Circuit Court for Baltimore City
Case No. T22060005

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 839

September Term, 2024

IN RE: D.O.

Beachley,
Albright,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: January 13, 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).

On April 25, 2023, the Circuit Court for Baltimore City, sitting as the juvenile court, terminated the parental rights of Ms. D. in relation to her youngest child, D.O. Ms. D. appealed that decision, and in an unreported opinion this Court vacated the judgment and remanded to the circuit court. After an additional hearing, the court again terminated Ms. D.'s parental rights on May 30, 2024. Ms. D. appeals from that decision, and presents two questions for our review, which we have consolidated to a single question[1]:

Did the court err in terminating Ms. D.'s parental rights?

For the reasons set forth below, we affirm.

[1] Ms. D. presented the following questions in her brief:

1. Did the court err and abuse its discretion when it terminated mother's parental rights to D.O. because DSS failed to ever seriously attempt reunifying the family?
    a. Was the court erroneous when it failed to acknowledge the full extent of DSS's inadequate reunification services?
    b. Was the court erroneous when it found that mother's efforts were "problematic," as a pretext for excusing DSS's failures?
    c. Is denial of the guardianship petition the proper remedy for DSS's services failings?
2. Did DSS fail to prove, and did the court err in finding, that exceptional circumstances justified TPR?
    a. Did the court make erroneous factual findings under Maryland Code, Family Law (FL) § 5-323(d)?
    b. Can exceptional circumstances be established by the bond between a child and substitute caregiver, the length of the child's placement, and the child's medical needs where DSS has made inadequate efforts to reunify the child and fit parent?

FACTUAL AND PROCEDURAL BACKGROUND[2]

D.O. was born in May 2016, with numerous medical problems, most notably: congenital heart disease, dextrocardia (his heart points to the right instead of the left), situs inversus totalis (his abdominal organs are on the opposite sides of his body), spleen malfunction, and primary ciliary dyskinesia (the small hair-like structures in his respiratory tract do not function, causing a build-up of mucus). These medical issues cause him to have breathing problems, heart problems, be more prone to illnesses, and less able to fight infections. D.O. has needed to use a gastrostomy tube ("g-tube") for feeding and medications, and was oxygen-dependent at one point. While he still has a g-tube and a prescription for oxygen, both are rarely used. For the first three years of his life, he was frequently hospitalized and required close monitoring for breathing problems. D.O. has had three heart surgeries and was awaiting a fourth, and final, heart surgery at the time of the TPR hearing. It is anticipated that the g-tube will be removed after that surgery.[3]

Ms. D. tested positive for cannabis at D.O.'s birth and admitted that she had not received prenatal care during her pregnancy. D.O., however, did not test positive for cannabis at birth. D.O. was placed in foster care eight days after his birth, although he remained in the NICU for a period of time after placement. The decision to remove him from Ms. D.'s care was based on his medical fragility, exposure to cannabis, and lack of

[2] Because no new evidence was presented on remand, we rely substantially on the facts recounted in our prior unreported opinion.

[3] Because there was no subsequent evidentiary hearing, it is unclear whether D.O. had the final heart surgery in 2023 as anticipated or whether his g-tube was removed.

prenatal care, as well as Ms. D.'s unstable housing and history of domestic violence with D.O.'s father, Mr. O.[4] After being discharged from the hospital, D.O. was placed in the care of foster parents Mr. and Mrs. M., and continues to reside with them to this day. The parties stipulated that D.O. "has done well" in the foster home.

Because D.O. has been in foster care for eight years, we shall provide a brief overview of the more notable court orders during his time in care. D.O. was determined to be a child in need of assistance ("CINA") [5] on February 13, 2017. The initial permanency plan for D.O. was reunification with Ms. D. She was granted unsupervised visitation with D.O. on February 13, 2017, but an order on March 10, 2017, imposed a condition that "unsupervised visitation is subject to medical clearance." Although Ms. D. completed medical training in 2017 and 2019, she was never provided unsupervised visitation, and in March of 2019, the court ordered that her visitation "shall remain supervised." Her visitation has remained supervised since that time. On May 28, 2019, the court ordered that Ms. D. "shall be given advance notice of all medical appointments and may attend." On December 17, 2019, the court ordered that a bonding assessment be performed, and it supplemented that order on February 5 and 11, 2020, requiring that a "therapeutic

[4] Mr. O. was deemed to have consented to TPR after failing to note an objection. He is not a party to this appeal.

[5] A CINA is "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." Md. Code (1974, 2020 Repl. Vol.), § 3-801(f) of the Courts and Judicial Proceedings Article.

assessment" be conducted concerning D.O.'s separation anxiety, and that the doctor performing the bonding assessment be made aware that Mrs. M. had been "sitting in with mother's visits for the last 3 years." On September 16, 2020, the court again ordered that a bonding assessment be performed. For reasons we shall discuss later in this opinion, no bonding assessment was ever performed for Ms. D., although a bonding assessment was performed for the foster parents.

On February 5, 2020, the permanency plan changed from reunification to a concurrent plan of reunification with Ms. D. and adoption by a third party. The permanency plan changed again on December 22, 2020, to adoption by a third party. On March 29, 2021, the court struck the December 22, 2020 order, effectively returning the permanency plan to a concurrent plan of reunification and adoption. On July 26, 2021, the court again changed the permanency plan to adoption by a third party. The Department of Social Services ("DSS" or the "Department") filed a petition for TPR on March 9, 2022.

A TPR hearing was held over seven days between February 28, 2023, and April 25, 2023. Numerous witnesses, including two experts, testified, and over eighty documents were admitted into evidence. Among the documents were court orders from the CINA case, three service agreements, parental fitness and bonding evaluations for the foster parents, a parental fitness evaluation for Ms. D., and contact notes authored by DSS workers.

MS. D.'S TESTIMONY

Ms. D. has a total of eight children, six of whom live with her. Some of her children are adults, but she has two young children close to D.O.'s age. Those two young children were removed from her care at the same time as D.O., and were returned to her care in April 2019. She testified that she frequently brings her two young children with her to visit D.O.

Ms. D. testified that her visits with D.O. have been supervised for the entirety of the time that he has been in foster care. Prior to her other children being returned to her care, Ms. D. asked for unsupervised visitation with D.O., which was rejected without explanation. She testified that, when the court granted her unsupervised visitation with D.O. in 2017, DSS did not allow her to have unsupervised visits. When the court changed the order to unsupervised visitation "subject to medical clearance," DSS did not do anything to help her get medical clearance. However, Ms. D. also admitted that she did not talk to the caseworker or any medical professionals about medical clearance.

Visitation with D.O. started in September 2016, supervised by DSS, and Mentor Maryland[6] took over supervising the visits in January 2017. When Ms. D. asked DSS if some visits could occur at places other than the Mentor Maryland office, she was told "because of [her] visitation situation with [D.O.], it wasn't allowed." Initially, according

[6] Mentor Maryland is an organization that provides numerous services, including facilitating the placement and monitoring of medically fragile children in foster homes. *Medically Fragile Foster Care*, MENTOR MARYLAND, https://www.md-mentor.com/youth-and-families-services/medically-fragile-foster-care (last visited Jan. 3, 2025).

to Ms. D., the visits were scheduled every two weeks for one hour. For approximately a year before the TPR hearing, the visits had been occurring monthly. Ms. D. asserted that she has no input in selecting the time of the visitation, although she does have input on what day visitation occurs.

D.O.'s foster mother, Mrs. M., transported D.O. to visits with Ms. D. Ms. D. testified that, although she is scheduled to have one-hour visits, Mrs. M. was a half hour late bringing D.O. to the October 2022 visit, had been late "the last four, five visits," and Ms. D. was not given any additional time with D.O. Prior to June 2022, Mrs. M. brought D.O. on time. Ms. D. informed the caseworker about Mrs. M.'s tardiness, and the caseworker told Ms. D. "she would speak to the foster mom and rectify it." Mrs. M. was on time for the March 2023 visit.

Between April 2020 and "[s]ometime in 2022," her visits with D.O. were over Zoom. Ms. D. testified that the quality of the Zoom visits was "not good" because the visits would sometimes take place while Mrs. M. was driving or shopping with D.O. At other times, D.O. would be distracted during visits because there were other people around.

Ms. D. did not schedule any visits with D.O. for the months of November 2022 through January 2023 because she had seasonal employment with UPS that "didn't allow [her] the time off to be able to do the visit." She testified that she was placed "on call" at UPS, meaning she "pretty much [had] to wait for a text message telling [her] where and what time [she] had to be there," and her hours usually started after 1:00 p.m. and ended after 6:00 p.m. Visits at that time could not start before 5:00 p.m. because DSS would not

allow D.O. to be picked up from school early for the visits.[7] She raised the issue with DSS, and "was trying to make it work, but the schedule just wasn't going to be able to do it." She informed the caseworker that as soon as her "on call" status ended, she would be able to restart visits. Although a visit was scheduled for February 2023, Ms. D. asked to reschedule that visit because she was sick. Thus, her last visit with D.O. before the start of the hearing was four months prior, in October 2022.

Shortly after D.O.'s birth, Ms. D. was referred to a drug treatment program. She testified that she attended the program, but was determined not to be in need of services because she did not meet "the qualifications of an addict." DSS did not ask Ms. D. to submit to drug testing. Although DSS did not require Ms. D. to engage in mental health treatment, Ms. D. began therapy on her own in 2016 after someone at the drug treatment program suggested it. The parties stipulated that Ms. D. is currently in therapy. Ms. D. received medical training in 2017 and 2019 concerning D.O.'s medications and use of the g-tube and oxygen. She was told by a caseworker that those two trainings were "the only medical training [she] would receive," and she has not been asked to update her training. She believes that she would be able to recognize when D.O. is getting sick. Ms. D. was referred to and completed parenting classes in September 2016; DSS has not asked her to complete further parenting classes. She obtained housing through a DSS program in April 2019 and has remained in the same house since that time. When Ms. D. asked the

[7] There was never any evidence concerning the possibility of weekend visitation.

caseworker what more she needed to do to have D.O. returned to her care, the caseworker told her, "There was nothing [Ms. D.] had to complete. Everything had been completed."

Ms. D. provided testimony concerning a bonding evaluation scheduled for her and D.O. in February 2020. That bonding study did not occur because D.O. "was very agitated" and Ms. D. believed it was best not to risk increasing his stress levels because of his health conditions. The decision not to do the bonding evaluation was a joint decision between Ms. D. and the assigned evaluator, Dr. Ruth Zajdel. Ms. D. testified, "we came to an understanding that we would just try and come back and do it another time[,]" but the evaluation could not be rescheduled due to Covid-19.

Ms. D. testified that, although Mrs. M. was supposed to provide Ms. D. with information about D.O.'s medical appointments, Mrs. M. consistently gave her the incorrect time for appointments. Ms. D. received no response from DSS when she raised the issue. Consequently, Ms. D. has not attended any of D.O.'s medical appointments. However, Ms. D. was informed each time D.O. was hospitalized. Ms. D. would visit him at the hospital "[a]s much as [she] possibly could," usually staying three or four hours, and once staying at the hospital overnight. She admitted that she did not obtain contact information from any of D.O.'s doctors at the hospital, and did not ask them about follow-up appointments.

Ms. D. confirmed that D.O. did not test positive for cannabis when he was born, and that she did not test positive for any substances other than cannabis.

MRS. M'S TESTIMONY

Mrs. M. testified concerning D.O.'s health that "the last couple of years he's been doing very well." In the past, when D.O. would get a cold, his breathing problems sometimes required him to be hospitalized, but recently he has only gotten "minor" colds that last three days. Some of the signs Mrs. M. looks for when D.O. gets sick include behavior changes such as being "a little cranky" or "sleep[ing] a lot." D.O. is no longer being fed using the g-tube, but his doctors "plan on keeping that until he ha[s] his last heart surgery," which she anticipated being scheduled in the summer of 2023. Mrs. M. testified that D.O. has had three prior heart surgeries, and has "been in and out of the hospital at least 17 times," although he has not been hospitalized for an illness since 2017. Ms. D. visited D.O. several times for three or four hours each time he was in the hospital. Mrs. M. confirmed that D.O. had not used oxygen "in a long time" and has "been doing well with his breathing."

D.O. routinely has appointments with a cardiologist every six months, a pulmonologist and geneticist once per year, and a gastroenterologist periodically to monitor his g-tube. Mrs. M. testified that Ms. D. has rarely attended D.O.'s appointments, but when asked if Ms. D. was informed of the appointments, Mrs. M. responded: "No. I don't think so. I'm not for sure." She testified that she was never asked to keep Ms. D. informed about D.O.'s appointments.

According to Mrs. M., D.O. is doing well in school, and has "a whole bunch of friends" both at school and in her neighborhood. He spends over an hour on most days

"running around playing" outside. Mrs. M. testified that, when D.O. first started going to school, he tried to use his foster parents' last name.

Concerning D.O.'s visitation with Ms. D., Mrs. M. testified that the visits had been weekly, but were changed to monthly because the weekly visits "didn't happen." Visitation with Ms. D. was "frequent at one time and then she just dropped off." Mrs. M. testified that she is sometimes five or ten minutes late getting D.O. to the visits because of traffic. When she is late, visit times are not extended, but she does not know why. Mrs. M. testified that, in 2021, Ms. D. attended visits with D.O. "frequently," or "half the time," but "some months she came every week." At one point, D.O. would routinely cry during visits with Ms. D. when Mrs. M. left the room, but "now he's used to going to do his visit because he said he's going to see his brother[] and sister." Mrs. M. sat in on visits when D.O. "was real small" because "[t]hat's how they had it set up," but "it's been a long time" since she last sat in on a visit. She estimated that she stopped sitting in on the visits when D.O. was three years old. It took D.O. "a couple months or more" to stop crying during visits when Mrs. M. was not present. When D.O. does not get a chance to visit with Ms. D., "he doesn't mention it." Additionally, Mrs. M. reported being unaware of D.O. having any attachment to his siblings.

DR. RUTH ZAJDEL'S TESTIMONY

The Department called Dr. Ruth Zajdel as an expert in bonding and parental fitness. As a psychologist for the Circuit Court for Baltimore City, Dr. Zajdel was tasked with conducting parental fitness and bonding evaluations for the foster parents and Ms. D. She

testified that the foster parents are "parentally fit," and that D.O. is "securely bonded to both" foster parents.

Although a bonding evaluation with Ms. D. and D.O. was scheduled in February 2020, Dr. Zajdel did not conduct the evaluation because D.O. refused to go to the room where the evaluation was to be conducted. Dr. Zajdel described the incident:

> When it was time for the bonding evaluation to begin, [D.O.] was initially very excited to see his Mom and happy to see her, went to her, spoke to her. When it was time to go . . . from the waiting area to the toy room with myself, [D.O.], and his biological mom, he refused to go. And he got very, very upset to the point where we decided . . . we were not going to be able to do the bonding evaluation.
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> . . .
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> [Ms. D.] was not interested in participating. She was fairly argumentative. She did not help comfort [D.O.] when he became upset. I asked her to try to encourage him to come back for the bonding evaluation. She declined my offer.

The bonding evaluation was rescheduled, but cancelled when the courts closed due to Covid-19. Dr. Zajdel testified that, by the time her office began conducting bonding evaluations again, the deadline set in the order for the bonding evaluation had passed. Consequently, a bonding evaluation was never completed for Ms. D. and D.O.

Ms. D.'s parental fitness evaluation was scheduled to be conducted in March 2020, but was also postponed due to Covid-19. Dr. Zajdel was able to interview Ms. D. for the evaluation through teleconferencing in August 2020. During that evaluation, Dr. Zajdel "noted a complete change in [Ms. D.'s] demeanor. She was much more willing to engage with me. She was cooperative with the process." Ms. D. reported in the interview that, between February and August 2020, she had gotten out of an abusive relationship and

started therapy. Dr. Zajdel testified that Ms. D. raised several concerns with her during the August 2020 interview, including Mrs. M. being present during visitation, and Ms. D. not being informed of D.O.'s medical appointments.

Dr. Zajdel testified concerning the need for children to form secure attachments to their caregivers, and that a caregiver may foster such an attachment by being "reliably and consistently available to the child's needs," understanding the child's "cues" regarding their physical and emotional needs, and knowing how to fill those needs. When asked whether a foster parent's presence during visitation could impact bonding between the parent and child, Dr. Zajdel could not say whether it might have a positive or negative impact. She opined that visitation more frequent than every two weeks might not be needed to form a parent-child bond because "[e]very individual child is different in this process." Rather, the important thing is that visitation is "consistent and reliably occurring."

Dr. Zajdel's written reports for both parental fitness evaluations and the foster parents' bonding evaluation were admitted into evidence. These documents reflect that D.O. is securely bonded to his foster parents. Mrs. M. reported to Dr. Zajdel that Ms. D. "did not attempt to contact [D.O.] for almost two years after the child was born and only requested visitation after the termination process began." In her September 2, 2020 report on Ms. D.'s parental fitness, Dr. Zajdel stated that Ms. D. was "more emotionally stable, cooperative to the evaluation process, and less argumentative" than when she met Dr. Zajdel in February 2020. Ms. D. "shared that she has been actively engaged in weekly individual therapy sessions" which have been helpful, and she ended contact with Mr. O.,

who was physically and verbally abusive toward her. Dr. Zajdel noted that Ms. D. "appeared to have a fairly accurate understanding of all of [D.O.'s] medical issues and special needs." She believed that D.O. could form a secure attachment to Ms. D. "given the right circumstances." She provided the following suggestions:

> With support, [D.O.] can be encouraged to spend meaningful time with [Ms. D.], who now appears to be more capable of appropriately caring for her son than she has in the past. [D.O.'s] exposure to [Ms. D.] and separation from [Mrs. M.] should happen gradually. For example, [D.O.] should practice being apart from [Mrs. M.] in his home or other familiar locations for short periods of time and that time should gradually increase. Likewise, [D.O.] should be exposed to time spent with [Ms. D.] without [Mrs. M.] present for only short periods of time, at first, and should then gradually increase as he feels more comfortable. There are other behavioral techniques that can also be utilized to help decrease [D.O.'s] separation anxiety, such as creating reliable routines surrounding visits so the child knows what to expect and offering the child transitional objects that help comfort him.
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> Given [D.O.'s] complex medical needs, it is recommended that his doctors be consulted to help establish clear guidelines about when to pause visits with [Ms. D.] so that the child's distress does not have any negative impacts on his health. In addition, given the extent of [D.O.'s] separation anxiety, it is recommended that [the foster parents] and [Ms. D.] work with a trained professional who can help ease the transition into [D.O.] having independent visits with his biological mother. A referral to Kennedy Krieger Institute is likely appropriate in this case, as they are a well-known and trusted agency in this area who offer behavioral treatments that are targeted at decreasing childhood anxiety.

VISITATION SUPERVISOR'S TESTIMONY

Michael Black, a Family Support Worker at Mentor Maryland, testified that he had been supervising Ms. D.'s visits with D.O. since 2018. Mr. Black testified that, in 2018, the visits took place weekly in Mentor Maryland's office and Ms. D. "didn't seem very involved at that point," and was "on her phone and things like that." However, he indicated

that Ms. D. has been more involved recently, and became "much more involved in trying to interact with" D.O. when the visits changed to monthly. Mr. Black believed that the visits did not go well when Ms. D. did not bring her other young children. His testimony indicated that the change to monthly visitation occurred at the same time Ms. D. started bringing her other children to visits, which he estimated to be in 2020 or 2021. However, when shown his notes from 2019 that indicated the visits were occurring every two weeks and Ms. D. was sometimes bringing her other young children to visits, he admitted that he "could be" mistaken about some of the details.

The Department submitted into evidence contact notes authored by Mr. Black after each of the visits he supervised between April 8, 2019, and November 4, 2019. These notes indicate that, during that time period, DSS was only scheduling visits every two weeks on average despite a provision in a contemporaneous service agreement which required Ms. D. to attend "weekly" visits. Mr. Black's contact notes reflect that Ms. D. attended approximately two-thirds of the scheduled visits, and often failed to attend without notice, requiring Mr. Black to call her ten or fifteen minutes after the visit was scheduled to begin. Ms. D. explained that she simply forgot about three of the visitations that she failed to attend. Mr. Black noted that Ms. D. sometimes failed to meaningfully engage with D.O. and during one visit, Mr. Black "did not witness [Ms. D.] engage or interact with [D.O.] at all during this visit. She did not appear interested in anything he was doing or seemed like she really wanted to be at this visit."

Also notable is that these contact notes contradict certain parts of Mr. Black's testimony. Mr. Black testified that Ms. D. did not bring her other children to visits until sometime after 2020 when the visits switched to monthly. He also recalled that she did not bring the other children until after the foster mother stopped sitting in on visits. Instead, the notes for all visits indicate that Mrs. M. was present in the room during the 2019 visits, and on most days anywhere from one to three of Ms. D.'s other children were also present.

Mr. Black testified that it "did not work out well" when Mrs. M. stopped sitting in on visits. D.O. "would be crying and trying to get out of our visit room and go back to his foster mother. . . . He would be crying and just screaming and saying he wants to leave." During one visit when D.O. was upset and crying, Ms. D. said, "Let's just stop the visit because [D.O.] is too upset." Ms. D. "tried settling him down, but he was just inconsolable and just kept trying to leave[.]" Mr. Black testified that he did not believe it was ever planned that Mrs. M. would sit in on visits, recalling that "[i]t just seemed to be that's the way it happened." According to Mr. Black, "The visits did not get better until they went to monthly and Ms. D. started bringing her younger children."

In 2021, D.O. was "much more interactive" when the other children were present. Ms. D. "would attempt to interact with him. Sometimes he would be open to it and sometimes he would not." Mr. Black did not recall any times that D.O. initiated interactions with Ms. D. He also testified that, in 2021 and 2022, Ms. D. was consistently on time for visits, interacted appropriately with the children, "and if she ha[d] to cancel for any reason, she always [gave him] a notice," although she did not cancel often.

Because the visits were exclusively scheduled by DSS, all communication about scheduling went through DSS. He explained that the recent visits were scheduled for 5:00 p.m. to 6:00 p.m. The office typically closes at 5:00 p.m., but Mr. Black "made exceptions for this case." However, because he cannot keep the office open past 6:00 p.m., the visits were not extended if Mrs. M. arrived late for visitation. He testified that Ms. D. routinely arrives early for visits, and Mrs. M. is sometimes late. He noted that, even when Mrs. M. "arrives at 5:30, usually at 6:00 Ms. D. starts getting the kids read[y] to go," and she has not asked him to extend the time. However, he conceded that he told Ms. D. that he cannot keep the office open past 6:00 p.m.

PEDIATRICIAN'S TESTIMONY

Dr. Nakiya Showell, D.O.'s pediatrician from the time he was two months old, testified as his treating doctor and as an expert in pediatrics. She began her testimony by describing D.O.'s numerous medical problems, recounted above. In summary, she testified that his heart's ability to circulate oxygen-rich blood around his body is compromised, he is less able to fight infections, and more prone to respiratory infections than the average child. During pediatric appointments, Dr. Showell pays "special attention to his illness history," behavior, and symptoms because "just a small cold can really make him very sick." She testified that "in the first two years of [D.O.'s] life, he was hospitalized several time[s]." D.O. was last hospitalized for acute illness in December 2018. He regularly has appointments with a cardiologist and a pulmonologist, but "has not seen a gastroenterologist in several years" despite still having a g-tube. Although a typical healthy

child D.O.'s age would normally be seen by a pediatrician once per year, D.O. is seen every six months.

In order to prevent serious illness, Dr. Showell stressed the importance of ensuring that D.O.'s caregivers are able to recognize when D.O. is sick. "[T]he things that need to be in place are . . . just being able to monitor him and be able to recognize that he's changing, his behavior, if he has any symptoms, respiratory symptoms and being very prompt and being very responsive to that." A caregiver does not need special training to recognize D.O.'s symptoms, but rather

> [j]ust experience. I mean, you don't need to be a doctor to see that he's sick, especially if you've been around him and you recognize even those subtle sign[s]. . . . So just knowing him and having experience when he's not acting like his normal self and being able to promptly recognize when he's ill is what's needed. . . . You just have to have experience with being around him.

She also testified that, to ensure D.O.'s health and well-being, a caregiver needs experience "being with him, caring for him, recognizing the signs of him getting sick . . . [a]nd also, being in the spaces where the information is being shared," including regular appointments and during hospital discharge.

She stated that part of a routine pediatric visit is to observe interactions between the child and the caregiver, to determine socio-emotional development of the child. Dr. Showell observed that D.O. and Mrs. M. "seem to have a very loving relationship." She confirmed that no one at her clinic had reached out to Ms. D. about D.O.'s appointments, and that Ms. D. had not attended any of his pediatric appointments.

DSS CASEWORKER'S TESTIMONY

The Department assigned Cleona Garfield as D.O.'s caseworker in May 2021. She testified that D.O. is "very active," and "doesn't stay seated too long." She observed D.O. to be "very attached to his foster mother and father," and that he is "doing very well" in school and has "no behavior problems."

Ms. Garfield noted that D.O. does not currently require oxygen and has not been hospitalized for illness since 2017. She also testified that the foster parents keep DSS apprised of all of D.O.'s medical appointments.

Ms. Garfield's contacts with Ms. D. have primarily involved scheduling visitation, which is done by phone or email. Ms. Garfield initiates contact with Ms. D., Mrs. M., and Mr. Black to schedule the visits. She testified that she typically contacts Ms. D. first to confirm the day and time she is available for visitation. She would then contact Mrs. M. and Mr. Black to "make them aware of the time that Ms. D. was available for these visits." Ms. D. and Mrs. M. would contact Ms. Garfield if they needed to cancel a visit. Ms. Garfield confirmed that Ms. D.'s visits with D.O. have never been unsupervised.

Ms. D. informed Ms. Garfield that although Mrs. M. frequently arrived late for visitation, the visits were not extended. Ms. Garfield testified that she is not able to extend the visits past 6:00 p.m., and "[t]here's been no makeup" offered to Ms. D. However, she also noted that Ms. D. did not request that Ms. Garfield do anything about Mrs. M.'s tardiness.

Ms. Garfield could not remember if Ms. D. visited D.O. in November 2022, but testified that there were no visits in December 2022 or January 2023 because "Mother was not available due to her work schedule." According to Ms. Garfield, she spoke with Ms. D. in November or December 2022, at which time Ms. D. told her she got a temporary job and was not available for visits, but that Ms. D. would contact Ms. Garfield when she was available. Ms. Garfield recalled that Ms. D. advised her that Ms. D. worked "in the evenings from 6:00 to something." Ms. Garfield did not suggest an alternate arrangement, stating, "[t]here were no other options to suggest because she was not available." Ms. Garfield did not make any adjustments to the visitation time. According to Ms. Garfield, the visits could not start earlier than 5:00 p.m. because of D.O.'s school schedule. Because Ms. D. had not called, Ms. Garfield reached out to Ms. D. in February 2023 to schedule a visit. Ms. Garfield did not contact Ms. D. before February "because [Ms. D.] made [Ms. Garfield] aware she wasn't going to be available."

Some of the contact notes kept by Ms. Garfield and her predecessor caseworker were admitted into evidence. Additional details provided by these notes include the following:

- D.O. underwent heart surgery in early May 2021. Ms. D. was present in the hospital during that surgery.
- In June and July 2021, Ms. D.'s visits with D.O. were held weekly from 4:00 p.m. to 6:00 p.m.
- By September 2021, Ms. D.'s visits with D.O. had changed to monthly.
- Ms. D. began work at UPS on November 7, 2022, and reported to Ms. Garfield that her hours are 5:00 p.m. to 10:00 p.m. Ms. Garfield believed

that Ms. D. would contact her in January after her seasonal employment ended. When Ms. Garfield contacted Ms. D. to schedule a visit in February 2023, Ms. D. did not provide a reason as to why she did not contact Ms. Garfield the previous month. Ms. D. reported that she had started a new job on February 9, 2023, at Family Dollar.

- Ms. D. contacted Ms. Garfield seven hours before the scheduled February 2023 visit asking to reschedule the visit because she had a stomach virus.

COURT'S FINDINGS AND FIRST APPEAL

On April 25, 2023, the court terminated Ms. D.'s parental rights. Ms. D. noted a timely appeal from that order. This Court vacated the circuit court's order and remanded for further proceedings. *In re D.O.*, No. 552, Sept. Term 2023 (filed Jan. 18, 2024). We did so because some fact-findings by the circuit court were clearly erroneous and the court failed to address all of the required statutory factors found in Md. Code (1984, 2019 Repl. Vol.), § 5-323(d) of the Family Law Article ("FL").

PROCEEDINGS AFTER FIRST APPEAL

On remand, the court gave the parties the opportunity to present additional evidence, but they declined to do so. A hearing was held on April 29, 2024, during which the parties presented additional arguments. These arguments were primarily focused on whether DSS provided adequate services to facilitate reunification, and whether Ms. D. made sufficient efforts toward reunification. On May 30, 2024, the circuit court issued a written opinion discussing its findings in detail and again terminated Ms. D.'s parental rights. Ms. D. noted this timely appeal.

DISCUSSION

I. Termination of Parental Rights Principles

It is well-established that parents have a fundamental right to raise their children. *In re Adoption/Guardianship of C.A. and D.A.*, 234 Md. App. 30, 47 (2017); *see also Santosky v. Kramer*, 455 U.S. 745, 758-59 (1982). Furthermore, children have "a constitutionally protected liberty interest in the preservation of parental rights" and "'an interest in maintaining a close familial relationship with siblings.'" *In re Adoption/Guardianship No. T00032005*, 141 Md. App. 570, 580 (2001) (quoting *In re Adoption/Guardianship No. T97036005*, 358 Md. 1, 16 (2000)). These rights are not absolute and parental rights can be terminated when it is in the best interest of the child. *C.A. and D.A.*, 234 Md. App. at 47. There is a strong presumption, however, that it is in a child's best interest to maintain the parent-child relationship. *Id.* at 48. This presumption can only be overcome where the parent is unfit to continue the parent-child relationship or where exceptional circumstances exist such that continuation of the parent-child relationship is detrimental to the child's best interests. *Id.*; *see also* FL § 5-323(b).

The Maryland General Assembly created a list of factors that a court must consider in determining whether a parent is unfit, whether exceptional circumstances exist, and whether it is in the best interest of a child to terminate the relationship. FL § 5-323(d); *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 501 (2007).

> The court's role in TPR cases 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.

Our review of a decision to terminate parental rights "involves three interrelated standards: (1) a clearly erroneous standard, applicable to the juvenile court's factual findings; (2) a *de novo* standard, applicable to the juvenile court's legal conclusions; and (3) an abuse of discretion standard, applicable to the juvenile court's ultimate decision." *C.A. and D.A.*, 234 Md. App. at 45 (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). Our role is not to determine whether "we might have reached a different conclusion. Rather, it is to decide only whether there was sufficient evidence—by a clear and convincing standard—to support [the court's] determination that it would be in the best interest of [the child] to terminate the parental rights of [the parent]." *Id.* at 46 (alterations in original) (citation omitted) (quoting *In re Adoption No. 09598 in Cir. Ct. for Prince George's Cnty.*, 77 Md. App. 511, 518 (1989)).

Section 5-323(d) of the Family Law Article sets forth the factors a court must consider:

> Except as provided in subsection (c) of this section, in 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[8] 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

[8] "Drug" is defined in FL § 5-323(a): "In this section, 'drug' means cocaine, heroin, methamphetamine, or a derivative of cocaine, heroin, or methamphetamine."

(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.

II. The Juvenile Court's Findings

We note that the juvenile court's opinion on remand expressly addressed each of the FL § 5-323(d) factors.[9] In its discussion of FL § 5-323(d)(1)(ii), the court found that DSS offered Ms. D. services such as a referral for parenting classes and providing Ms. D. transportation funds and in-person and video visitation. However, the court had "some concerns" with the services DSS provided. "While DSS informed [Ms. D.] about [D.O.'s] medical procedures, they failed to inform her about [D.O.'s] routine medical appointments." Additionally, "DSS failed to monitor" Ms. D.'s visits with D.O., resulting in Mrs. M. sitting in on the visits until D.O. was three years old, and "there were times

[9] As D.O. notes in his brief, the court specifically addressed the six concerns that we identified in our prior unreported opinion.

when [Ms. D.] was entitled to weekly visits but received bi-weekly visits."[10] Concerning the services provided by DSS to facilitate reunification, the court concluded:

> Although . . . DSS provided or recommended a plethora of services, it could have done more for [Ms. D.]. DSS could have monitored the visits to ensure that they were conducted properly and timely. Regular service agreements would have possibly kept [Ms. D.] on schedule or more clearly demonstrated that [Ms. D.] was not invested in reunification. These failings amounted to missed opportunities which worked against a timely reunification process.

In discussing FL § 5-323(d)(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," the court noted several failings on the part of Ms. D. The court concluded that Ms. D.'s efforts to maintain contact with D.O. weighed "both in favor and against" Ms. D.

> [Ms. D.] made some efforts to maintain regular contact with [D.O.]. She visited with [D.O.] by phone and in person. However, when the foster mother was late bringing [D.O.] to the visits, [Ms. D.] failed to protest and demand her rights to a full visit. Further, [Ms. D.] did not complain when DSS or Mentor Maryland changed her weekly visits from weekly to bi-weekly.

[10] In its discussion of FL § 5-323(d)(1)(iii), "the extent to which the local department and parent have fulfilled their obligations under a social services agreement," the court also noted the Department's failure to monitor the video visits, resulting in "ineffective" visits during which "D.O. (then four years old) and his foster mother were in grocery stores and while the foster parent was focused on driving her vehicle." The court additionally found that "DSS failed to offer make up visits when the foster mother was late for the parent-child visits at Mentor Maryland[,]" and failed to "encourage [Ms. D.] to consider an alternate schedule or revert to Zoom visitations" during the period when Ms. D. indicated she would not be available for visits due to her work schedule. The court concluded that "While DSS offered various services and some of these services bore fruit, DSS failed in the critical area of visitation and communications."

> Further, [Ms. D.] missed visiting [D.O.] during her holiday seasonal employment from November 2022 through January 2023. Further, [Ms. D.] failed to contact DSS after her seasonal job ended. DSS had to contact [Ms. D.] to schedule a February 2023 visit. Only hours before that visit, [Ms. D.] contacted DSS to cancel that visit due to her illness. There is no evidence that she attempted to schedule any visits between November and February. In fact, the uncontroverted evidence is that [Ms. D.] simply announced that she would not be available while she had the seasonal job.
>
> However, [Ms. D.] did adjust her schedule for many of the Mentor Maryland visits at 5:00 P.M. and for hospital visits while [D.O.] had seventeen surgeries and procedures.

The court found that Ms. D.'s contacts with DSS weighed in favor of TPR because, "[w]hile [Ms. D.] did contact DSS, that was the exception as opposed to the rule. Sometimes [Ms. D.] contacted DSS to cancel visits, and other times she did not contact DSS at all." Concerning Ms. D.'s "contribution to a reasonable part of [D.O.'s] care and support," FL § 5-323(d)(2)(ii), the court noted that it was not clear whether Ms. D. "had the means to offer regular support" to D.O. at any point, but also that Ms. D. failed to provide D.O. any gifts or occasional support even when she had employment. The court concluded that this factor "weighs somewhat against" Ms. D.

In discussing FL § 5-323(d)(2)(iv), "whether additional services would be likely to bring about a lasting parental adjustment so that the child could be returned to the parent," the court noted that D.O. is eight years old and "has never been to [Ms. D.'s] home." The court found:

> During his lifetime, generally, [D.O.] has seen his mother on a weekly, bi-weekly, or monthly basis. Other times, [D.O.] has not seen his biological mother for extended periods. Certainly, [Ms. D.] has visited [D.O.] in the hospital during his hospital confinements; however, [Ms. D.] was not there

> for routine doctor visits. In essence, there is no mother/child bond between [Ms. D.] and [D.O.].
>
> Further, since there is no bond between [D.O.] and his biological mother, based on the evidence, time would have to be extended to allow [D.O.] to adjust to unsupervised visits with his biological mother and be away from his foster family. Further, Dr. Zajdel noted that should we move to the next step of unsupervised visits, the [c]ourt should consult with the medical providers to ensure that [D.O.'s] fragile medical state is not damaged in the process.
>
> Then, additional time would be required to give [Ms. D.] the opportunity to get to know [D.O.] so that [Ms. D.] would appreciate when [D.O.] is becoming sick or otherwise require medical attention. Presently, [Ms. D.] has little appreciation for [D.O.'s] medical needs.
>
> Even if this [c]ourt extended the time, given [D.O.'s] resistance to being with his biological mother, there is no evidence that additional extensions would be fruitful.

The court also found that D.O. "has no emotional ties and feelings for his mother, siblings and others that would adversely impact [D.O.] if this Petition is granted[,]" and has no ties to Ms. D.'s home or community. "According to the evidence, [D.O.] neither recognize[s] nor understands a parent-child relationship with his biological mother." The court discussed the attempted February 2020 bonding evaluation,[11] concluding that

> [i]n hindsight, this bonding study appointment was an opportunity for [Ms. D.] to try to cultivate a relationship with [D.O.], under the guiding and watchful eye of Dr. Zajdel, even if that initial effort to persuade [D.O.] to go to the interview room failed. However, [Ms. D.] failed to attempt to instill some level of trust in [D.O.].

[11] As noted in Ms. D.'s brief, the court erred by stating that this attempted bonding evaluation occurred in August 2020. We fail to see how this slight error in the date could have made any difference to the circuit court's conclusions.

The court found that "the likely impact of terminating parental rights on [D.O.'s] well-being" is "*de minimus*," and expressed concerns that delaying the process could negatively impact D.O.

> If this [c]ourt denies this Petition, and extends this process another eighteen months, [D.O.] will be nine years old, over halfway to his eighteenth birthday. After living with his foster family for . . . nine years, after the medical trauma he has been through, how would one expect him to react[?] His well-being may be damaged beyond repair.
>
> Although this [c]ourt considers this case to be fraught with missed bonding opportunities, any attempt to correct these failings would be more damaging than the original shortcomings. Furthermore, [Ms. D.] has generally presented herself as uninvested in [D.O.'s] day-to-day life, except for his[] surgeries and in-patient medical procedures. Otherwise, [Ms. D.] proved to be less than energetic when she participated, especially when [D.O.] proved to be difficult.
>
> Lastly, although Dr. Zajdel noted that there is a possibility for bonding to take place, she offered one caveat. S[h]e said that bonding could take place under the right circumstances. Those circumstances do not exist in this case.

The court concluded that exceptional circumstances exist which make termination of Ms. D.'s parental rights in D.O.'s best interests.

> [T]he exceptional circumstances are based on a number of factors. First, [D.O.] was shelter[ed] shortly after his birth and he remained in care for all of his life. [D.O.'s] foster parents took him home from the hospital when he was approximately nine days old. He is now eight years old. [D.O.] has resisted identifying with his biological mother in name and title.
>
> [D.O.] refused to participate with his biological mother in the bonding evaluation. He was so emotionally distressed that his biological mother refused to try to attempt to persuade him to participate.
>
> [D.O.] is still a medically fragile child. [D.O.'s] biological mother has not been a consistent presence in his life for . . . more than one-hour at a time, except when [D.O.] was undergoing medical procedures. Therefore, his mother understands that she would have to expend time learning [D.O.'s]

> manners and habits and using this intelligence to determine when [D.O.] is becoming sick. [D.O.] is still facing one more major surgery and the removal of his G-tube.
>
> Through able counsel, [Ms. D.] has fought valiantly, however, she has not expended the same level of energy in standing up for her rights during this TPR process.

III. Analysis

Ms. D. argues that the court erred in its findings on some of these factors. Specifically, she argues that, concerning FL § 5-323(d)(1)(ii), the court should have found that DSS did not provide adequate services to facilitate reunification, based on its failure to provide frequent visitation and failure to obtain a bonding study between Ms. D. and D.O. She also argues that the court erred by not mentioning that there was a second order for a bonding study between Ms. D. and D.O. in September 2020 and that no evidence was presented that DSS attempted to schedule a bonding study as a result of that order. Concerning FL § 5-323(d)(2), Ms. D. argues that the court erred in finding that her visitation with D.O. was "inconsistent," and in concluding that she "sat on her rights" and "didn't work hard enough" to make changes necessary for reunification. Ms. D. additionally argues that DSS's failure to provide adequate services should preclude TPR. Finally, Ms. D. argues that DSS failed to prove exceptional circumstances.

The juvenile court's findings are supported by the record. The court noted numerous instances where DSS failed to make reasonable efforts to reunify D.O. and Ms. D. Its failure to mention certain details of the now eight-year history of this case, such as the existence of a second order for a bonding study in 2020, does not render its findings

clearly erroneous. Moreover, as we discuss below, the court appropriately considered DSS's less than ideal efforts as part of its comprehensive review of the statutory factors.

The court's findings concerning Ms. D.'s efforts were also supported by the record. In discussing Ms. D.'s efforts to maintain regular contact with D.O., the court focused primarily on the most recent evidence: that Ms. D. failed to visit D.O. from November 2022 to January 2023 because of her seasonal employment; that she failed to contact DSS to arrange for visitation after the seasonal employment ended, resulting in an additional month without visitation; that she did not attempt to make any contact with D.O. during that period; and that Ms. D. failed to assert her right to the full period of visitation when Mrs. M. was late to visits in 2022. Thus, although there may not have been definitive evidence of the frequency of Ms. D.'s visits prior to November 2022, the court's description of Ms. D. as not having been "a consistent presence in [D.O.'s] life" is supported by the more recent record. We are satisfied that the court considered the full record, and it made sufficient findings relevant to each of the FL § 5-323(d) factors.

The focus of a TPR inquiry is on the child's best interests. *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 56 (2019). As discussed above, although there is a presumption that it is in a child's best interests to maintain the parent-child relationship, this presumption may be rebutted where the FL § 5-323(d) factors show that exceptional circumstances exist such that it is in the child's best interests to terminate the

relationship.[12] *C.A. and D.A.*, 234 Md. App. at 47-48. Thus, the factors inform both whether exceptional circumstances exist and whether TPR is in the child's best interests. *In re Ta'Niya C.*, 417 Md. 90, 104 (2010) (citing *Rashawn H.*, 402 Md. at 499). Notably, the factors concerning the efforts DSS made to prevent placement, to reunify, and to fulfill its obligations under service agreements are not focused on how those efforts affect the interests of the parent, but on how those efforts affect the child's best interests. *In re Adoption of K'Amora K.*, 218 Md. App. 287, 302 (2014) ("[A] *parent's* rights do not drive our decision. As the [Supreme Court] recently reaffirmed, '*the child's best interest* has always been the transcendent standard in . . . TPR proceedings,' and 'trumps all other considerations,' even the rights and interests of parents." (last alteration in original) (quoting *Ta'Niya C.*, 417 Md. at 111-12)).

Ms. D. argues that "[b]ecause the court found that DSS *never* adequately provided the family with core services needed for successful reunification, the TPR must be

[12] Ms. D. argues that the court improperly focused on whether a change in custody would be in D.O.'s best interests, rather than focusing on termination of the parental relationship. We acknowledge that the court's statement, "the removal of [D.O.] from [the foster] home could critically damage his emotional, physical, and mental health," contemplates custody of D.O. However, the likelihood of the parent eventually having custody of the child is important in a TPR case. FL § 5-323(d)(2)(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"); *In re K.H.*, 253 Md. App. 134, 160 (2021) ("Ultimately, these factors seek to assist the juvenile court in determining '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.'" (quoting *C.E.*, 464 Md. at 51-52)). A fair reading of the court's opinion persuades us that its focus was on the lack of a bond between Ms. D. and D.O. rather than the potential effect resulting from a change in custody.

reversed." Ms. D. cites four Maryland cases in support of this assertion: *In re Adoption/Guardianship Nos. CAA92-10852, 92-108053*, 103 Md. App. 1 (1994); *In re Adoption/Guardianship Nos. J9610436 & J9711031*, 368 Md. 666 (2002); *In re James G.*, 178 Md. App. 543 (2008); and *In re Adoption/Guardianship of Victor A.*, 386 Md. 288 (2005).[13] In both *CAA92* and *James G.*, DSS met with the parents only once and otherwise made virtually no effort to provide services toward reunification. 103 Md. App. at 13-16, 21; 178 Md. App. at 551. In *CAA92*, this Court held that, under the facts of that case, DSS's failure to provide reunification services precluded TPR. 103 Md. App. at 28. In *James G.*, we held that the failure to provide reunification services precluded a change in permanency plan. 178 Md. App. at 590. In *J9610436*, the Maryland Supreme Court held that, although DSS had provided the father with numerous services, those services were not adequate because they were not focused on the specific needs of the father. 368 Md. at 680-82. This failure precluded TPR because the evidence did not indicate "that proper additional services could not bring about an adjustment that would permit reunification." *Id.* at 694. The father had "made extensive and extraordinary efforts to further reunification" and "maintained as regular a contact with his children as [DSS] would permit." *Id.* These cases show that, where DSS fails to provide adequate services that are likely to lead to reunification, such failure can be a strong factor against TPR. However,

[13] The only part of *Victor A.* that is relevant to this issue is a short comment that long-term placement may be appropriate where "DSS has not provided timely reunification services." 386 Md. at 312.

none of these cases suggest that a failure to provide adequate reunification services precludes TPR. Instead, they show that, where parents have not been given an opportunity to demonstrate their parenting skills or to make the specific changes needed for reunification, TPR may not be in the child's best interests. The exception to this is where the evidence indicates that additional services are not likely to lead to reunification. *See J9610436*, 368 Md. at 694.

Ms. D. asks this Court to hold that DSS's failures, in and of themselves, preclude a TPR order in this case. However, a TPR determination must be based on all of the statutory factors as they inform the best interests of the child. *In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 736-37 (2014) ("[T]he court must weigh all of the statutory factors together, without presumptively giving one factor more weight than another." (citing *In re Adoption/Guardianship No. 94339058/CAD*, 120 Md. App. 88, 105 (1998))); FL § 5-323(d) ("[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[.]"). The juvenile court appropriately adopted this global view in concluding that exceptional circumstances exist which make it in D.O.'s best interest to terminate Ms. D.'s parental rights. The court viewed the entire record, and concluded that there was a lack of familiarity between D.O. and Ms. D. Indeed, the court correctly noted that D.O. "has never been in his mother's care." This is not a case like *J9610436*, where the parent "made extensive and extraordinary efforts to further reunification" and "maintained as

regular a contact with his children as [DSS] would permit." 368 Md. at 694. Instead, Ms. D.'s past behavior demonstrated to the court that she would unlikely put in the time and effort to establish the level of familiarity required for reunification. The court was especially concerned with Ms. D.'s lack of proactivity with regard to D.O. and willingness to go months without any contact with him and without attempting to suggest an alternative solution. In reaching its conclusion, the court considered all of the FL § 5-323(d) factors, viewing the circumstances as whole rather than a single facet of the long, complex history of this case. As in *In re Adoption/Guardianship No. 94339058/CAD in Circuit Court for Baltimore City*, 120 Md. App. 88, 105 (1998), the court here found that DSS "could have done more." Nevertheless, as we concluded in that case, we similarly affirm here because the evidence related to all of the statutory factors, considered together, is sufficient to uphold the finding that termination is in the child's best interests. *Id.*

"[A] critical factor in determining what is in the best interest of a child is the desire for permanency in the child's life[.]" *K'Amora K.*, 218 Md. App. at 306 (quoting *In re Jayden G.*, 433 Md. 50, 82 (2013)). D.O. has been in foster care for over eight years, and the court's conclusion that D.O. "has no emotional ties and feelings for his mother" is amply supported by the record. The court recognized that, although reunification was hindered by the actions of both DSS and Ms. D., the only way D.O. can now achieve the stability he needs is by terminating Ms. D.'s parental rights and allowing the only family D.O. has ever known to adopt him. The court's fact-findings were not erroneous, and the court appropriately concluded that exceptional circumstances exist in this case that made

continuing the parental relationship detrimental to the child. We discern no abuse of discretion in the ultimate decision that it was in D.O.'s best interests to terminate Ms. D.'s parental rights.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY, SITTING AS THE JUVENILE COURT, AFFIRMED. COSTS TO BE PAID BY APPELLANT.