UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1157

September Term, 2015

IN RE: ADOPTION/GUARDIANSHIP OF C.D.

Meredith,
Reed,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: August 29, 2016

This case arises from an order of the Circuit Court for Anne Arundel County, sitting as a juvenile court, terminating the parental rights of H.C. ("Ms. C."), appellant, to her minor child, C.D., also an appellant, after determining that Ms. C. is an unfit parent and that termination of parental rights is in C.D.'s best interests. On appeal, Ms. C. and C.D. present two questions for our review, which we have consolidated and rephrased:[1]

> Did the juvenile court properly exercise its discretion in granting guardianship of C.D. to the Anne Arundel County Department of Social Services (the "Department"), after it determined that Ms. C. is unfit and it is in C.D.'s best interests to terminate Ms. C.'s parental rights?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

[1] Ms. C. presented the following questions for this Court's review:

> I. Did the Court err in terminating the mother's parental rights when the child is emotionally connected to her mother and severing the parental relationship would be detrimental to the child's best interest?
>
> II. Did the Court err in terminating the mother's rights effectively making the minor child a legal orphan without exploring a more appropriate permanency plan other than adoption?

C.D. presented the following questions for this Court's review:

> I. Did the court commit an error of law when it terminated parental rights, after finding that [C.D.] was emotionally attached to her mother, where the impact of the termination was that [C.D.], an emotionally fragile 15 year old, would lose her connection to her mother?
>
> II. Did the court commit and [sic] error of law or abuse its discretion when it found that termination was in [C.D.'s] best interest even though there was no viable plan to provide for [C.D.'s] permanency and it was against her express wishes?

FACTUAL AND PROCEDURAL BACKGROUND

C.D. is the now sixteen-year-old[2] daughter of Ms. C. and Joseph D ("Mr. D.").[3] The Department had been involved with Ms. C. and her ex-husband, Mr. D., on multiple occasions since 2000 when it began providing the family with continuing services following their relocation from Indiana.[4] The Department's most recent involvement with the family began on October 17, 2011, when it received a report that C.D., then age eleven, and her two younger siblings, D.D., age ten, and T.D., age six, were living in a two bedroom trailer with Mr. D., his mother, and his step-father. Ms. C. was not living in the home at that time, having previously moved out, without the children, because Mr. D. was physically and emotionally abusive. The report alleged that the trailer was dirty and that the children went to school filthy, unkempt, inappropriately dressed for the weather, smelling strongly of animal urine, and that they frequently brought roaches to school with them.

On November 1, 2011, a Department worker went to the trailer to investigate the allegations, but was not allowed entry. The following day, the Department was contacted

[2] C.D. was born on April 17, 2000. During the guardianship proceedings in April of 2015, C.D. turned fifteen-years old. As of the date of this appeal, she is sixteen-years old.

[3] Mr. D. consented to the termination of his parental rights by operation of law and is not a party to this appeal.

[4] Ms. C. has four other children who are not part of this appeal. The oldest child, C.D.'s adult half-sibling, B.C., was raised by her maternal grandmother since November of 1999, when B.C. was about four years-old. The other three biological children of Ms. C. and Mr. D., J.D., D.D., and T.D., were found to be children in need of assistance and Ms. C. voluntarily relinquished her rights to them. They have subsequently been adopted.

by the children's school after the children arrived at school with bugs on them. The assigned Department worker returned to the trailer with police. Upon investigation, the Department determined that the trailer was unsafe, unsanitary, and uninhabitable: there was junk, trash, and debris outside of the trailer; the inside of the trailer had holes in the floor that were covered with boards and rugs; there were rodents in the walls and the trailer was infested with roaches; and there was a noticeable stench from the twelve animals living in the trailer. The Department contacted Ms. C., who was living at a motel, and she acknowledged being aware of the living conditions in the trailer and agreed that the children should be removed; however, she was unwilling and unable to care for the children.

On November 2, 2011, the three children were removed from the home and were placed in shelter care with the Department. After a two-day adjudication hearing on November 18, 2011 and December 15, 2011, and a disposition hearing on December 19, 2011, the circuit court Master found C.D. and her two siblings to be children in need of assistance.[5] After Ms. C. and Mr. D. objected to the Master's recommendations, an exceptions hearing was held on April 23, 2012. At the hearing, Ms. C. and Mr. D. withdrew the majority of their exceptions, the circuit court adjudicated the children CINA due to

[5] A child in need of assistance ("CINA") is "a child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Md. Code (2013 Repl. Vol.) § 3-801(f) of the Courts and Judicial Proceedings Article ("CJP").

parental neglect, and the children were committed to the custody of the Department for out-of-home placement.

History of Department Involvement With C.D. and C.D.'s Foster Care Placements

In June of 2001, C.D. was placed in the custody of the Department and, on August 31, 2001, she and her older brother were adjudicated CINA. C.D. was returned to her parents' custody in February of 2002.

In September of 2004, the Department emergently removed C.D. and her siblings from the home. C.D. was again found to be a CINA and returned home under an order of protective supervision. From 2005-2007, C.D. lived with a maternal aunt.

In February of 2010, the Department determined that the trailer in which C.D.'s family was living was unsafe and moved them into a motel. The Department later learned that Mr. D. had returned to the trailer with the children.

By the time of C.D.'s removal in 2011, Ms. C. had been indicated for neglect of C.D. in 2002, 2004, and 2005. She was also indicated for physical abuse in January of 2003. Since 2000, the Department had provided the family assistance with family preservation services, in home support, community support, financial and transportation assistance, reunification services for the children's return from out-of-home placement, assistance with scheduling and keeping medical appointments, finding special educational service programs for the children, and monitoring the interaction and discipline between Ms. C. and the children.

From the time of her removal in November of 2011 through the date of the guardianship hearing, C.D. had been in four foster homes. C.D. has a history of self-

injurious behavior, temper tantrums, forgetfulness, poor social skills, aggression, noncompliance at home, sleep difficulties, verbal abuse, and inappropriate sexual behavior. C.D. had two in-patient psychiatric hospitalizations in 2012 and was diagnosed with a depressive disorder and post-traumatic stress disorder. She was subsequently diagnosed with reactive adjustment disorder, a mood disorder, and attention deficit disorder. During the course of treatment, C.D. was prescribed Risperda and Limictal for her mood disorder, Vyvanse for her attention deficit disorder, and Zyprexa for alertness at school.

In 2012, after C.D. was discharged from her second hospitalization due to suicidal ideations and out-of-control and aggressive behavior, C.D. moved into a treatment foster home with the S. family, where she remained until July 1, 2014. In February of 2014, C.D.'s younger siblings, D.D. and T.D. were adopted.

While living with the S. family, in April of 2013, C.D. disclosed to her foster mother, Ms. S., that she had been sexually abused by her father, Mr. D. The Department investigated and determined that C.D. had suffered repeated sexual abuse and trauma by Mr. D. that began when she was in 5th grade. The abuse started when C.D. was living with both parents at the motel and continued when she returned to the trailer with Mr. D. The Department indicated Mr. D. for sexual abuse of C.D. in June of 2013, and in July of 2014, Mr. D. was convicted of a 4th degree sex offense and sentenced to one year of home detention and one year of supervised probation.

Ms. C.

Since leaving the trailer in 2011, Ms. C. had resided in a motel room, where she continued to reside at the time of the guardianship proceeding. Ms. C. worked at the motel

reception desk in exchange for lodging. Ms. C. shared the motel room with her boyfriend, Mitch M., who is the twin brother of Mr. D.'s stepfather. While living in the trailer with Mr. D., his mother, and his stepfather, Ms. C. had engaged in a sexual relationship with Mr. D.'s stepfather.

Linda Meade, Ph.D., a licensed psychologist, performed a psychological evaluation of Ms. C. Dr. Meade diagnosed Ms. C. with an adjustment disorder with anxious mood, and a personality disorder not otherwise specified with paranoid and dependent traits. Dr. Meade found that Ms. C. has "excellent superficial social skills," but is "somewhat limited" in casual conversation. She displays "very little insight into her circumstances and the obstacles she faces with respect to becoming an adequate parent for her children." Ms. C. "takes very little responsibility for her difficulties and is unlikely to take much responsibility with respect to improving her situation." Overall, Ms. C. "seemed like a highly dependent person."

Dr. Meade further found that Ms. C. is "quite limited intellectually," and shows poor judgment and "restricted insight into her limitations." Ms. C.'s "coping skills remain at an adolescent level, e.g., running away from unpleasant situations," and she "is not sure how to function as an effective parent." Dr. Meade stated that Ms. C. "is certainly not in a position to provide the day-to-day care, structure, nurturing, and constructive discipline that children need to develop properly," and it "may also be beyond her ability to complete the tasks assigned to her to master adequate parenting skills and prepare her for resuming custody" of C.D. Moreover, Ms. C. "has evidenced tremendous difficulty following through on recommendations she has been given and does not seem amenable to accepting

responsibility for her shortcomings as a parent." Based on her evaluation, Dr. Meade recommended that before Ms. C. could regain custody of C.D., she should "demonstrate to Child Welfare Services that she is committed to being an adequate parent, by following through on the recommendations she has been given to prepare [her]self for taking greater responsibility" for C.D.

As part of its reunification efforts, the Department had made multiple recommendations for Ms. C., many of which she refused. Although the Department recommended that Ms. C. obtain vocational rehabilitation services, Ms. C. refused those services because she liked her work. Ms. C. also repeatedly told the Department that she wanted to move out of the motel and obtain housing for her and C.D., indicating to the Department on different occasions that she would move out of the motel room after Mr. M. received inheritance money and/or disability payments, or when she received anticipated worker's compensation benefits. Nevertheless, she continued to live in the motel room with Mr. M. at the time of the guardianship hearing, as she had done since 2011.

Ms. C. also refused to participate in domestic violence counseling, parenting classes, or individual therapy. Ms. C. also repeatedly refused to participate in family therapy until mid-March of 2015. Although the Department provided Ms. C. with the contact information and instructions on how to schedule family therapy, at the time of the guardianship hearing, she had still not scheduled an appointment.

Ms. C. was also supposed to engage in visitation with C.D. Visitation was to be supervised and was not permitted to occur in Ms. C.'s motel room or in the presence of

Mr. M. Ms. C. had not had any overnight visits with C.D. since C.D. entered foster care in November of 2011. Ms. C. did regularly engage in weekly and then bi-weekly visits with C.D. from November of 2011 through February of 2014, but she did not visit with C.D. at all in March of 2014, and only visited with her on a monthly basis from May through July of 2014. Ms. C. did not request any visits with C.D. in August or September of 2014. As a result of Ms. C.'s missed visits, C.D. was disappointed and withdrawn, so C.D.'s foster parents, the As, contacted Ms. C. to request visitation. Ms. C. explained that her work hours had changed, which caused difficulty in scheduling visits.

Review Hearings

At the initial permanency planning hearing on September 28, 2012, the plan for C.D. was placement with a relative for custody and guardianship concurrent with reunification with a parent. After an exceptions hearing on December 17, 2012, the juvenile court found that the plan should remain reunification with the parents.

At the next permanency planning hearing on April 19, 2013, a plan of custody and guardianship to a non-relative was established for C.D. At that time, C.D. was living with the S. family. C.D. told the Master that she wanted to live with her mother, but that if she could not live with her mother, she wanted to live with her aunt. If she could do neither of those options, she wanted to stay with the S. family, or with the family with whom she had lived when she was five or six years of age. She did not want to be adopted.

At permanency planning hearings on October 15, 2013 and March 18, 2014, the plan for custody and guardianship by a non-relative was continued. On September 16, 2014, the permanency plan for C.D. was changed to adoption by a non-relative.

Guardianship Proceedings

On April 16 and April 20, 2015, the court held guardianship proceedings. At the time of the termination of parental rights ("TPR") hearing in April of 2015, C.D. had been in foster care for 3 ½ years. At the hearing, both Ms. C. and C.D. objected to the guardianship petition. Ms. C. did not attend the first day of the proceedings due to an upper respiratory infection, which the court found was not the type of illness that warranted a postponement in the proceedings. On the second day of the proceedings, Ms. C. did appear, but chose not to testify.

Andrea Russell, C.D.'s therapist from January of 2014 through June of 2014, testified as an expert in the field of child trauma, specifically with regard to sexual abuse and post-traumatic stress and adjustment disorders. Ms. Russell testified that the purpose of therapy was to help C.D. to process, speak about, and regulate her emotions regarding the trauma that she had endured, and to learn how to respond to her behaviors. C.D. was not able to form healthy, long-lasting relationships during the time that Ms. Russell was her therapist. She explained that although C.D. "desires to be loved[,] she doesn't know how to reciprocate that unfortunately. She is very fearful." Ms. Russell explained that C.D. could be loving, kind, and charming, but the "slightest threat of her loss of control usually results in rage, manipulation, verbal, physical violence as a way to try to control her environment or she'll totally shut down." Ms. Russell explained that C.D. was often only willing to cooperate in activities when "she was in control or she felt in control." When C.D. was not in control, "she would become disruptive and shut down" or "throw a tantrum in response to being prompted or told what to do."

Due to the trauma C.D. had suffered, C.D. is not emotionally or developmentally mature enough to know what is best for her. She does not possess the coping skills to do "even simple things like … going to school or cleaning her room. Just being healthy. She will fight those things, those requests, which would be in her best interest to do[.]" In Ms. Russell's opinion, it would be "very difficult" for C.D. to form attachments with people if she does not participate in individual therapy and family therapy with her potential adoptive family. When Ms. Russell asked C.D. why she did not want to remain with the S. family, C.D. told her that she "didn't feel like she . . . belonged," and she "didn't like being told what to do, what she was being asked to do." She also had "some conflict with some other children in the home." Nevertheless, C.D. was excited about the prospect of adoption. Ms. Russell explained, however, that C.D. is "very hyper vigilant" and is "always ready for . . . something bad to happen. She's on guard. And then [she is] distrust[ful]. And then there's also the . . . inability to regulate emotions." After meeting the A. family in April of 2014, C.D. told Ms. Russell that she was "happy and excited about the change," was enthusiastic, and was willing to be involved with individual and family therapy.

Ms. Russell stated that C.D. did not "have much to say" about visitations with her mother. C.D. did enjoy her visits with Ms. C., but would not share much more information than that; thus, Ms. Russell did not know much about C.D.'s attachment to Ms. C. Ms. Russell stated that she worked with C.D. on her trauma, which does affect her ability to attach to others, but attachment was not the focus of their sessions. Ms. Russell disagreed that it would be an encouraging sign if C.D. had a "treasured and valuable relationship with her mother," because although C.D. can express love towards others, her behaviors show

that she cannot form healthy relationships. She agreed that if C.D. did have an attachment to Ms. C., and the attachment was "abruptly severed," that the effect "wouldn't be positive," and could "[p]otentially" be negative.

The judge interviewed C.D. in chambers. C.D. told the judge that she enjoys playing soccer. She said that she does not eat dinner with the As because "sometimes they have wine with dinner and she doesn't like the smell of wine." She said that she does not do any other activities with the As, and that although they had offered to go to therapy with her, she did not feel comfortable with that, and only felt comfortable going to therapy with Ms. C. She had gone on vacations with the As, and she somewhat enjoyed the visits. She has friends at her school, but she did not know if she wanted to continue going to school there. C.D. stated that she has a bedroom and a yard, and that she likes the two dogs at her foster house. When the judge asked her how many bedrooms were in the house, C.D. stated that she did not know, but answered specific questions about the bedrooms when asked. She also could not tell the judge how her bedroom was decorated, stating that she "didn't know what" the judge meant, but when asked specific questions, she answered.

C.D. told the judge that her relationship with Ms. C. is "getting better," but she could not tell the judge what she meant by that. C.D. stated that she visits with Ms. C. once a month, and that she does not know how frequently she speaks with Ms. C. in between visits. C.D. told the judge that Ms. C. lived in a motel with Mitch M., and stated that she gets along with him. When the judge asked C.D. about conversations she had with Ms. C. about living together again, C.D. refused to talk about the conversations or how the

conversations made her feel. C.D. did say that she hopes that she can live with her mother again someday.

C.D. told the judge that she sees D.D. and T.D., and that they had both been adopted. C.D. stated that she would not like to have an adoptive family, saying only "I don't like it." C.D. stated that she stopped going to therapy because she "didn't want to go." C.D. was willing to go to family therapy with her mother, but was unwilling to do individual therapy. C.D. understood that she could not live in a motel with her mother. When asked whether she would want to live in another foster home or to continue to live with the As, C.D. said she did not know. She did say that she did not want to be adopted by anyone. C.D. acknowledged that there was a time that she wanted to be adopted by the As, but when the court asked her what had changed since that time, C.D. said she did not know.

Caitlin McGuire, C.D.'s caseworker from October of 2013 through September of 2014, testified as an expert in social work. Ms. McGuire stated that in November of 2013, C.D. was "very optimistic about adoption." C.D. stated at that time that she wanted to be adopted and to explore adoptive resources. C.D. shared that she wanted to be the only child in a two-parent household, and wanted to live in "the country" were she could play outdoors. She also wanted pets and her own bedroom. The Department was willing to look for the type of home that C.D. wanted because C.D. "is a child who requires a lot of patience and one on one attention." In her previous foster home, there were four other children "and it was pretty difficult . . . for [C.D.] to kind of navigate through all of that," so the Department wanted to find a home "that could really give her that one on one therapeutic environment."

When C.D. lived with the S. family, she exhibited a lot of behavioral problems, including "refusal of daily activities such as chores, bathing on a regular basis, occasionally refusing therapy, screaming, shutting down, tantrums, conflict with the other siblings . . . following directions, defiance, just refusal of a lot of activities." C.D. was "very excited" about moving to the As' home, and stated that the As were "the family . . . . who [she] want[ed] to be adopted by." C.D. stated that she felt that she could trust the A's and could talk to them about anything. C.D.'s excitement about adoption lasted from November of 2013 to December of 2014, when C.D. expressed that she did not want to be adopted. C.D. was not in therapy in December of 2014, was not taking her medications regularly, and Ms. C. had stopped requesting visitation with C.D.

Ms. McGuire had observed C.D.'s visitation with Ms. C. When Ms. C. missed visitations, C.D. would become "very withdrawn" and would "shut down" and express her disappointment. Ms. McGuire stated that during visitations, C.D. "definitely takes the role of the parent," and "enjoys the visits when she's in control." Ms. McGuire described the interactions as "almost sibling-like," stating that she had never observed Ms. C. act "parent-like" with C.D. Instead, Ms. C. allows C.D. to "take the lead" during visitation and the conversations are "very superficial" and "surface level." When C.D. "gets angry or is told that something she does not want to hear," Ms. C. does not set "clear boundaries" for C.D., but rather "give[s] into" C.D. and "allow[s]" her to "have what it was that was making her upset," "even for things small as . . . how long the visits can occur."

Ms. McGuire stated that C.D. told her she did not feel safe in her foster home because her foster parents drank alcohol, and she does not like the smell of alcohol. Ms.

McGuire stated that C.D.'s father used to drink alcohol and sneak into her room, which was why C.D. felt unsafe. Ms. McGuire discussed with Ms. C. that C.D.'s concern was not about an "actual threat," but was a "perceived threat" given C.D.'s history. Ms. C.'s response was that when C.D. lived with her, she would just go into a different room and drink wine. C.D.'s foster parents, on the other hand, ceased all alcohol consumption in the home after learning of C.D.'s concerns.

Ms. McGuire stated that C.D. is "emotionally seven or eight," she "tends to not engage at all with peers of her age," and she is not emotionally mature enough to know what is best for her. Ms. McGuire believes there is a "high degree of risk" for C.D.'s safety if is returned to Ms. C.'s care because Ms. C. "lacks the [insight] into [C.D.'s] behaviors and her needs and has not taken any clear steps towards understanding what those needs are or how interactions can become better, how . . . she can respond to . . . [C.D.'s] needs during those times of when she's acting or becoming aggressive." Ms. McGuire did not believe that C.D. should have overnight visits with Ms. C., and did not think that Ms. C. could protect C.D. from Mr. D.

Ms. McGuire stated that the As are "committed" to C.D. and "to her well-being, as well as safety." The As engaged in therapy in order to understand C.D.'s behaviors and how to interact with her, and they "continued to attempt to engage [C.D.] in anyway possible . . . despite [C.D.'s] refusal to engage with them." Ms. McGuire agreed that C.D. had threatened to run away from the As, had cursed at them, cried, yelled, and shown aggression. She explained that whenever the As would try to ask C.D. how her homework

was going, or tell her that she could not wear an outfit to school, C.D. would "get upset, clench her fist, run off to her room."

Ms. McGuire stated that Ms. C.'s refusal to participate in family therapy with C.D. and her unwillingness to educate herself about C.D.'s needs had undermined C.D.'s progress. There were no services that could be provided within a reasonable amount of time that would allow reunification between Ms. C. and C.D. Even after C.D.'s permanency plan was changed to adoption, however, the Department agreed to family therapy between C.D. and Ms. C. because it was the only therapy C.D. was willing to do, and getting C.D. back into therapy was "paramount." Ms. McGuire expressed concerns about C.D. going to a new foster home because "without any treatment . . . even on the basic level of therapy . . . the pattern will continue, repeat itself, and . . . . there's not any interventions that would be changing. It would just be again a change of scenery for her."

C.D. does have a strong attachment to her siblings and sees herself as the parent and protector, which is unhealthy for C.D. Ms. McGuire characterized C.D.'s attachment to Ms. C. as an "insecure attachment," meaning that C.D. "wants to be in control" and "assumes a role of being a parent to her mother. She worries about her."

Ms. McGuire stated that C.D. has "adjusted well to school," and that she plays soccer which "was actually really a milestone for" her. C.D. had also shared that she wanted to continue at the school.

Juvenile Court's Decision

At the conclusion of the guardianship hearing, after considering all of the statutory factors, the juvenile court determined by clear and convincing evidence that both parents

were unfit to remain in a parental relationship with C.D. and termination of parental rights is in C.D.'s best interests.

STANDARD OF REVIEW

In reviewing a juvenile court's decision with regard to termination of parental rights, we utilize three different but interrelated standards:

> "Namely, [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." *In re Adriana T.,* 208 Md. App. 545, 553–54 (2012) (alterations in original) (footnote omitted) (quoting *In re Adoption/ Guardianship of Ta'Niya C.,* 417 Md. 90, 100 (2010)).
>
> In reviewing whether the juvenile court abused its discretion in its ultimate decision to terminate parental rights, we are mindful that, "'to be reversed the decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *In re Shirley B.,* 419 Md. 1, 19 (2011) (quoting *In re Yve S.,* 373 Md. 551, 583–84 (2003)).

In re Adoption/Guardianship of Jasmine D., 217 Md. App. 718, 733-34 (2014).

DISCUSSION

I.

The Court Properly Exercised Its Discretion in Terminating Ms. C.'s Parental Rights

A.

The Court Did Not Violate Ms. C.'s or C.D.'s Constitutional Rights When It Terminated Ms. C.'s Parental Rights

Both Ms. C. and C.D. assert that the termination of Ms. C.'s parental rights violated their fundamental liberty interests in their parental ties.[6] The Department responds that parental rights are not absolute, and a court may terminate parental rights if it is in the best interest of the child.

Maryland Courts have long recognized the "fundamental right [of parents] to direct and control the upbringing of their children." *In re Victoria C.*, 437 Md. 567, 589 (2014). "The termination of fundamental and constitutional parental rights is a 'drastic' measure, and should only be taken with great caution." *In re Adoption/Guardianship of Harold H.*, 171 Md. App. 564, 576 (2006) (quoting *In re Adoption/Guardianship Nos. J9610436 & J9711031*, 368 Md. 666, 699 (2002)). A parent's fundamental right to raise his or her child, however, is not absolute. That right "must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 497 (2007).

In determining whether to terminate parental rights, "it is unassailable that the paramount consideration is the best interest of the child." *In re Adoption/Guardianship No. T00032005*, 141 Md. App. 570, 581 (2001). *Accord In re Adoption of Ta'Niya C.*, 417 Md. 90, 112 (2010) ("the child's best interest has always been the transcendent standard in adoption, third-party custody cases, and TPR proceedings"). It generally is presumed "that it is in the best interest of children to remain in the care and custody of their parents."

[6] "[T]his court has recognized that a child has a constitutionally protected liberty interest in the preservation of parental rights." *In re Adoption/Guardianship No. T000320005*, 141 Md. App. 570, 580 (2001).

Rashawn, 402 Md. at 495. That presumption, however, "may be rebutted upon a showing either that the parent is 'unfit' or that 'exceptional circumstances' exist which would make continued custody with the parent detrimental to the best interest of the child." *Id*.

Maryland Code (2012 Repl. Vol.) § 5-323(b) of the Family Law Article ("F.L."), gives juvenile courts the authority to terminate an individual's parental rights. It provides:

> *Authority*. — 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.

The factors that a court must consider in determining the child's best interest are set forth in F.L. § 5-323(d):

> (d) *Considerations*. — 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
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> (iii) the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any;
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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;

(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;

* * *

(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.

Here, the court carefully considered each required statutory factor, in finding, by clear and convincing evidence, that Ms. C. was unfit to remain in a parental relationship with C.D., and that, giving primary consideration of the health and safety of C.D., it was in her best interests to terminate parental rights. With respect to the factors in § 5-323(d)(1), the court considered all of the services provided to Ms. C. since 2000, and concluded that the services were extensive, appropriate, and timely. The court concluded that the Department had fulfilled its obligations under the service agreements it entered into with Ms. C. Ms. C., however, had failed to follow through with referrals for vocational

training, domestic violence counseling, parenting classes, individual and family therapy, and finding appropriate housing. Ms. C. also missed a number of visitations with C.D.

With respect to § 5-323(d)(2), the court found that Ms. C. had stopped visiting with C.D. without explanation, which caused C.D. "stress and anxiety." The court found that Ms. C. had "not really done anything to become self-sufficient," and is reliant on others, including Mr. M. The court found that there were no additional services that could be offered to Ms. C. that would be likely to bring about a lasting parental adjustment, noting that substantial services had already been provided for 40 months, and any additional services would "be just a wing and a prayer." The court noted that although "[e]veryone . . . is hoping that" Ms. C. would participate in family therapy, as "a means to get the child, who desperately needs therapy, into therapy," there was nothing in the history of the case to suggest that Ms. C. would actually do so.

With respect to abuse and neglect, the court noted that Ms. C. had previously been indicated for physical abuse and neglect, and it was a "significant consideration" that Ms. C. had left C.D. in a "particularly unsafe situation" when she knew that the trailer was unsafe and, as it turned out, C.D. was being sexually abused.

With respect to the factors in § 5-323(d)(4), regarding C.D.'s emotional ties and feelings, the court found that C.D. is emotionally attached to Ms. C., but that "it is not a healthy attachment," and C.D. "plays more of a parental role in the relationship." C.D. is also attached to her siblings. The court then discussed C.D.'s adjustment to community, home, placement and school, stating:

> In this particular case that – those things go very hand in hand . . . .

> [C.D.] initially wanted to be adopted by . . . the foster parents that she's living with now, but at some point in time that changed. She has not been able to articulate to anyone, including this [c]ourt, . . . a reason even for the change in that – in her feelings in that regard.
>
> She has adjusted to the community. She is in school. She doesn't seem to have any objection to the school, and in fact articulated to the [c]ourt that she has friends in school. Her grades have been improving.
>
> ***
>
> She – although I would say that she really tried to minimize her home situation to the [c]ourt even going to go so far as saying she doesn't know how many bedrooms are in the house that she is living in when it was described by Ms. McGuire. I heard a lot of detail about the house, and it seems to be a lovely setting, and in fact is just the setting that [C.D.] described as the home where she wanted to be adopted.

The court then explained that, with respect to § 5-323(d)(4)(iii), the child's feelings about severance of the parent/child relationship, C.D. "is very much opposed to severing that particular relationship. She doesn't want it to be severed. She makes it clear that she doesn't want that. Although it was difficult for her to articulate the reasons why she doesn't want it severed." The court then considered § 5-323(d)(4)(iv), the likely impact of terminating parental rights on the child's well-being, explaining that it had "given this factor a lot of thought," and could "see the pros and cons each way." Nevertheless, the court concluded that the "only way" C.D.

> is going to have an opportunity at this time to form more healthy parental attachments is by terminating the parental rights. It's the only way that quite candidly I can see [C.D.] having the ability to move on and form those attachments, otherwise it's my finding that she will continue to hold onto the hope and the prayer that one day her mother will get it together and become the mother that she wants her to be, and I don't see anything in the history of this case that suggests that that is going to happen for [C.D.].

Accordingly, the court concluded that after "careful considerations of the factors as required in this section I find by clear and convincing evidence that . . . both parents in this case are unfit to remain in a parental relationship with the child." The court stated:

> Mom has done very – has taken very minimal actions or nominal actions to go from being a neglect – a significantly neglectful parent, and in fact at least on one occasion an abusive parent – physically abusive parent to forming a foundation upon which she can appropriately parent [C.D.].
>
> I find this to be a particular danger for an emotionally fragile child like [C.D.] who has been essentially . . . put into a role of being the parent and acting in a parental manner towards her mother.

Thus "giving primary consideration to the health and safety of the child that it is in the best interest of the minor child . . . to terminate the parental rights of both of her parents and thereby granting the Department's petition . . . with the right to consent to adoption and other planned permanent living arrangements." The court's conclusion, based on the evidence, was not "'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Shirley B.*, 419 Md. at 19.

B.

The Court Properly Considered C.D.'s Emotional Attachment to Ms. C.

Both C.D. and Ms. C. assert that the court failed to take into account C.D.'s emotional attachment to her mother when deciding to terminate Ms. C.'s parental rights.

The Department responds that, to the contrary, the court did acknowledge C.D.'s emotional attachment to Ms. C., but determined that it was not enough to overcome Ms.

C.'s unfitness or the court's determination that termination of Ms. C.'s parental rights was in C.D.'s best interests.

As we observed above, the juvenile court considered all of the required factors in determining whether to terminate parental rights, including § 5-323(d)(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 interests significantly." FL § 5-323(d)(4)(i). When considering the applicable factors, "no one factor is controlling. Rather, the court 'must review all of the relevant factors and consider them together.'" *In re Adoption/Guardianship No. T00032005*, 141 Md. App. 570, 605 (2001) (other citation omitted). Indeed, the only "controlling factor" is "'what best serves the interests of the child.'" *In re Adoption/Guardianship of Chaden M.*, 189 Md. App. 411, 437 (2009).

Similar to this case, in *Adoption/Guardianship No. T00032005*, eleven-year-old John opposed termination of parental rights because he was "deeply 'attached' to his mother and ha[d] 'strong ties' to his two siblings." 141 Md. App. at 573. John, who initially did not oppose the termination of parental rights, later changed his mind because the "termination of parental ties would 'devastate'" him. *Id.* at 576-77. Nevertheless, after considering all of the relevant factors, the court granted the Department's petition. *Id.* at 580.

On appeal, this Court observed that "the evidence and proffers demonstrated that John feels affection for his mother," but "the proffers also showed Ms. H.'s failure over the course of several years to take the necessary steps to overcome the drug abuse that led her to neglect John in the first place," and that she did not visit John regularly. *Id.* at 604.

Furthermore, this Court noted that, as found by the juvenile court, although "there is a relationship between John and his mother . . . that's not a parental bond." *Id*. We further observed that there was no evidence to suggest that termination of Ms. H.'s parental rights would deny John a relationship with his half-siblings. *Id.* at 605.

Here, Ms. C. and C.D. assert that C.D.'s strong emotional attachment to Ms. C. is a reason that Ms. C.'s parental rights should not have been terminated. As Ms. McGuire testified, however, as in John's case with Ms. H., Ms. C. and C.D.'s relationship is not a parental bond. Instead, C.D. takes the role of the parent and her interactions with Ms. C. are "sibling-like." Ms. McGuire had never observed Ms. C. acting "parent-like" with C.D., instead allowing C.D. to take the lead. Ms. C. does not set "clear boundaries" for C.D., but rather allows her to control the setting and the relationship. Moreover, like John's mother, Ms. C. had not fulfilled her obligations under the service agreements with the Department and had failed to take the steps necessary to remedy the situation that existed when C.D. was first sheltered with the Department.

Similarly, C.D.'s relationship with her siblings was also unhealthy because C.D. functioned in a parental, protective role towards them. Even if C.D. did have a healthy relationship with her siblings, Ms. C.'s parental rights would have had no effect on that relationship because Ms. C. had already given up her parental rights to C.D.'s siblings, and they have been adopted.

Accordingly, after considering all of the relevant factors, the court properly determined that, despite C.D.'s emotional attachment to Ms. C., the unhealthy relationship

between Ms. C. and C.D., in addition to the other factors, weighed in favor of termination of parental rights.

C.

The Court's Findings Regarding C.D.'s Adjustment to Foster Care Placement Were Not Clearly Erroneous

Ms. C. asserts that the court's conclusion that C.D. had adjusted to the "lovely setting" of her foster home was clearly erroneous. She asserts that the court's conclusion was not based on the evidence presented and, instead, the evidence showed that C.D. does not enjoy engaging with the As, and that she waits until the As have finished dinner before eating because the As "consume alcohol with their dinner, which makes her feel[] unsafe" in the home because the alcohol "triggers the sexual trauma that she suffered from her father." Furthermore, she asserts that C.D.'s disappointment and withdrawal after Ms. C. stopped visiting with C.D. demonstrates the negative effect that terminating Ms. C.'s parental rights would have on C.D., and thus that the court erred in finding that "by granting the TPR it is possible that [C.D.] may be able to form more healthy parental relationships." To the contrary, she argues, the evidence "indicates that severing the parental relationship" would "serve only to be detrimental" to C.D., and the "fact that the Department is committed to engage C.D. and Ms. C. in family therapy even if the TPR is granted emphasizes their understanding of the deep emotional connection" between C.D. and Ms. C., "as well as the need to keep that connection even after the TPR is granted."

The Department responds that the evidence established that C.D. had adjusted well to many aspects of her life, and that although her relationship with the As had deteriorated,

it occurred at a time "when C.D. had stopped going to therapy, was not taking her medication, and Ms. C. had stopped making an effort to see" her. Moreover, argues the Department, the courts findings were not based on the "lovely setting" of the home, but rather its conclusion took into account many factors, including C.D.'s attempts to minimize her positive home situation. Furthermore, it asserts, while it is unclear whether C.D. will ever be able to form healthy attachments, a problem for which Ms. C. is largely responsible, Ms. C. should not be able to rely on C.D.'s inability to form attachments to a foster family as a reason why her parental rights should not be terminated.

In deciding whether to terminate parental rights, FL § 5-323(d)(4)(ii) requires a juvenile court to consider "the child's adjustment to: 1. community; 2. home; 3. placement; and 4. school." Here, the evidence established that C.D. liked and had adjusted to her school, had made friends, and was participating in soccer, which was a "milestone" for her. Although C.D.'s relationship with the As had deteriorated, it occurred at a time when C.D. had stopped going to therapy and taking her medications, and when Ms. C. had stopped making any effort to visit C.D., which caused C.D. a great deal of stress. As Ms. Russell testified, C.D. was not able to form healthy, long-lasting relationships and is "very fearful." When C.D. feels she is not in control, she can become "disruptive and shut down" or "throw a tantrum in response to being prompted or told what to do." It is also "very difficult" for C.D. to form attachments with people, and will continue to be that way unless she participates in individual therapy and family therapy with her potential adoptive family. Ms. Russell also explained that C.D. is "very hyper vigilant" and is "always ready for . . .

something bad to happen. She's on guard. And then [she is] distrust[ful]. And then there's also the . . . inability to regulate emotions."

Based on the evidence presented, including the evidence regarding C.D.'s adjustment difficulties, the court found that the foster home was "just the setting that [C.D.] described as the home where she wanted to be adopted." The court did not reach an "erroneous conclusion," as Ms. C. suggests, that C.D. had adjusted to placement with the As based on the "lovely setting" of the home "and not the interaction between [C.D.] and the foster parents." Instead, the court considered C.D.'s ideal setting, along with the fact that C.D. attempted to "minimize her home situation," as well as her adjustment difficulties. The court's findings were not clearly erroneous.

D.

The Court Properly Concluded That Ms. C. Is Not A Fit Parent

C.D. asserts that the court found Ms. C. unfit based on "a finding that failed to recognize" that Ms. C. "had followed through with some of the services offered by the Department and she had cooperated with the Department." "Most importantly," she asserts, Ms. C. "maintained her visits with [C.D.]," and the Department's "requirements that she attend vocational training and domestic violence counseling, were no longer necessary as mother was employed and had removed herself from [Mr. D.] even before" the case came before the juvenile court. She asserts that the court's conclusion that Ms. C. was "improper in that it did not consider mother's efforts to cooperate with the Department," and that termination "does not provide . . . stability and permanency for" C.D.

The Department responds that the question at issue in a guardianship proceeding is not whether a parent is fit to have visitation with a child, but whether the parent is fit to continue a parental relationship with the child. The Department asserts that the evidence showed that Ms. C. was not fit to continue a parental relationship with C.D. Furthermore, the Department asserts, there is no merit to C.D.'s argument that the court did not give enough credit to Ms. C.'s "partial compliance" with Department services, or that her failure to comply with vocational training and domestic violence referrals should be disregarded as unnecessary.

Here, the evidence showed that Ms. C.'s relationship with C.D. was not parental. To the contrary, Ms. C. had a long and continuous history of failing to act in C.D.'s best interests, beginning, at least, in 2010 when she left the family to escape Mr. D., leaving C.D. in what she knew to be deplorable conditions with a man who was physically and emotionally abusive. In fact, after Ms. C. left C.D. in that environment, Mr. D. continued sexually abusing C.D. Furthermore, despite indicating that Mr. D. and his family, who were abusive towards Ms. C., continued to "harass" her, Ms. C. remained in a relationship with Mr. D.'s step-uncle, living in a motel room with him. Ms. C. was aware that C.D. could not live with her in the motel room, yet she refused Department services that would have enabled her to find a job and alternate housing suitable for C.D. Instead, Ms. C. was waiting to obtain better housing until Mr. M. received an inheritance or she received some type of benefits. In 2014, Ms. C. abruptly stopped visiting C.D., which caused C.D. to become depressed and withdrawn. Ms. C. also refused to participate in family therapy up until the guardianship hearing, despite the overwhelming evidence that C.D. needed to be

in therapy to deal with her trauma. Ms. C. did not encourage C.D. to be in therapy, and did not want therapy for herself to address her own issues.

The evidence showed that Ms. C. made little effort over the 40-month period between C.D.'s removal from the home and the guardianship proceedings to change her own circumstances so that C.D. could live with her. Ms. C.'s employment at the motel in exchange for a room prevented Ms. C. from being able to make an adequate home for C.D., and Ms. C. refused any services to change that circumstance. Furthermore, Ms. C. made no effort to seek therapy to address her own issues with domestic violence, which issues were severe enough to cause her to move out of the trailer and abandon her children. Although C.D. argues that termination of Ms. C.'s parental rights will lead to a lack of permanence, it is the uncertainty over the past 40 months, which uncertainty was due in large part to Ms. C.'s failure to follow through with services, that has created the instability in C.D.'s life. The court correctly determined that Ms. C. was unfit to remain in a parental relationship with C.D.

E.

The Court Properly Terminated Parental Rights Despite C.D.'s Unwillingness To Consent to Adoption

Finally, both C.D. and Ms. C. argue that the termination of Ms. C.'s parental rights was erroneous given C.D.'s refusal to consent to adoption, since a child over the age of nine cannot be adopted without his or her consent. The Department responds that "Maryland law is clear that a child's unwillingness to consent to adoption does not prevent the termination of parental rights."

Section 5-350(a)(2) of the Family Law Article provides: (a) **Consent.** – A juvenile court may enter an order for a child's *adoption* . . . only if: ***(2) for an individual who is at least 10 years old, the individual consents." (emphasis added). Termination of parental rights – the issue in this case -- and adoption, however, are two separate and distinct issues, and "it is not necessary that a child possess a present desire to be adopted for a court to grant a petition for guardianship." *In re Adoption/Guardianship Nos. 2152A, 2153A, 2154A*, 100 Md. App. 262, 280 (1994). Indeed, "a child's prospects for adoption must be considered independent from the termination of parental rights, in that the facts should first be considered as if the State were taking the child from the parent for some indefinite placement and upon that determination open the question of the suitability of the proposed adoption and its relation to the child's welfare." *In re Adoption/Guardianship of Victor A.*, 386 Md. 288, 317 (2005) (internal citation and quotation marks omitted).

In *Adoption/Guardianship Nos. 2152A*, this Court considered whether Becky, a 16-year old child not wishing to be adopted, was properly the subject of a termination of parental rights petition. 100 Md. App. at 265. Becky's father, Walter F., had been sexually abusing Becky and her sisters. *Id.* Diane W., Becky's mother, knew of the abuse but failed to protect the children and refused counseling after the children were removed from the home. *Id.* at 274. After a petition to terminate parental rights was filed, Ms. W. objected. Two of the sisters consented to the termination and wanted to be adopted by their foster parents, but Becky, who had difficulty adjusting to foster care, did not wish to be adopted and wanted to continue to see Ms. W. *Id.* at 268. Nevertheless, the court terminated Ms. W.'s parental rights.

In affirming the juvenile court, this Court observed that Ms. W. had "direct knowledge of the harm that her husband was doing to the children, yet she repeatedly left them alone with him and did nothing to intervene or to come to their rescue." *Id.* at 273. Ms. W. also "continue[d] to fail to recognize or even to acknowledge her role in allowing the abuse suffered by her children to persist." *Id.* at 274. Ms. W. would "not take part in counseling; she insists that there is nothing wrong with her and, therefore, she does not need therapy," rather than "accepting help as a means of gaining insight about her role in the tragedy that befell her children, so that, in the future, she will be better equipped to recognize when their well-being is threatened." *Id.* We also noted "the absence of any indication that Ms. W. has accepted any responsibility for the abuse or has developed an understanding of what happened sufficient to enable her to look out for her childrens' welfare." *Id.* at Accordingly, this Court concluded that "Becky's status as a CINA and her compelling history of years of abuse and neglect formed a sufficient basis for the trial court's finding, by clear and convincing evidence, that her best interest would be served by the termination of Ms. W.'s parental rights." *Id.* at 278.

Here, as in Becky's case, Ms. C. was aware of the deplorable conditions in the trailer, and of Mr. D.'s physically and emotionally abusive behaviors, yet she moved out and left C.D. in that environment. Ms. C. refused counseling, is unable to recognize the role that her neglectful parenting played in contributing to C.D.'s status, and cannot protect C.D. from potential future harm. Although C.D. -- who has the emotional maturity of an eight-year old, and lacks an understanding of what is best for her -- has had difficulties in foster care, and does not, at least at this time, wish to be adopted, as in Becky's case, her

feelings about being adopted are "not etched in stone." *Id.* at 280. C.D. "remains[] entitled to change her mind," and by granting the guardianship, "the trial court gave [her] the option to proceed with being adopted, if she were to have a change of heart, without in any way diminishing her right not to be adopted, if her preference continue[s]." *Id.* Nevertheless, C.D.'s "lack of desire to be adopted did not preclude the trial court from terminating [Ms. C.'s] parental rights." *Id.*

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANTS.