Circuit Court for Worcester County
Case No. C-23-JV-23-000084

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 785

September Term, 2024

IN RE: M.R.

Leahy,
Reed,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: January 14, 2025

*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 Worcester County, sitting as a juvenile court, terminated the parental rights of the appellant, S.T.[1] ("Mother"), as to her then two-year-old daughter, M.R.[2] The court determined that termination of parental rights ("TPR") was appropriate because Mother was unfit to parent M.R. The court based its decision on "ample evidence of [Mother's] ongoing, severe issues with addiction and with mental health problems." The court ruled that it was unsafe to return M.R. to Mother within a reasonable time and that it was in M.R.'s best interests to terminate Mother's parental rights. Thus, the court granted the petition for guardianship filed by the appellee, the Worcester County Department of Social Services ("Department").

Mother presents the following two questions for our review:

I. "Did insufficient evidence support the juvenile court's decision to terminate the relationship between Mother and her daughter, and as a result, did the court err as a matter of law and abuse its discretion when concluding that TPR was in M.R.'s best interests?"

II. "Did the court improperly focus on custodial considerations and shift the burden of proof to Mother when it granted the TPR petition?"

We hold, *first*, that there was sufficient evidence to support the juvenile court's decision, as the Department presented evidence of Mother's substance abuse, unstable mental health condition, and history of child neglect. *Second*, we hold that the court

[1] The biological father of M.R. is unknown. The court noted that "service was effected by publication in a local newspaper and by posting on the Maryland Department of Human Services website, and a consent by the unknown father was deemed to have been effectuated by operation of law on January 15, 2024."

[2] To protect Mother's children's identities, we refer to them by their initials.

correctly focused on the guiding factors contained in Maryland Code (1984, 2019 Repl. Vol., 2023 Supp.), Family Law Article ("FL"), section 5-323(d), and properly determined that the Department met its burden of persuasion through the presentation of clear and convincing evidence that it was in M.R.'s best interests to terminate Mother's parental rights. Accordingly, we affirm the judgment of the circuit court.

BACKGROUND

A. The Circumstances Surrounding M.R.'s Birth

Before M.R.'s birth, Mother had two children who were each adjudicated as a child in need of assistance ("CINA") and removed from Mother's care by the Department.[3] Mother's older son, A.B. (born in 2002) was adopted after Mother's parental rights to A.B. had been terminated. Mother's younger son, T.T. (born in 2011), was determined to be a CINA four times. Those CINA determinations involved findings of neglect based on Mother's substance abuse and mental health issues. T.T.'s maternal grandparents have custody of T.T., and Mother was granted limited unsupervised visitation of him.

M.R. was born in November 2021. At birth, M.R. tested positive for cocaine and marijuana. As a result, the Department opened a substance-exposed newborn case,[4] met

[3] At the TPR hearing involving M.R., the court took judicial notice of the CINA and TPR cases involving Mother's two other children. In an opinion and order issued on May 22, 2024, the court noted "the plethora of case law which directs a trial court to consider the parent's treatment of a sibling or other minor child when determining whether there will be similar behavior and similar treatment of the child who is before the Court."

[4] Under FL § 5-704.2(c), healthcare practitioners involved in the delivery or care of a substance-exposed newborn are generally required to report to the local department of social services about the newborn's condition and the mother's ability to properly care for

with Mother and M.R., and referred Mother to substance abuse treatment. After the Department concluded that Mother had been compliant with substance abuse treatment services, it closed the case. Mother, however, then refused in-home services.

B. M.R.'s CINA Adjudication

In March 2022, the Department received notifications that M.R. had missed several medical appointments, including scheduled vaccinations. Thereafter, the Department was alerted that Mother had been involved in domestic violence while M.R was present. Mother revoked her consent for the Department to access records from her treatment providers.

The court issued a shelter care[5] order in May 2022. The next month, M.R. was adjudicated as a CINA based on Mother's neglect. M.R. was placed with her foster caregiver, S.H.

C. Procedural History Post-CINA Adjudication

At the December 12, 2022 permanency plan review hearing, the juvenile court found that the Department had made referrals for Mother for mental health and substance abuse, and referred Mother to Dr. Samantha Scott for a psychiatric evaluation. The court ordered Mother undertake substance abuse testing and treatment, psychological and

the newborn. The local department must then promptly conduct a risk assessment and, if further intervention is necessary, take additional actions to ensure the safety of the family. FL § 5-704.2(h).

[5] "'Shelter care' means a temporary placement of a child outside of the home at any time before disposition." Md. Code, CTS. & JUD. PROC. § 3-801(cc).

psychiatric evaluations, parenting classes, and individual counseling. Under the permanency plan for reunification with a parent or guardian, the court ordered supervised visitation "at least weekly."

At the subsequent permanency plan review hearing held on May 8, 2023, the juvenile court found that the Department continued to make reasonable efforts to finalize the permanency plan of reunification, including facilitating visits between M.R. and Mother and T.T., and providing transportation for medical appointments. The court noted the "[Department's] recommendation for adoption if permanency plan not achieved by next hearing."

At the conclusion of the next permanency plan hearing on October 27, 2023, the juvenile court changed the permanency plan from reunification to adoption by a non-relative. On November 8, 2024, the Department filed a Petition for Guardianship.

D. TPR Hearing

Mother and M.R. were each represented by separate counsel at the contested hearing held on April 22, 2024, on the Department's petition requesting guardianship and termination of Mother's parental rights to M.R. Counsel for M.R. stated that she supported the Department's petition.

The Department called Dr. Samantha Scott as its first witness. The parties stipulated to her qualification as an expert in psychology. Dr. Scott completed a psychological and Fit2Parent evaluation of Mother, and her corresponding 30-page report was admitted into evidence without objection. The evaluation started in April 2023. Mother then failed to show up for four appointments with Dr. Scott, and thus delayed the completion of the

evaluation. Dr. Scott wrote in the report that Mother "never returned for the remain[d]er of her psychiatric intake, nor did she complete the discipline interview or Thematic Apperception Test." In addition, Mother "did not provide any references to contact." Without this information, Dr. Scott was unable to make a formal diagnosis. Instead, Dr. Scott described "clinical syndromes suggested" in her report, including suggested disorders such as delusional disorder, bipolar 1 disorder, and adjustment disorder with anxiety. The report also noted the possibility of several additional personality disorders.

At trial, Dr. Scott described Mother as "fairly complex with mental health issues and substance abuse issues that have been just going on over 20 years, self-reported." In the report, Dr. Scott explained that Mother's "pattern of responding reflects a severe mental disorder characterized by a constricted and defended mindset, pronounced distrust of others, and self-defeating circles of inflexible interpersonal exchanges." Together with Mother's "long history of homelessness, [], substance abuse, and interpersonal violence[,]" Dr. Scott also concluded that there was "significant evidence that [Mother] has and may be currently experiencing some form of psychosis including delusional and paranoid thinking patterns and behaviors." Dr. Scott noted in her report that it appeared that visits with Mother were causing M.R. stress. On cross examination at trial, Dr. Scott testified that she observed this when she was present during a meeting between Mother and M.R.

Dr. Scott stated in her report that, based on her assessment of Mother, "[s]ignificant concern is raised regarding [Mother's] psychological functioning, particularly as it pertains to her ability to offer [M.R.] a safe environment in which to return." Her recommendation was, "[a]t this time, it is not advised that [M.R.] return to [Mother's] care." Dr. Scott also

recommended that Mother enter residential treatment, as she "would benefit greatly from a co-occur[r]ing mental health and substance abuse treatment facility where she can detox (if necessary) and be afforded 24-hour psychiatric care and substance abuse counseling."

The Department's case manager and social worker, Connie Bonsall, testified next and related that she had been working on M.R.'s case since M.R. was first sheltered in May, 2022. She explained that Mother's history with the Department dates back to 2005, and that her parental rights to two of her other children had been terminated. The Department introduced, and the juvenile court accepted into evidence, the CINA records for M.R.'s siblings. Ms. Bonsall explained that in M.R.'s case, the Department made referrals for Mother to obtain substance abuse and mental health treatment and to participate in parenting classes. The Department also provided transportation to those services. However, Ms. Bonsall explained that, in contravention to her service plan with the Department, Mother canceled or missed appointments with mental health treatment providers. She also refused to sign various consents for the release of treatment records, failed to submit to random urinalysis testing, and failed to complete parenting classes.

Ms. Bonsall testified that the Department provided supervised visitation between Mother and M.R. (and the Department provided Mother's transportation to those visits). At first, Mother "was very difficult to get ahold of" and was inconsistent with visiting M.R. In the year leading up to the TPR hearing, however, Mother's visitation was more consistent. Ms. Bonsall, who supervised most of the visits between Mother and M.R., described the visits as going "very well," and added that Mother "is very attentive to [M.R.], she does her hair, she puts lotion, she does her nails, she brings food, they go very

well." Ms. Bonsall testified, however, that Mother had made no efforts to adjust her substance abuse and mental health during the two years preceding the TPR hearing. She explained that because of Mother's substance abuse, mental health, and domestic violence issues, the Department had the same safety concerns for M.R. that it had at the start of the case. Thus, the Department recommended against granting Mother unsupervised visitation with M.R.

Ms. Bonsall explained that since the Department received custody of M.R., she has lived with her foster caregiver, S.H. According to Ms. Bonsall, M.R. is bonded with S.H. and the other members of S.H.'s household, including another adopted daughter around the same age as M.R. Ms. Bonsall described how S.H. took M.R. to doctor's appointments and dealt with M.R.'s behavior at school.

S.H. testified next. She said that she has been M.R.'s foster mother for about two years, and that she loves M.R. and she would like to adopt her. S.H. described the other members of her household, including her biological ten-year-old son and four-year-old adopted daughter. She testified that she would be willing to continue supervised visits between M.R. and Mother, "[a]s long as it's good interactions and doing well."

The final witness was Mother, who testified that she currently has a regular visitation arrangement with her younger son, T.T, that includes unsupervised overnight visits. Mother explained that she takes T.T. to visits with M.R. once per month. She said that M.R. sticks to her during visits and does not frequently interact with strangers, but M.R. plays with T.T. and lets him hold her occasionally.

Mother testified that Dr. Scott was not physically present for most of her evaluation, and she only saw Dr. Scott briefly at the intake and again at the final one-on-one session. Mother explained that she skipped portions of the evaluation because they were traumatic, and she was under the impression that she would be able to redo those portions in the future. She claimed that she provided Dr. Scott the names and addresses of her siblings, as well as some close friends. Mother related that she had been undergoing mental health and substance abuse treatment since June 2022. She said that she had a heart condition that required her to be hospitalized several times, causing her to miss multiple appointments for substance abuse treatment.

Mother attended parenting classes, "was doing them constantly," and "only had like two classes left." She explained that she had already taken multiple other parenting courses and has certificates from them, and she was not aware that she needed to complete the classes. Mother testified that she had regular contact with the Department, and has been in contact with S.H.

On cross-examination, Mother admitted that she had revoked her permission for the release of her mental health records to the Department in May 2022. However, she claimed that she had signed multiple releases since then. She clarified that she did not sign an open release, but signed a checklist-style release and provided Ms. Bonsall with the providers the Department could contact.

E. The Juvenile Court's Decision

In May 2024, the court issued its opinion and order, which granted the Department guardianship of M.R. and terminated Mother's parental rights. In its findings of fact, the

court made note of Dr. Scott's report, which states that Mother presents with "a severe mental disorder," and may suffer from alcoholism and drug addiction. The court stated that although the Department attempted to introduce various police reports involving Mother, it only admitted "any police records involving Mother during a time frame when a minor child was in her home." Still, the court noted "that Mother's other cases, and her reported history given to Dr. Scott, indicate an ongoing involvement with domestic violence, and evidence of volatile and sometimes violent interpersonal relationships." Regarding M.R., the court found:

> [M.R.], by all accounts, appears to be developmentally on target in her milestones, her temperament and her growth. She is undeniably bonded with her foster parent, with whom she was placed immediately upon her removal, and refers to her as, "Mom" or "Mama". As well, she has bond with Mother, and without dispute, the visits between the two of them go well. Mother is appropriate, caring, attentive.

In its discussion, the court thoroughly addressed the factors in FL § 5-323(d). Discussing the first factor, "All services offered to the parent before the child's placement," the court took judicial notice of mother's prior CINA cases, stating:

> Mother objected to the Court taking judicial notice of [T.T]'s case and the case of [A.B.], Mother's two sons. The Court overruled that objection, pointing to case law which directs courts to consider parent's past abuse or neglect when making determination of whether the child at issue is at risk, and noting, as well, the statute in the Family Law Article of the Annotated Code of Maryland, section 9-101.

The court noted that, based on cases such as *In re Priscilla B.*, 214 Md. App. 601 (2013), courts should consider a parent's prior history of neglect when considering whether the child at issue will be neglected in the future. The court found that the Department made reasonable efforts to reunify Mother and M.R., including In-Home Services, Safety Plans,

and making referrals for substance abuse treatment. The Court also found that the Department made reasonable efforts to locate and serve M.R.'s biological father, who remains unidentified.

Regarding the next two factors under FL § 5-323(d), related to the services offered by the Department and Mother's use of those services,[6] the court found that the Department repeatedly referred Mother to mental health services and substance abuse treatment, but Mother refused to submit to a drug screen and failed to treat her mental health issues. The court noted that this was a pattern, based on her actions in previous CINA cases. Therefore, the court found, "by clear and convincing evidence, that Mother was unable to adjust her circumstances and her situation then, such that it was safe for the two older boys to return home, due to her engagement with law enforcement, with addiction, and with untreated mental health issues."

The court next considered the fourth factor, related to Mother's efforts to adjust her circumstances:[7]

[6] Those factors are:

> (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;

FL § 5-323(d)(1)(ii)-(iii).

[7] The fourth factor is:

> There is no dispute that Mother cares deeply for this child. As well, this Court is persuaded that Mother suffers from significant, severe mental health issues which may preclude her from selfcare, much less from caring for small child and that, perhaps, these issues create barrier so significant that Mother simply cannot overcome it. Nevertheless, there was credible evidence that Mother has not been consistent with her mental health treatment; Dr. Scott testified that when the named provider was contacted, Mother's involvement with him was several years old and she was not current with treatment. Mother denied this, but Dr Scott's testimony was credible, and because Mother had revoked her consent, the Department was unable to track any compliance which might have favored Mother's consistent attendance at treatment.

The court noted that Mother has continued to be involved with law enforcement, and that there have been repeated incidents of domestic violence stemming from Mother inviting unknown men into her home. The court summarized its findings on this point:

> *In re: Adoption No. 12612*, 353 Md. 209, 725 A.2d 1037 (1999) reminded courts that the Family Law article, section 9-101 requires that, if a party to proceeding has neglected a child – not just the child at issue but any child – then the court must determine if it is likely or probable that the party will abuse or neglect the child at issue. If the court cannot *specifically* find that that there is no likelihood or probability of future neglect, then the court must deny custody or visitation rights to that party unless it can impose an arrangement which ensures the safety and well-being of the child.
>
> Because of the long standing issues Mother has had with the courts, both in the criminal justice system and with findings of neglect of her children, because of her long-term and significant mental health issues and addiction, and because she was unable to document compliance with consistent and targeted treatment, the Court cannot specifically find that Mother has

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> (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[.]

FL § 5-323(d)(2)(i).

> adjusted her circumstances such as to create and to sustain safe and stable home for small child.

The court then considered all remaining factors, including "[t]he likely impact of terminating parental rights on the child's well-being." The court found that "[i]t is simply unsafe to return [M.R.] to her Mother within a reasonable period of time[,]" and concluded that Mother was unfit to parent M.R., as Mother's "chaotic environment, within which [she] has existed for many years, will also likely continue." The court thus found by clear and convincing evidence that was is in M.R.'s best interests to terminate Mother's parental rights, and entered an order for guardianship. Mother then noted her timely appeal to this Court.

DISCUSSION

I.

A. Parties' Contentions

Appellant

Mother argues that the court abused its discretion when it terminated the parent-child relationship because there was an insufficient legal basis to do so. According to Mother, the court applied the wrong standard for a TPR determination when the court ruled that she was unable to imminently resume custody of M.R. Mother also asserts that the Department failed to ensure a necessary reunification service until almost one year after M.R. was removed from Mother's custody. In Mother's view, her efforts weighed against termination of her parental rights, no aggravating circumstances existed to rebut the

presumption of continuation of the parental relationship, and M.R.'s emotional ties to her contradict the TPR ruling.

Appellee

The Department responds that the court applied the correct standard to determine whether termination of parental rights was appropriate under these circumstances. The Department contends that it diligently offered services to facilitate reunion between Mother and M.R. The Department argues that aggravating circumstances, such as Mother's neglect of her older sons, supported the TPR ruling. Moreover, the Department claims that the court properly considered M.R.'s emotional ties to Mother, her foster caregiver, S.H, and her foster siblings.

B. Legal Framework

"Termination of parental rights decisions are reviewed under three 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 K.H.*, 253 Md. App. 134, 156 (2021). "[U]nfitness and exceptional circumstances are two separate inquiries[,]" and either one may serve as a basis to terminate parental rights. *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 54 (2019). "Legal conclusions of unfitness and exceptional circumstances are reviewed without deference." *Id*. at 47.[8]

[8] In Mother's reply brief, Mother claims that the Department inaccurately describes the standard of review applied to the court's conclusion that Mother was unfit to parent M.R. We agree with Mother that we review *de novo* the court's legal conclusion on parental unfitness. *In re Adoption/Guardianship of C.E.*, 464 Md. at 47.

"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.'" *Id*. at 48 (quoting *Troxel v. Granville*, 530 U.S. 57, 66 (2000)). "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." *Id*. Under those circumstances, FL § 5-323 governs the court's TPR determination:

> 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).

The statute lists factors that a juvenile court must consider before determining a parent is unfit or that exceptional circumstances exist. Nevertheless, 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 must consider include:

> (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, 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;
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> (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 Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 737 (2014).

C. Analysis

Standard for Parental Unfitness

We first address Mother's claim that the court applied the wrong standard for a TPR determination when the court ruled that she was unable to imminently resume custody of M.R. To be sure, the court stated that it was "simply unsafe to return [M.R.] to her Mother within a reasonable period of time." That analysis, however, relates to a factor which the court *must* consider under FL § 5-323(d)(2)(iv), i.e., "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[.]" The court properly analyzed that statutory factor

and then ultimately concluded that it was in M.R.'s best interests to terminate Mother's parental rights.

The Department's Efforts to Reunify the Family

To properly analyze FL § 5-323(d)(1):

> [t]he court is required to consider the timeliness, nature, and extent of the services offered by [the Department] or other support agencies, the social service agreements between [the Department] and the parents, the extent to which both parties have fulfilled their obligations under those agreements, and whether additional services would be likely to bring about a sufficient and lasting parental adjustment that would allow the child to be returned to the parent.

In re Adoption/Guardianship of Rashawn H., 402 Md. 477, 500 (2007). Here, the court determined that the Department repeatedly offered services to Mother before and after M.R.'s removal from Mother's custody. Indeed, the court correctly noted that, "[p]rior to removal, [the Department] implemented In-Home services, Safety Plans, and held a Family Team Decision Making meeting and as well, immediately after her birth, the Department made referrals for substance abuse treatment and followed up with services to ensure that [M.R.'s substance-exposed newborn] case could be successfully closed." At least "10 or 11" times, Mother declined the Department's requests for her to sign releases to verify that she was receiving services. Mother also did not complete required drug testing.[9]

[9] The Department notes that "[b]y the time M.R. was placed into shelter care, Mother had been offered services over the course of 17 years." Mother responds in her reply brief: "Nowhere does the CINA subtitle say that a court can look at a parent's prior, separate, and closed CINA cases as evidence of whether the department has made reasonable efforts in an altogether different case." As outlined above, there was significant evidence that the Department repeatedly made reasonable efforts to reunify Mother and M.R., even without considering the services provided to Mother in prior CINA cases involving Mother's other children.

Despite the evidence of Mother's repeated obstinance when dealing with the Department, Mother argues that the Department failed to ensure that she received a timely psychological/parenting evaluation from Dr. Scott. The Department caseworker explained that Dr. Scott had "a very long waiting list" and that the Department's practice is to refrain from "send[ing] the referral until Dr. Scott is ready – until she has time on her schedule to do the actual testing." To be sure, that referral was sent in January 2023 and M.R. was removed from Mother's custody in May 2022. Nevertheless, that delay was reasonable under the circumstances. The Department communicated with Dr. Scott, timely placed Mother on Dr. Scott's waiting list, timely made a referral once Dr. Scott was available, and then provided Mother with transportation to Dr. Scott's office.

The Department caseworker testified in detail about the services provided to Mother: "Referrals have been made to substance abuse, mental health, transportation has been provided to those services, parenting class referrals, mental health referrals, we did the psychological evaluation with Dr. Scott, transportation was provided for that, and Dr. Scott's fees were paid by the Department." Dr. Scott's busy schedule of patients does not render the Department's efforts unreasonable. The Department was not required to find another doctor to evaluate Mother. *See* COMAR 07.02.11.14A ("*To the extent that funds and other resources are available*, a range of services that will facilitate or maintain successful reunification of the child shall be: (1) Provided by the local department[,]" made available by referral to another agency, or purchased by the department upon written approval by the director or director's designee) (emphasis added).

Mother's Efforts to Adjust Her Circumstances

Next, we consider Mother's argument that she sufficiently adjusted her "circumstances, condition, or conduct to make it in the child's best interests for the child to be returned to [her] home[.]" FL § 5-323(d)(2). We recognize that Mother had regular supervised visits with M.R. The juvenile court also credited Mother's efforts to maintain contact with M.R. "throughout most of the last nine to twelve months" preceding the TPR hearing. The court also noted that the Department's caseworker "reported that, aside from being unavailable during much of the first year after [M.R.'s] removal, Mother is now in regular contact with the Department and is, overall, responsive to any questions and requests."

Nevertheless, the record contains abundant evidence to support the court's legal conclusion that Mother was unfit to remain in a parental relationship with M.R. Before M.R.'s birth, Mother had two children who were adjudicated as CINAs and removed from Mother's care by the Department. At birth, M.R. tested positive for cocaine and marijuana. According to the Department's caseworker, Mother made no efforts to adjust her substance abuse or improve her mental health circumstances after M.R.'s removal from her custody. Dr. Scott also concluded that there was "significant evidence that [Mother] has and may be

currently experiencing some form of psychosis including delusional and paranoid thinking patterns and behaviors."[10]

Evidence of Aggravating Circumstances

Mother claims that the court improperly considered aggravating factors because "the 'neglect' that Mother was found to have committed against M.R. was speculative[.]" We disagree. Complying with FL § 5-323(d)(3)(i), the court considered whether Mother "ha[d] . . . neglected [M.R.] or a minor and the seriousness of the . . . neglect[.]" Indeed, the court found that "[t]he evidence sustained that Mother neglected [M.R.] and that removal of [M.R.] when she was about five months old was in her best interests." In addition, the court noted that Mother's two sons were removed from her custody "because

[10] Mother argues that the court erred in ruling as follows: "There was credible testimony that, at one point, Mother had suffered from Traumatic Brain Injury." The court's statement appears to stem from *Mother's attorney's* cross-examination of Dr. Scott. Mother's attorney asked Dr. Scott the following: "Do you think the fact that that traumatic brain injury that [Mother] did not disclose to you, the fact that it occurred could that have some impact on her ability to answer the questions in this Fit2Parent?" Dr. Scott replied: "Yes."

Because Mother's counsel's own questioning suggested that Mother had suffered from an undisclosed traumatic brain injury, we cannot say that the court erred in relying on that suggestion. In any event, the court's consideration of Mother's possible traumatic brain injury did not affect the court's TPR determination, which was based on "Dr. Scott's dire statements regarding Mother's mental health, and the less than hopeful predictions of future mental health without extremely intensive treatment, coupled with Mother's history of neglect of other children[.]"

Further, to the extent that Mother challenges the court's reliance on Dr. Scott's psychological evaluation, we note that Mother's counsel stipulated to Dr. Scott's qualifications as an expert witness in the field of psychology. Moreover, Mother's counsel stated "[n]o objection" when the Department sought admission of copies of Dr. Scott's psychological and Fit2Parent evaluation at the TPR hearing. As the factfinder, the court was entitled to rely on those reports and accept Dr. Scott's opinions.

of [her] neglect." The court recognized the undisputed fact that M.R. was born substance exposed. FL § 5-323(d)(3)(ii)(1).

M.R.'s Emotional Ties to Mother and S.H.

In accordance with FL § 5-323(d)(4)(i), the court considered M.R.'s bond with Mother, S.H., and S.H.'s children. Moreover, the court ruled that M.R. "is developmentally on target, cheerfully attends her daycare, and presents as adjusted to her community and home." In particular, S.H. testified that M.R. is "doing very well" in daycare and that she has a bond with S.H.'s other children. Examining the facts under FL § 5-323(d)(4)(iv), the court ruled that M.R. had "little chance" of harm when remaining in State custody, as "she will, in all likelihood, remain with her current resource parent, who has already committed to adopting her if and when that is possible." By contrast, the record supports the court's finding that "[t]he potential for harm to [M.R.] if returned to Mother is considerable, given Mother's inability to document compliance with mental health and substance abuse treatment[.]"

For all these reasons, there was more than sufficient evidence to support the juvenile court's decision to terminate the parental relationship between Mother and M.R. The court neither erred nor abused its discretion when concluding that the TPR ruling was in M.R.'s best interests.

II.

Mother's counsel dedicates the last three pages of her opening brief to two claims. *First*, Mother argues that the court erroneously focused on custodial issues and improperly required her to prove sufficient parental fitness. *Second*, Mother claims that the court erred

when it focused on statutory considerations related to custody, visitation, and permanency planning.

According to the Department, the court considered the appropriate statutory factors to determine whether Mother was fit to maintain parental rights. The Department asserts that Mother conflates the concepts of burden of persuasion and burden of production, as the court correctly recognized that Mother failed to meet the burden of production once the Department met its initial burden of persuasion.

The juvenile court provided a detailed analysis of the FL § 5-323(d) factors to examine "whether the parent is, or within a reasonable time will be, able to care for the child in a way that does not endanger the child's welfare." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. at 500. To be sure, the court referenced FL § 9-101, which applies to custody and visitation proceedings, in the passage below:

> *In re: Adoption No. 12612*, 353 Md. 209, 725 A.2d 1037 (1999) reminded courts that the Family Law article, section 9-101 requires that, if a party to a proceeding has neglected a child – not just the child at issue but any child – then the court must determine if it is likely or probable that the party will abuse or neglect the child at issue. If the court cannot *specifically* find that that there is no likelihood or probability of future neglect, then the court *must* deny custody or visitation rights to that party unless it can impose an arrangement which ensures the safety and well-being of the child.
>
> Because of the long standing issues Mother has had with the courts, both in the criminal justice system and with findings of neglect of her children, because of her long-term and significant mental health issues and addiction, and because she was unable to document compliance with consistent and targeted treatment, the Court cannot specifically find that Mother has adjusted her circumstances such as to create and to sustain a safe and stable home for a small child.

The court was not discussing custodial issues here. Context shows that this reference to FL § 9-101 occurred within the court's analysis of FL § 5-323(d)(2)(i) – "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" – which the court must consider in TPR proceedings. Indeed, in the same section of the court's opinion, the court wrote: "The Court finds, by clear and convincing evidence, that Mother has not been able to adjust her circumstances and/or her condition and conduct such that she has created a safe and stable environment for [M.R.]"

Mother also notes that the court referenced FL § 9-101 when the court judicially noticed the CINA cases involving Mother's two sons, A.B. and T.T.[11] This reference occurred within the court's analysis of FL § 5-323(d)(1)(i), which the court must consider in TPR proceedings. That section of the court's opinion was entitled: "(d)(1)(i) All services offered to the parent before the child's placement, whether offered by a local department, another agency, or a professional." In that section, the court only referenced Mother's prior CINA cases to note her existing familiarity with the Department.

Similarly, Mother argues that the court's opinion contains the following alleged error: "After consideration of those factors found in Family Law Section 5-525, this Court cannot find that a return to Mother's care would be in [M.R.]'s best interests at this point." According to Mother, the court erred by considering FL § 5-525 because that statute relates

[11] Mother does not appeal the circuit court's decision to take judicial notice of these prior cases. A court may take judicial notice of prior CINA proceedings in a TPR case. *See In re H.R.*, 238 Md. App. 374, 400-07 (2018).

to permanency planning, not TPR determinations. The court's reference to FL § 5-525, occurred within the context of the court's consideration of FL § 5-323(d)(4)(iv), which the court must consider in TPR proceedings. That section of the court's opinion was entitled: "(d)(4)(iv) The likely impact of terminating parental rights on the child's well-being." The court's passing references to FL § 9-101 and FL § 5-525 do not affect our conclusion that the court properly focused on the FL § 5-323(d) factors.

Finally, we agree with the Department that Mother's argument conflates the burden of production and the burden of persuasion. Mother takes issue with two of the court's statements. *First*, the court wrote that "[t]he potential for harm to [M.R.] if returned to Mother is considerable, given Mother's inability to document compliance with mental health and substance abuse treatment, and her failure to persuade the Court that she, herself, is healthy and able to care for a toddler." *Second*, the court wrote that "Mother has failed to convince this Court that she is strong, healthy, sober, and able to direct her attention and energies to the full-time care and protection of [M.R.]" Mother argues that "[i]n a TPR proceeding, it is the department, as the petitioning party, who has the burden to show that TRP is legally justified[.]"

The Supreme Court of Maryland has explained that the Department bears the "burden of persuading the juvenile court of [the parent's] unfitness as a parent, through the presentation of clear and convincing evidence, and any component of that unfitness was subject to that same standard." *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 720 (2011). "Once the Department had presented evidence on this issue to the juvenile court, however, the judge could decide that burden of *producing* relevant evidence shifted

to [the parent]." *Id*. Like in *Amber R.*, "the Department had the burden of producing evidence that [Mother] was addicted to illegal drugs" and experiencing mental health issues. *Id*. at 721. When the Department met that burden of production through ample evidence of Mother's substance abuse and mental health condition, the burden of production shifted to Mother, "which meant that she risked 'the liability to an adverse ruling (generally a finding or directed verdict) if evidence on the issue has not been produced.'" *Id*. (quoting *Commodities Reserve Corp. v. Belt's Wharf Warehouses, Inc.*, 310 Md. 365, 368 n.2 (1987)). Mother, however, introduced no evidence to meet her burden of production.

In sum, the court properly applied the factors in FL § 5-323(d), and the court did not err in terminating Mother's parental rights.

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