobriety and mental health. It is clear that Father was unable to balance his own needs with those of his children, including their serious medical and developmental limitations.

Although, at the time of trial, Father was doing well with his sobriety and had obtained stable housing and employment, the time and effort required to establish and maintain those significant anchors were just in their beginning stages, while his children have significant, predictably long-term needs of their own. Ms. Malphrus opined that there were no services that the Department could offer to the parents that could bring about

lasting change in the foreseeable future so that the children could be placed with the parents. Under these circumstances, we are not persuaded that the juvenile court's determination that the Department's reunification services were reasonable was clearly erroneous.

We further find that the juvenile court, after considering all the factors enumerated in FL § 5-323(d), did not err in concluding that Father was unfit to care for the children or that exceptional circumstances existed so that it was in the children's best interest to terminate his parental rights. At the time of the TPR hearing, E.L. was six years old, and E.E.L. was two and a half years old, having essentially spent all their lives in foster care. Father has never had custody of either child, and he has never managed a visit with both children at the same time. Moreover, all his visits have been supervised. As stated above, his visitations since his release from prison have been inconsistent, with him missing close to half of all visitations scheduled. During his testimony, Father minimized the children's substantial medical and behavioral issues. There is nothing to suggest that the court erred in concluding that Father was unlikely to care for the children safely within a reasonable time period. Father presciently testified that he could not take on the added time and energy to attend their doctor appointments while managing his own life.

We are mindful that the Maryland Supreme Court in *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 501 (2007), recognized that a child's childhood is finite and that time is of the essence when it stated "that children have a right to reasonable stability in their lives and that permanent foster care is generally not a preferred option[.]" "A critical factor in determining what is in the best interest of a child is the desire for

permanency in the child's life." *In re Adoption of Jayden G.*, 433 Md. 50, 82 (2013). "Long periods of foster care are harmful to the children and prevent them from reaching their full potential." *Id*. at 83 (cleaned up). While Father argues that the children have the "right" to be raised together, he also concedes, as he must, it is not the law in Maryland. Maintaining Father's parental rights under these circumstances would have placed the children's status in a state of suspended animation until a future date that may never occur. Despite Father's recent successes, the juvenile court found that this was "too little[,] too late[.]" Under the circumstances, we find no abuse of discretion in the termination of Father's parental rights.

Mother's Appeal

Mother argues that the circuit court erred in terminating her parental rights because she had made "substantial and material changes to her circumstances" by the time of the TPR hearing. She points out that, for the year preceding the TPR hearing, she had been drug free and enrolled in Priceless Hearts intensive inpatient treatment program and, as part of her treatment, she pays $100 per month toward her housing; attends individual and group counseling; and has a "good" prognosis. She further points out that her visits with the children are good, and she has an emotional bond with them. Lastly, she argues that the Department failed to make reasonable efforts toward reunification by failing to obtain records "that were necessary in assessing . . . whether or not [she was a fit parent] and whether or not exceptional circumstances" existed.

On the record before us, we find no abuse of discretion in the termination of her parental rights. We agree with the juvenile court that, while it is commendable that Mother had been drug free for a year with the support of an intensive inpatient treatment program,

continued successful enrollment is not demonstrative of her capability to care for the children. The children have essentially not resided with Mother since birth and cannot reside with her in her current living situation. As both experts testified, Mother has difficulty managing both children at the same time.

We also agree with the juvenile court's finding that the Department provided Mother with reasonable reunification services. The Department referred her to numerous inpatient substance abuse and mental health facilities, provided her with visitation and transportation, encouraged her to attend the children's doctor's appointments, and provided her with a parental fitness evaluation, and more. Additionally, the Department secured a smaller visitation room when Mother requested it because handling both children in a larger room was difficult for her, and the Department changed its communication to written form at Mother's request to account for Mother's seeming cognitive disabilities.

We likewise find no merit in Mother's argument that the Department failed to provide reasonable reunification efforts because it failed to retrieve her treatment records or provide a second referral to evaluate her fitness to parent. We note that Mother introduced evidence at the TPR hearing of her compliance with her mental health and substance abuse treatment programs. We cannot conclude that the Department obstructed her ability to assert her case. Moreover, given all the factors the court weighed in deciding to terminate her parental rights, we fail to see how a second parental fitness evaluation would have changed the outcome.

Implicit in the court's findings and conclusions was the ability of the court to judge the credibility of the witnesses and to observe their conduct and appearance before the

court. Indeed, the court observed that, at trial, Mother slurred her words, appeared tired, and had difficulty understanding and responding to the questions posed, all of which grew worse as the hearing proceeded.

Accordingly, we find abundant evidence to support the juvenile court's decision to terminate Mother's parental rights to both E.L. and E.E.L.

Exceptional Circumstances

Both parents challenge the juvenile court's finding of "exceptional circumstances," as provided by FL § 5-323(b), to likewise support its decision to terminate their respective parental rights to E.L. and E.E.L. Each assert that the court erred in not providing specific findings of fact to support its conclusion of the existence of such statutory exceptional circumstances. We agree that the court did not elaborate. But we likewise conclude, even disregarding the court's unexplained findings of exceptional circumstances, its findings, by clear and convincing evidence, of unfitness of the respective parents supports its ultimate ruling that their parental rights be terminated, and the Department's petition be granted. It is clear from the record that the juvenile court gave "primary consideration to the health and safety" of E.L. and E.E.L.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.