Circuit Court for Prince George's County
Case No. CAD22-02840

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1443

September Term, 2022

AMARIAH N. DABNEY

v.

ANTOINE XAVIER CLARK

Graeff,
Albright,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Adkins, Sally D., J.

Filed: October 20, 2023

*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).

This appeal follows a denial of a complaint for termination of parental rights ("TPR"). Maryland Code (1984, 2019 Repl. Vol.) § 5-1402 of the Family Law Article ("FL") permits a court to terminate the parental rights of a parent upon a showing of clear and convincing evidence that the child at issue was conceived as a result of nonconsensual sexual conduct and termination is in the best interest of the child. Appellant Amariah Dabney appeals an order denying her complaint to terminate the parental rights of Appellee Antoine Clark as to their daughter, E.R.D.

Dabney asks[1] us to resolve one question, which, for clarification, we have revised as follows:

> Did the circuit court err in finding no clear and convincing evidence that nonconsensual sexual conduct led to the conception of E.R.D. and therefore abused its discretion in denying the termination of parental rights?

For the following reasons, we answer this question in the negative and affirm the circuit court's decision.

FACTS & LEGAL PROCEEDINGS

The parties in this case first met in July 2018, when they began attending school together and riding the same bus. The two established a friendship, and Dabney visited Clark's home several times a week in 2018 and 2019. Neither party described their relationship as romantic or sexual. A prior incident between Clark and Dabney's brother

[1] Dabney presented the question as: "Did the circuit court err or abuse discretion in denying Appellant's Complaint to Terminate the Parental Rights of a Parent – Child Conceived through Nonconsensual Sexual Conduct?" Clark was not represented by an attorney in this appeal and did not file a brief with this Court.

escalated in July 2019 when Dabney invited Clark to her home over the objection of Dabney's brother, which ultimately led to the police being called.[2] In September 2019, the parties had a falling out when Clark sent Dabney text messages that Dabney thought threatened her and her family. Dabney reported those messages to her school, which then informed Dabney's mother. Dabney's mother subsequently filed a peace order on behalf of Dabney against Clark, which was ultimately dismissed.

In July 2020, Dabney discovered she was pregnant. Her child, E.R.D., was born in March 2021. In August 2021, Dabney filed a complaint for paternity and child support against Clark, who was adjudicated the father of E.R.D. by consent after DNA testing. Clark filed a petition for custody in February 2022, and Dabney filed a complaint to terminate parental rights for a child conceived through nonconsensual sexual conduct in May 2022. The parties consented to the consolidation of the cases, and the Circuit Court for Prince George's County held a hearing on the cases in August 2022.

The evidence presented at the hearing focused on the relationship between the parties and the alleged instance of nonconsensual sexual conduct that was the basis of the TPR complaint.[3] Dabney, Clark, and each of their mothers presented largely conflicting testimony regarding the circumstances of E.R.D.'s conception. Dabney testified that she only saw Clark twice after the peace order was dismissed: in April 2020 when she went to

[2] No further details of this incident were elicited in testimony or other evidence.

[3] At the hearing, Clark's counsel stated that he was only seeking access to E.R.D. and not custody, so TPR was the only issue argued.

Clark's home to confront him about ongoing bullying and in June 2020 when he allegedly raped her. Regarding the rape, Dabney testified that she was at an employee training at Six Flags when Clark pushed her back into a women's restroom and forced himself on her. Dabney further testified that Clark had previously physically abused her, which dissuaded her from fighting back and from disclosing the incident. Dabney said that she had not communicated with Clark since the incident. Dabney's mother offered testimony similar to Dabney's regarding how they discovered Dabney was pregnant and the parties' history.

Clark denied being at Six Flags on the day Dabney alleged. He instead testified that Dabney came to his home in June 2020 and initiated intercourse. Clark also stated that Dabney texted and called him in January 2022 regarding E.R.D. and visited his home in February 2022. Clark's mother testified that she saw Dabney leaving the Clark residence in June 2020 and that she spoke with Clark and Dabney together on the phone in February 2022. Clark also presented photos from his building's security camera that showed Dabney outside the Clarks' apartment, which Clark asserted were from February 2022 and Dabney asserted were from April 2020.

At the close of the hearing, the judge ruled that Dabney had not shown clear and convincing evidence that E.R.D. was conceived through nonconsensual sexual conduct as required by FL § 5-1402 and denied the TPR complaint. Specifically, the judge found that nonconsensual sexual conduct did not occur at Six Flags in June 2020. She questioned why Clark would have been present at the park at the height of the Covid-19 pandemic if he had never applied for a job or attended a career fair there and how Clark happened to

find Dabney in the bathroom without any communication between the two. The judge also determined that "any past verbal abuse [did not have] any impact on the sexual interactions between the parties" because it seemed consistent with typical high school behavior. Finally, the judge found that the security photos were more consistent with Dabney being at the Clark home in February 2022 than April 2020 due to Dabney's attire. The court entered its order denying TPR on September 23, 2022. Dabney timely appealed.

STANDARD OF REVIEW

Our review of the circuit court's decision to deny termination of Clark's parental rights turns on three interrelated standards. *In re Adoption/Guardianship of Victor A.*, 386 Md. 288, 297 (2005) (citing *In re Yve S.*, 373 Md. 551 (2003)). Specifically,

> [w]hen the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8–131(c)] applies. [Second,] [i]f it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

Id. (quoting *In re Yve S.*, 373 Md. at 586) (alterations in original).

In a case involving the termination of parental rights, "the greatest respect must be accorded the opportunity [the trial judge] had to see and hear the witnesses and to observe their appearance and demeanor." *Cecil Cty. Dept. of Social Servs. v. Goodyear*, 263 Md. 611, 622 (1971). *See also* Md. Rule 8–131(c) ("[An appellate court] will not set aside the

judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.").

DISCUSSION

Dabney contends that the hearing court abused its discretion in denying her complaint to terminate Clark's parental rights, arguing that the court erred by making no reference to Clark's alleged physical abuse against Dabney and her family. Dabney maintains that the history of physical abuse along with the other evidence presented at trial amount to clear and convincing evidence that Dabney and Clark's minor child was conceived through nonconsensual sexual conduct.

The statute underlying Dabney's complaint for TPR, FL § 5-1402, permits a court to terminate a respondent's parental rights if, after trial, the court: (1) "finds by clear and convincing evidence that the respondent committed an act of nonconsensual sexual conduct against the other parent that resulted in the conception of the child at issue"; and (2) "finds by clear and convincing evidence that it is in the best interest of the child to terminate the parental rights of the respondent." The statute is permissive, stating that "a court **may** terminate the parental rights of a respondent" if the requisite findings are made. *Id.* (emphasis added).

We first consider the hearing court's findings of fact and review it under the clearly erroneous standard. Md. Rule 8–131(c). In doing so, we recognize the "greatest respect" given to the hearing court's opportunity to observe the witnesses as they testify. *Goodyear*, 263 Md. at 622.

Unlike this Court, the hearing judge observed the witnesses and ultimately concluded that she did not find clear and convincing evidence that nonconsensual sexual conduct occurred at Six Flags on the date Dabney alleges it did. Most of the evidence presented at the TPR hearing was witness testimony that was largely inconsistent and conflicting. The hearing judge was in the best position to determine which testimony was credible, and we will not disturb her factual findings unless clearly erroneous.

In concluding that there was not clear and convincing evidence of nonconsensual sexual conduct, the hearing judge explained that she had to "rely on the testimony of the parties." In its ruling, the court noted inconsistencies within and between witnesses' recounts of events, which raised questions about why Clark would have been present at Six Flags on the day Dabney alleges the sexual conduct occurred and how Clark would have known Dabney was both at the park and where within it she was. The circuit court also noted how the security photos conflicted with Dabney's testimony about when she visited Clark's apartment and found the photos to be more convincing than Dabney's testimony. Finally, of the four witnesses called in the TPR hearing, the judge stated that she found the testimony of Clark's mother to be the most convincing because it "was consistent with all that has happened."

We find nothing in the record that indicates clear error in the hearing court's factual findings. Each of the judge's findings had a basis in the evidence and testimony presented when considered alongside the judge's ability to see and hear the witnesses firsthand. If evidence conflicted, the judge made credibility determinations to guide the ultimate

findings of fact. In light of the respect given to the hearing judge's findings, we conclude the judge made no clear error.

We next assess whether the hearing judge erred as a matter of law in applying her factual findings to FL § 5-1402. *In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. 30, 45 (2017). The issue for this review is whether the factual findings amount to clear and convincing evidence that E.R.D. was conceived through nonconsensual sexual conduct.

The burden of proof for clear and convincing evidence is "greater than the usually imposed burden of proof by a fair preponderance of the evidence, but less than the burden of proof beyond a reasonable doubt imposed in criminal cases." *In re Adoption/Guardianship No. 94339058/CAD in Cir. Ct. for Balt. City*, 120 Md. App. 88, 98 (1998) (quoting *Berkey v. Delia*, 287 Md. 302, 318 (1980)). "The evidence should be clear in the sense that it is certain, plain to the understanding, and unambiguous and convincing in the sense that it is so reasonable and persuasive as to cause one to believe it." *Id.* (quoting *Wills v. State*, 329 Md. 370, 374 n.1 (1993)) (cleaned up).

In this case, the hearing judge did not err in concluding that there was no clear and convincing evidence of nonconsensual sexual conduct. Each party's testimony regarding the circumstances of E.R.D.'s conception directly contradicted the other's. The hearing judge found inconsistencies between Dabney's testimony and the security footage that detracted from her credibility. These inconsistencies contributed to the judge finding a lack of clear and convincing evidence. Given the totality of the evidence, we conclude that

the hearing judge committed no error in refusing to find clear and convincing evidence that E.R.D. was conceived through nonconsensual sexual conduct.

Finally, we review the hearing judge's final decision for abuse of discretion. "An abuse of discretion occurs when the court's decision is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. at 45 (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 313 (1997)).

Under FL § 5-1402, a trial court must first find clear and convincing evidence that the child at issue was conceived as a result of nonconsensual sexual conduct. Without this finding, a court cannot terminate parental rights under § 5-1402. Because the hearing judge's factual findings and legal conclusions were without error, her final determination to deny the TPR complaint was well within her discretion. The judge could not have terminated parental rights without the prerequisite finding of clear and convincing evidence of nonconsensual conception.

Dabney argues that the hearing judge erred in failing to mention the physical abuse allegedly perpetuated by Clark against Dabney and her family. She asserts that "[t]he court below did not recognize that [Clark's] verbal abuse of [Dabney] and her family progressed into physical abuse and ultimately, sexual abuse of [Dabney]."

The Supreme Court of Maryland has distinguished "between an explicit abdication of discretionary responsibility and the very different circumstance wherein a judge makes the required ruling but simply does so 'without setting forth any reasoning.'" *In re*

Adoption of Jayden G., 433 Md. 50, 87 (2013) (quoting *Smith v. Johns Hopkins Cmty. Physicians, Inc.*, 209 Md. App. 406, 425 (2013)). In the latter circumstance, "[t]he exercise of a judge's discretion is presumed to be correct, he is presumed to know the law, and is presumed to have performed his duties properly." *Id. See also Bangs v. Bangs*, 59 Md. App. 350, 370 (1984) ("A chancellor is not required to articulate every step in his thought processes. A judge is presumed to know the law and to properly apply it. That presumption is not rebutted by mere silence." (citation omitted)).

Here, the hearing judge was required to make a determination about the sufficiency of the evidence as to whether E.R.D.'s conception was the result of nonconsensual sexual conduct. The hearing judge made her factual findings and applied those findings to the applicable law to make the requisite conclusion about the evidence. Although she did not mention the alleged history of physical abuse by Clark, we presume that the hearing judge knows the law and considered all of the evidence in making her determination.

In TPR cases where the court reaches the issue of the best interest of the child, a hearing court is required to consider the factors listed in FL § 5-323(d) (1984, 2019 Repl. Vol.).[4] *In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 734 (2014). In *In re Adoption/Guardianship No. 87A262*, however, the Supreme Court of Maryland declined to reverse a denial of TPR on the basis that the juvenile judge did not "itemize" his factual

[4] Section 5-323 applies to TPR proceedings based upon unfitness to remain in a parental relationship or in exceptional circumstances and not nonconsensual sexual conduct as in § 5-1402. Section 5-1402, however, does not contain its own best interest criteria. We think it safe to apply the considerations in §5-323 to the best interest findings under § 5-1402.

findings. 323 Md. 12, 20 (1991). The Court distinguished that case—in which TPR was denied—from cases where TPR is granted, acknowledging that "the utmost caution should be exercised in any decision to terminate parental rights" because TPR is a "drastic measure." *Id.* at 19–20. The Court concluded that "the judge's decision to deny termination was clearly based on consideration of the factors set forth in [former] section 5-313 [now found in § 5-323]" and thus the Court found "his failure to make specific findings of fact as to each item of the statute in this case is not reversible error." *Id.* at 20.

In this case, given that FL § 5-1402 does not list required factors for determining whether there was clear and convincing evidence that the child was conceived as a result of nonconsensual sexual conduct, the hearing judge was not required to make any specific factual finding. The hearing judge was simply required to look at all of the evidence presented and, acting as the fact-finder, determine which evidence she found convincing before deciding whether Dabney had overcome the clear and convincing hurdle. If a juvenile court is not required to itemize every statutory consideration for the best interest of a child if it is denying TPR as in *In re Adoption/Guardianship No. 87A262*, then certainly there can be no reversible error in this analogous context.

CONCLUSION

We find no error in the hearing court's determination that there was not clear and convincing evidence that E.R.D. was conceived through nonconsensual sexual conduct, and therefore we conclude that the hearing judge did not abuse her discretion in denying the TPR complaint. We therefore affirm the circuit court's decision.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.