

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 2053

September Term, 2023

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IN RE: S.W.

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Arthur,  
Tang,  
Sharer, J. Frederick  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Tang, J.

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Filed: July 9, 2024

\*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, C.M. (“Mother”), challenges a judgment of the Circuit Court for Baltimore County, sitting as a juvenile court, which terminated her parental rights with respect to one of her children, S.W., and granted guardianship to the Baltimore County Department of Social Services (“Department”). The court also terminated the parental rights of S.W.’s father (“Father”), who is not a party to this appeal.

Mother filed an appeal and presents two questions for our review, the first of which we have divided into two and restated for clarity:<sup>1</sup>

- I. Did the court err in relying heavily on Mother’s past circumstances and overlooking her progress and the stability in her current situation?
- II. Did the court err by not considering Mother’s plan to have relatives help care for S.W.?
- III. Did the court err in finding the Department made reasonable efforts to promote reunification?

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

### **BACKGROUND<sup>2</sup>**

Mother has two children: K.C., born in November 2011, and a younger child, S.W., born in October 2018.<sup>3</sup> In the year that S.W. was born, Mother was charged with second-degree child abuse of K.C. and was incarcerated for the first year of S.W.’s life. In January 2022, custody and guardianship of K.C. were awarded to a paternal relative.

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<sup>1</sup> Mother and the Department filed their respective briefs. Counsel for S.W. did not file a brief and instead adopted by reference the entirety of the Department’s brief.

<sup>2</sup> Because Father did not file an appeal from the order terminating his parental rights, we recite only those facts relevant to Mother’s appeal.

<sup>3</sup> K.C. and S.W. apparently have different fathers.

On June 14, 2021, the Department received a report that S.W., who was then two years old, had ingested methadone. He was taken to the emergency room, where he was administered two doses of Narcan and survived. According to a report prepared by the Department, the information provided by Mother as to how and where the exposure to methadone occurred was “very difficult to understand and scattered.” Mother said that when she picked S.W. up from her mother’s house in the middle of the night, she noticed that he was “lethargic” and “acting out of character[,]” and he was transported to the hospital by “a stranger at the gas station.”

Because of Mother’s “behavior and lack of information” regarding the incident, the Department implemented a safety plan for S.W. The plan involved placing S.W. with Mother’s cousin and requiring supervised interactions between Mother and S.W. at all times. On June 23, 2021, however, the Department found out that the cousin had gone out of town for a few days, leaving S.W. in Mother’s care without supervision. As a result, the Department implemented a new safety plan, placing S.W. with his paternal grandmother.

On July 15, 2021, the Department filed a CINA Petition with Request for Shelter Care.<sup>4</sup> The Department alleged that Mother “had a habit of leaving [S.W.] with different individuals for weeks at a time” without providing supplies needed for his care, a date for

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<sup>4</sup> CINA or “child in need of assistance” 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, Cts. & Jud. Proc. (“CJP”) § 3-801(f) (1974, 2020 Repl. Vol.).

“Shelter care” means a temporary placement of a child outside of the home at any time before disposition” of a CINA petition. CJP § 3-801(bb).

her return, or a way to contact her in her absence. She had recently tested positive for cocaine and cannabis. She had been diagnosed with “major depressive disorder, recurrent, severe with psychotic symptoms”; “[b]ipolar disorder, current episode manic severe with psychotic features”; and unspecified anxiety disorder and post-traumatic stress disorder. She had only been engaged in mental health treatment for two months. Father was incarcerated at that time.

After a shelter care hearing on July 16, 2021, the court granted the Department temporary custody of S.W. Mother was given liberal and supervised visitation through the Department. She had three supervised visits with S.W. in August 2021.

On August 13, 2021, S.W. was removed from the paternal grandmother’s care due to conflicts between her and Mother. The Department noted that Mother “exhibited poor boundaries” by calling the paternal grandmother every day to speak with S.W., showing up for unannounced visits multiple times a week, and “generally overwhelming [the paternal grandmother] which ultimately caused a placement disruption.” S.W. was then moved to his current foster care placement.

On October 18, 2021, the court held an adjudication and disposition hearing. Following the hearing, the court found S.W. to be a CINA. The court further found that it was contrary to S.W.’s welfare to return S.W. to Mother’s custody because she had “insufficiently treated mental health and substance abuse issues that prevent her from providing proper care and attention” to S.W. Mother was ordered, among other things, to maintain consistent weekly contact with the Department, continue in mental health

treatment and outpatient substance abuse treatment until “successfully discharged,” complete parenting classes, and maintain safe and stable housing.

On February 28, 2022, the court approved a permanency plan for S.W. of reunification with a parent. The court continued to order Mother to participate in and comply with recommended mental health treatment and substance abuse treatment until successfully discharged, submit to random drug testing, and maintain safe and stable housing. The court also ordered Mother to provide documentation of employment.

On April 22, 2022, the court continued the plan of reunification with a parent and continued to order Mother to comply with recommended mental health and substance abuse treatment, undergo random drug testing, maintain safe and stable housing, and provide documentation of employment. It also ordered Mother to complete parenting and anger management classes and produce certificates of completion.

On February 6, 2023, the court changed the permanency plan to adoption by a non-relative.<sup>5</sup>

### **Termination of Parental Rights**

On February 15, 2023, the Department filed a petition for an order granting guardianship of S.W. to the Department, with the right to consent to adoption or long-term care short of adoption. The court held a termination of parental rights (“TPR”) hearing on

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<sup>5</sup> Initially, the court inadvertently issued an order changing the permanency plan from reunification with parent to *reunification concurrent* with adoption by a non-relative. It later issued a corrected order to reflect that the permanency plan had actually changed from reunification to a sole plan of adoption by a non-relative.

the merits of the Department’s petition on December 13 and 14, 2023. S.W. was five years old at the time of the hearing and had been in foster care for almost two and a half years.

The Department called two social workers assigned to S.W.’s case: Emily Smith, a formal kinship social worker, and Gina Malphrus, an adoption social worker. The court also heard testimony from Cheryl Phillips, the Court-Appointed Special Advocate (“CASA”).<sup>6</sup> The court admitted documents from the CINA case, including permanency planning review reports filed by the Department and court orders. Father testified in his case. Mother participated in the hearing via remote connection but did not testify. She called three family members to testify about her relationship with S.W. The following evidence was adduced at the two-day hearing.

*Periods of Mother’s Incarceration*

Mother was first incarcerated for the first year of S.W.’s life due to the second-degree child abuse of K.C. On September 7, 2021, before the adjudication and disposition hearing in October 2021, she was incarcerated again, this time in New Jersey, for reasons that are unclear from the record. She was not released until about two months later, on November 3, 2021.

On April 22, 2022, after the court had continued the plan of reunification with a parent, Mother was arrested on charges of violating the terms of her probation related to the 2018 child abuse conviction. She remained incarcerated in Maryland for 17 months.

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<sup>6</sup> A CASA is a trained volunteer who is appointed by a judge to represent the best interests of children in cases involving alleged abuse or neglect. *In re Billy W.*, 387 Md. 405, 410 n.1 (2005) (citation omitted). *See also* CJP § 3-830.

On September 22, 2023, she was transferred to a jail in New Jersey in relation to a violation of probation charge in that state. She was released on October 7, 2023.

*Mother’s Progress During Period of Release from Incarceration:  
November 3, 2021–April 22, 2022*

After Mother was released from incarceration on November 3, 2021, the Department noted that Mother “had poor engagement” with it and had made only minimal progress toward permanency goals. The Department had asked Mother about her progress in completing a substance abuse assessment, parenting classes, and obtaining housing. Mother responded that she might return to jail, so those things were not her priority.

Mother received mental health services and claimed to be taking her medication as directed. When it came to substance abuse treatment, Mother denied having a problem and refused to participate in court-ordered treatment. She claimed to have received treatment through her mental health provider, but the Department was unable to confirm this. The Department referred Mother for urinalysis and hair follicle testing, but she refused to submit to the testing because she “just got [her hair] done” and had purportedly tested positive for COVID. She informed the Department that she used cannabis and would continue to do so until she regained custody of S.W. Mother claimed to have completed parenting and anger management classes but did not cooperate with the Department to verify completion.

The Department had no address for Mother. Mother told the Department that she had been staying in hotels and the homes of various friends and family members. She most

often stayed at her sister’s home but would not provide the address to the Department because her sister “did not want it on file.”

Mother reported that she was employed in a private security position and worked as a cosmetologist, but she provided no employment verification or proof of income.

Mother visited S.W. on November 18, 2021. A supervised visit was scheduled for March 15, 2022, but the visit was canceled because Mother did not respond to the Department’s request to confirm the visit. The Department subsequently sent text messages to Mother, requesting a date and time for her to visit S.W., and offering transportation, but Mother did not respond.

The Department reported that it was difficult to schedule visits with S.W. because Mother wanted them on different days, times, and locations. She was “not interested in a consistent weekly schedule for visits as she never knows if she will be working/busy.” She requested visits on weekends or otherwise outside of “agency time frames,” which the Department could not accommodate. When the Department attempted to schedule visits during the week, Mother did not respond with a time and location until the evening before, which did not allow the Department enough time to coordinate S.W.’s transportation to the visit. Mother later advised the Department social worker that she had been intentionally avoiding contact with the Department because she was evading arrest.

*Mother’s Progress During Period of Reincarceration:  
April 22, 2022–October 7, 2023*

During her reincarceration, Mother completed parenting and anger management classes, as well as a 45-day substance abuse program. Upon completion of that program, it



was recommended that Mother complete a six-month intensive outpatient program and attend 90 Narcotics Anonymous meetings after her release from incarceration.

From April to December 2022, Mother was housed at a correctional facility that did not allow in-person or virtual visits with S.W. After Mother was transferred to a different facility, the Department was able to set up monthly virtual visitation.

Mother participated in five virtual visits from April to August 2023. According to the Department’s witnesses, the virtual visits went “relatively poorly.” S.W. displayed “negative reactions” during each visit[,] and Mother “had a tendency to have outbursts around S.W. that were inappropriate.” According to a review report, Mother “made some attempts to engage” with S.W. but “lack[ed] the skills to appropriately connect with him.” S.W. was “often hesitant to participate in the visits” and said to Mother, “I didn’t miss you,” “I don’t love you,” and “I don’t want to see you,” and “I’m done talking, I’ve had enough.” During one visit, Mother “raised her voice” and said, “I’m your mother. You do not talk to me that way.” She then exited the virtual meeting.

Mother requested in-person visits at the correctional facility, but the Department denied the request after consulting S.W.’s therapist. Based on the consultation, the Department decided that it was not in S.W.’s best interest to bring him to the correctional facility for in-person visits because the virtual visits were not going well. According to a review report, the Department requested that Mother’s visitation remain virtual due to her “historical lack of visitation and [S.W.’s] poor response during visitation.”

*Mother's Progress After Latest Release from Incarceration: Post-October 7, 2023*

After being released from incarceration on October 7, 2023, Mother went to live with her father. She claimed to have resumed mental health services but said she was not getting substance abuse treatment, even though it was recommended that she complete a six-month intensive outpatient program and attend 90 Narcotics Anonymous meetings after being released from incarceration. When Mother submitted to a urinalysis on October 17, 2023, after her release, the results were positive for marijuana.

As for visitation, Mother missed each of her scheduled virtual visits with S.W. upon her release from incarceration. She told the social worker, Ms. Smith, that she could not join the virtual meetings and needed help with the technology. Ms. Smith scheduled a meeting with Mother to assist and arranged for transportation by cab. She texted Mother around 9:00 a.m. the morning of the meeting, which was scheduled for noon, and Mother confirmed that she would be ready to be picked up at 11:30 a.m. Upon arriving at her home, the cab driver called Mother, but she did not answer. Mother later told the social worker that she had “dozed off” after taking medicine for a “bad cold.” The social worker then engaged in a series of text messages with Mother and was able to help her download the videoconference app onto her phone. But Mother continued to miss scheduled virtual visits.

Two months before the TPR hearing, Mother again requested in-person visits. The Department denied the request upon a determination that, due to S.W.'s negative behaviors during virtual visits, it would be “detrimental” to begin in-person visitation at that time.

*Department's Efforts to Place S.W. with a Relative*

Before S.W.'s permanency plan was changed to placement with a non-relative, Mother presented over 20 possible relative placement resources. The Department explored relative placement options but had concerns about Mother's ability to respect visitation boundaries due to her asserted belief that she would have unlimited access to S.W. and her past behavior when S.W. was in the care of the paternal grandmother.<sup>7</sup>

Some of Mother's relatives did not respond to the Department's inquiries. Others were ruled out as placement resources for various reasons. Mother's cousin, who was entrusted with the care of S.W. under the initial safety plan, was denied because she left Mother alone with S.W., which violated the safety plan. Another relative was eliminated from consideration due to a recent child welfare report and response for maltreatment.

Mother's sister "self-declined due to her lack of availability to carry the responsibility." Mother's half-sister attended one visit with S.W. but was ruled out after she failed to attend three subsequently scheduled visits and stopped communicating with the Department.

Mother's father was eliminated from consideration due to his "extensive criminal history."

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<sup>7</sup> Mother also provided the first name of someone from her church community but was unable to provide any contact information. The Department determined that it was not in S.W.'s best interest to pursue a different non-relative placement at that time because S.W. had "stability" in his current placement and was "so bonded to the foster parent."

Mother's niece was explored as a potential placement resource, but she failed to complete the fingerprinting process, and the criminal background check raised concerns about traffic-related offenses.

Mother's grandfather was investigated as a resource, but his home did not pass an assessment because a gas stove was used as the sole heat source. The Department also had concerns about the adequacy of his financial resources.

S.W.'s paternal grandmother expressed an interest in becoming a placement resource, but the Department declined to consider her due to concerns that "familial conflict" would lead to another placement disruption. The Department added that the paternal grandmother had not consistently visited S.W. since he was removed from her care. She was often late to visits or did not show up at all. On the occasions the paternal grandmother showed up, S.W. did "not appear to be particularly bonded" to her and hid behind the social worker or asked the social worker not to leave the room. The Department added that the "safety of the placement" was "compromise[d]" because Father was living with the paternal grandmother.

#### *Mother's Status*

Mother was on probation at the time of the TPR hearing in December 2023. She advised the Department that she was living with her grandfather. In early December, a week before the TPR hearing, Mother told the Department that she was unable to submit to random drug testing because she was in California and had been there since Thanksgiving. The Department did not know if Mother, who participated in the TPR

hearing via remote connection, had since returned to Maryland. To the Department’s knowledge, she was not employed.

*S.W.’s Status*

Ms. Phillips, the CASA, was assigned to S.W.’s case in April 2022. She testified that she had observed virtual visits between Mother and S.W., which “did not go well.” Mother had a “difficult time relating to S.W.” S.W. “did not appear to want to engage” with Mother and used “a lot of avoidance tactics,” such as talking to Ms. Phillips or the social worker instead of Mother.

Ms. Phillips testified that S.W. “showed signs of thriving” in his foster home. Ms. Smith, the kinship social worker, also described S.W. as “thriving.” Ms. Malphrus, the adoption social worker, described S.W. as “outgoing” and “very well-mannered,” and noted that S.W. is “extremely intelligent,” being able to read books at age five. He had an “excellent” home life and participated in activities and vacations with his foster mother and extended foster family. There were no concerns about his physical or mental health.

S.W. refers to his foster mother interchangeably as “godmom” or “mommy.” He “very much recognizes that placement as his home” and has “repeatedly stated that he does not want to leave[.]” The foster mother was willing and able to adopt S.W. Ms. Malphrus and the foster mother had talked to S.W. about living with the foster mother until he “becomes a grown-up and goes off to college,” and S.W. said he would “like to do that.”

*Expert Testimony*

Ms. Malphrus testified for the Department as an expert in general social work, child abuse and neglect, permanency planning, and adoption risk and safety assessments.

According to Ms. Malphrus, S.W. has no apparent “positive emotional ties” to Mother. She explained that children “depend upon routine” and that missed or inconsistent visitation is “confusing” to a child. She testified that children “need[] to know that they can depend upon their parent[,]” and when parents miss visits, it can affect the relationship between the child and the parent.

In Ms. Malphrus’s opinion, providing more services to Mother would not be beneficial because she had not addressed the circumstances that led to S.W.’s placement in foster care in the two and a half years since he was taken into care. She added that Mother’s incarcerations “continue to provide supervision and safety concerns[.]”

According to Ms. Malphrus, S.W.’s current placement provided him with a “secure parental attachment” and a “stable, loving, and positive home environment in which he has thrived[.]” She opined that a change in S.W.’s placement would “most likely cause psychological and physical distress that would negatively impact him.” She testified that a “destruction” of his attachment to the foster mother would significantly affect his sense of safety and security and would negatively impact his short- and long-term development and mental health.

Ms. Malphrus testified that long-term placement in foster care and the associated lack of permanency would be “detrimental” to S.W.’s well-being. She explained:

Continuing the CINA case would be detrimental to S.W.’s emotional growth and development. He has been in care for approximately two-and-a-half years of his young life. . . . He just turned five. The birth parents have failed to follow through with most of the [c]ourt-ordered tasks, and have failed to maintain regular contact with S.W. . . . Since [Mother] has been released [from incarceration], she has missed the monthly virtual visitation that has been offered to her. And giving [Mother] additional

time to address [her] issues would just cause S.W. to continue to remain in foster care unnecessarily.

In Ms. Malphrus’s opinion, terminating Mother’s rights was in S.W.’s best interest because it would give him “the permanency that he deserves.”

*Mother’s Witnesses*

Mother was present for the hearing via remote connection but did not testify during the hearing. Instead, she presented three witnesses: her sister, her niece, and a cousin (who was not the same person entrusted with S.W.’s care under the initial safety plan).

The sister testified that Mother was a “good” and “loving” mother who “took good care” of S.W. before he was removed from her care. She was not sure who took care of S.W. when Mother was incarcerated during the first year of his life. She said that Mother was “doing very well” since her release from incarceration and described Mother’s appearance as “[v]ery respectful, refreshed. Her normal self.”

The niece described Mother’s interactions with S.W. before his removal from her care as “fine” and “normal.” She was unsure who had cared for S.W. while Mother was incarcerated. Although she had previously presented herself as a placement resource, she “never got a chance to complete” the background clearance process because she “had stuff going on.” She testified that her circumstances had since changed, and she was presently able to be a placement resource.

The cousin said Mother was “a loving, caring type of mom.” She described the interaction between Mother and S.W. as “very loving” and “affectionate.” She did not know who took care of S.W. while Mother was incarcerated. Since being released from

prison, Mother was “very upbeat” and was trying to “reintegrate into society.” The cousin stated that she did not present herself as a placement resource before the TPR hearing. When asked if it was “possible” for her to be a resource, the cousin responded, “I can be.”

### **Court’s Ruling**

In ruling on a petition for guardianship of a child, a juvenile court must give primary consideration to the health and safety of the child and consider various factors to determine whether terminating a parent’s rights is in the child’s best interests. These factors are enumerated in Maryland Code, Family Law Article (“FL”) § 5-323(d)(1)-(4) (1984, 2019 Repl. Vol.):

- (1) (i) all services offered to the parent before the child’s placement, whether offered by a local department, another agency, or a professional;
- (ii) the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent; and
- (iii) the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any;
- (2) the results of the parent’s effort to adjust the parent’s circumstances, condition, or conduct to make it in the child’s best interests for the child to be returned to the parent’s home, including:
  - (i) the extent to which the parent has maintained regular contact with:
    1. the child;
    2. the local department to which the child is committed; and
    3. if feasible, the child’s caregiver;
  - (ii) the parent’s contribution to a reasonable part of the child’s care and support, if the parent is financially able to do so;
  - (iii) the existence of a parental disability that makes the parent consistently unable to care for the child’s immediate and ongoing physical or psychological needs for long periods of time; and



(iv) whether additional services would be likely to bring about a lasting parental adjustment so that the child could be returned to the parent within an ascertainable time not to exceed 18 months from the date of placement unless the juvenile court makes a specific finding that it is in the child's best interests to extend the time for a specified period;

(3) whether:

(i) the parent has abused or neglected the child or a minor and the seriousness of the abuse or neglect;

(ii) 1. A. on admission to a hospital for the child's delivery, the mother tested positive for a drug as evidenced by a positive toxicology test; or

B. upon the birth of the child, the child tested positive for a drug as evidenced by a positive toxicology test; and

2. the mother refused the level of drug treatment recommended by a qualified addictions specialist, as defined in § 5-1201 of this title, or by a physician or psychologist, as defined in the Health Occupations Article;

(iii) the parent subjected the child to:

1. chronic abuse;
2. chronic and life-threatening neglect;
3. sexual abuse; or
4. torture;

(iv) the parent has been convicted, in any state or any court of the United States, of:

1. a crime of violence against:
  - A. a minor offspring of the parent;
  - B. the child; or
  - C. another parent of the child; or
2. aiding or abetting, conspiring, or soliciting to commit a crime described in item 1 of this item; and

(v) the parent has involuntarily lost parental rights to a sibling of the child; and

- (4) (i) the child’s emotional ties with and feelings toward the child’s parents, the child’s siblings, and others who may affect the child’s best interests significantly;
- (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.

During closing argument, the Department summarized the evidence for each factor. The court “expressly and explicitly” adopted the Department’s closing argument as part of its findings.<sup>8</sup> We summarize the court’s adopted and express findings as follows:

**FL § 5-323(d)(1)(i):** The Department implemented a safety plan for S.W., requiring S.W. to stay with Mother’s cousin and for Mother’s interactions with S.W. to be supervised at all times. But the cousin left town for a few days, leaving S.W. in Mother’s care without supervision. As a result, a new safety plan was implemented, placing S.W. with his paternal grandmother.

**FL § 5-323(d)(1)(ii):** The court found that the Department offered Mother “extensive services” and “all appropriate support and referrals[.]” It found that the Department provided Mother referrals for mental health and substance abuse treatment but

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<sup>8</sup> It is the role of the court to make specific findings with respect to each statutory factor. *See In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 501 (2007). There were no objections raised to the court adopting the Department’s argument as part of its findings, and this issue was not raised on appeal by any party.

emphasized that her “involvement and contact” with those programs were essential for success. The court found that Mother’s mental health was “clearly unstable[,]” and there was no evidence that she currently had proper mental health support or substance abuse treatment, despite the Department’s efforts to offer these services.

Regarding visitation, the court found that Mother did not attend all the virtual and in-person visitation offered by the Department. Mother missed scheduled visitation, and the few visits with S.W. were considered “insignificant” by the court. The court remarked, “[Y]ou can’t parent if you’re not there, if you’re not actively engaged with the child[.]”

According to the Department, it explored and vetted over 20 placement resources suggested by Mother. None of them were viable for one reason or another. The court found

it particularly concerning [that Mother’s] three witnesses . . . were not even aware of where [S.W.] was during the time before he came into care and was placed in foster care with a non-relative. That’s particularly striking, that even the family resources didn’t seem to even know where he was. Not to say that they didn’t care, but they were not involved enough to even know who was caring for him when [M]other was not, and that’s very concerning, as far as any support that [Mother] would have.

**FL § 5-323(d)(1)(iii):** The Department acknowledged that this factor did not apply as there were no service agreements due to the lack of the parents’ engagement.

**FL § 5-323(d)(2)(i)(1):** According to the Department, while Mother was involved in virtual and in-person visits, she did not “properly engage” with S.W. during the visits. In addition, since her release from incarceration, Mother has not engaged in any visits.

**FL § 5-323(d)(2)(i)(2):** According to the Department, while incarcerated, Mother maintained “much better” contact with the Department. But “when left to her own devices and out on the street, . . . she did not maintain regular contact with the Department,” for

example, when she was concerned about the warrant for her arrest. Since her last release, her contact with the Department has been “sporadic[.]”

**FL § 5-323(d)(2)(i)(3):** The Department acknowledged that this factor did not apply because Mother did not have the contact information for the caregiver; the Department facilitated the visitation.

**FL § 5-323(d)(2)(ii):** Mother did not contribute financially to S.W.’s care, but the Department acknowledged there was no evidence of her being employed and capable of contributing financially.

**FL § 5-323(d)(2)(iii):** The Department acknowledged that this factor did not apply. The court agreed that there did not appear to be a parental disability, though it noted a parent’s mental health is “very close to being a full disability.”

**FL § 5-323(d)(2)(iv):** According to the Department, S.W. had been in the Department’s care for nearly half of his life. There was no evidence that it would be in S.W.’s best interest to “extend this any further” as he needs permanence. The expert had testified about the impact of the lack of permanency on S.W.’s life.

The court found that Mother had a “significant amount of time” to address the Department’s concerns but did not put “enough effort” into creating a safe and stable environment appropriate for S.W.’s care. The court did not believe additional services beyond what had been offered would lead to reunification within 18 months. It found that even if services were utilized going forward, they would be the same services that Mother had not fully used or that were ineffective.

**FL § 5-323(d)(3)(i):** The court found that Mother had been convicted of physically abusing her older child, for which she was incarcerated. The court found this to be “quite disturbing.”

According to the Department, Mother also routinely neglected S.W. by leaving him with friends and family for days at a time without any contact. She also left him with inappropriate caregivers, which resulted in his ingestion of methadone when he was two and a half years old.

**FL § 5-323(d)(3)(ii):** The Department acknowledged that this factor did not apply as S.W. was not a substance-exposed newborn.

**FL § 5-323(d)(3)(iii):** The Department acknowledged that this factor did not apply as Mother was not accused of chronic abuse, sexual abuse, “or anything along those lines.”

**FL § 5-323(d)(3)(iv):** Although Mother was not convicted of a crime of violence, she was convicted of child abuse of her older child and was incarcerated because of it.<sup>9</sup>

**FL § 5-323(d)(3)(v):** The Department acknowledged that this factor did not apply because Mother did not involuntarily lose the parental rights of S.W.’s sibling. It conceded that Mother had not lost parental rights to the older child “at this point[.]”

**FL § 5-323(d)(4)(i):** According to the Department, the review reports and the testimony of Ms. Smith and Ms. Phillips demonstrated that S.W. had a poor relationship

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<sup>9</sup> Mother was convicted of child abuse in the second-degree, which is not a “crime of violence” within the meaning of FL § 5-323(d)(3)(iv). *See* FL § 5-101(d)(1) (cross-referencing the definition of “crime of violence” in § 14-101 of the Criminal Law Article).

with Mother. The evidence established that S.W. did not love Mother and even asked her to leave during visits.

The court found that S.W. had no emotional attachment to Mother, which was “quite concerning.” The court explained that the lack of bond was because Mother did not avail herself of the offered visitation:

Of course there would be a bond with the foster parent because the foster parent has the child all the time, and if it’s a good placement, the child should bond, we would hope that the child would bond with the foster parent. But that doesn’t preclude a bond with the parent, and . . . the only way there could be a bond with the parent is if the parent makes themselves more available. So even the limited visits that can be arranged with the Department were not fully utilized. So how could there be an emotional bond . . . to these parents with them not even taking advantage of the access that they did have? . . . [H]ad the parents more fully participated . . . there might well have been a further bond[.]

**FL § 5-323(d)(4)(ii):** According to the Department, S.W. thrived in out-of-home placement. He learned to read before kindergarten, feels safe, and has bonded with his foster mother.

**FL § 5-323(d)(4)(iii):** According to the Department, the evidence established that S.W. did not see himself having a parent-child relationship with Mother and referred to her as his “belly mom.”

**FL § 5-323(d)(4)(iv):** According to the Department, the evidence established that terminating parental rights will have a positive impact on S.W. According to the expert, S.W. has begun to understand his situation “as different” and does not want to be engaged in an impermanent situation.

In the end, the court found by clear and convincing evidence that Mother and Father were unfit to remain in a parental relationship with S.W. and that it was in S.W.’s best interest to terminate their parental rights. The court was “particularly disturb[ed]” by how S.W. came into the Department’s care. “The fact that he was in such a dangerous situation” when in Mother’s care was “significant” to the court. The court expressed that Mother’s “extensive prior behavior” caused the court to have a “grave concern” about whether she was able or would ever be able to parent a child safely. The court also explained that Mother had “not made enough progress over the course of this case, despite the best efforts of the Department.”

On December 15, 2023, the court entered a written order consistent with its oral ruling.<sup>10</sup> This timely appeal followed. We will include additional facts in our discussion of the issues.

### STANDARD OF REVIEW

“Termination of parental rights decisions are reviewed under three interrelated standards: clear error review for factual findings, de novo review for legal conclusions, and abuse of discretion for the juvenile court’s ultimate decision.” *In re K.H.*, 253 Md. App. 134, 156 (2021). In evaluating the court’s findings of fact, we must give “the greatest respect” to the court’s opportunity to view and assess witness testimony and evidence. *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 719 (2011). “[W]e must assume the truth of all the evidence, and of all of the favorable inferences fairly deducible therefrom,

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<sup>10</sup> The court’s written order does not include findings beyond those expressed in its oral ruling.

tending to support the factual conclusion of the trial court.” *In re B.C.*, 234 Md. App. 698, 708 (2017) (citation omitted). “A trial court’s findings are ‘not clearly erroneous if there is competent or material evidence in the record to support the court’s conclusion.’” *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019) (quoting *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996)).

“[W]hen the appellate court views the ultimate conclusion of the [juvenile 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.” *K.H.*, 253 Md. App. at 156 (citation omitted). A decision will be reversed for abuse of discretion only if it 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 Yve S.*, 373 Md. 551, 583–84 (2003).

## DISCUSSION

“Parents have a fundamental right under the Fourteenth Amendment of the United States Constitution to ‘make decisions concerning the care, custody, and control of their children.’” *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 48 (2019) (citation omitted). Moreover, “there is ‘a presumption of law and fact [] that it is in the best interest of children to remain in the care and custody of their parents.’” *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 216 (2018) (citation omitted). The presumption in favor of parental rights may be rebutted “‘by a showing that the parent is either unfit [to continue the relationship] or that exceptional circumstances exist that would make the continued relationship detrimental to the child’s best interest.’” *Id.* at 217 (citation omitted).



“Unfitness or exceptional circumstances do not, by themselves, mandate a decision to terminate parental rights[,]” but only “demonstrate that the presumption favoring the parent has been overcome.” *Id.* at 218. The ultimate decision of whether to terminate parental rights “must always revolve around the best interests of the child.” *Id.* at 218–19 (emphasis and footnote omitted).

To determine whether termination of parental rights is in the child’s best interest, the court must consider the statutory factors in FL § 5-323(d). *C.E.*, 464 Md. at 50. “[T]he court must weigh all of the statutory factors together, without presumptively giving one factor more weight than another.” *In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 737 (2014). The court must further “determine expressly whether those findings suffice either to show an unfitness . . . or to constitute an exceptional circumstance that would make a continuation of the parental relationship detrimental to the best interest of the child[.]” *In re Adoption/Guardianship of Ta’Niya C.*, 417 Md. 90, 102 (2010) (citation omitted).

## I.

### **Mother’s Progress**

Mother’s first contention is that the court erred in terminating her parental rights because it relied heavily on Mother’s past circumstances and overlooked her progress and the stability of her current situation. According to Mother, the evidence showed that she had stable housing at her grandfather’s home, was employed, and had addressed her mental health and substance abuse issues.

The record does not support Mother’s characterization of the evidence. After being released from incarceration on October 7, 2023, Mother informed the Department that she was living with her grandfather. But the evidence demonstrated that Mother had left Maryland around Thanksgiving and had been in California. She was still in California a week before the TPR hearing, which she participated in remotely. The court found no evidence of her whereabouts at the time of the TPR hearing and questioned her presence in California and the length of her stay. Ms. Smith testified that, to the Department’s knowledge, Mother had not found employment since her release.

Regarding mental health and substance abuse treatment, the court found there was no evidence “of any significance that shows that [Mother] has proper mental health support [and] substance abuse treatment at the present time.” Although the evidence shows that Mother reported that she resumed mental health treatment upon her release from incarceration, there was no evidence that she had been “successfully discharged” from treatment, as the CINA court had ordered.

Contrary to Mother’s claim that she had addressed her substance abuse issues, there was no evidence that Mother had complied with the court order to be “successfully discharged” from outpatient substance abuse treatment as ordered by the CINA court. Although she completed a 45-day substance abuse program while incarcerated, there was no evidence that she followed up with discharge instructions to participate in intensive outpatient treatment and attend 90 Narcotics Anonymous meetings upon her release. A review report noted that Mother submitted to a urinalysis on October 17, 2023, ten days after she was released from incarceration, and the “results were positive for marijuana.”

*See Amber R.*, 417 Md. at 722 (“given the well-known difficulty of overcoming drug addiction, and the likelihood that addiction will persist if untreated, a court can infer that a parent will continue to abuse drugs unless he or she seeks treatment”). The court’s findings regarding Mother’s lack of progress are supported by evidence in the record and were not clearly erroneous.

Mother suggests that her problems were “temporary and correctable” with more time, but the court expressly found that even if the services were provided going forward, they would be the same ones that Mother had not used and that had not been effective. We conclude that the court appropriately weighed Mother’s progress (or lack of) when it found that she had made some effort but not enough to create a safe and stable environment for S.W.

## II.

### **Placement with a Relative**

Next, Mother contends that the court failed to consider whether her “plan” to have family members care for S.W. was in his best interest. The Department responds that the issue of placement was not before the court in the guardianship proceeding but was a matter to be addressed in the CINA case. The Department maintains that, even if the issue were before the court in the proceeding to terminate parental rights, it would not change the outcome, as the evidence showed that the Department investigated all potential relative resources but found none willing and able to be a placement resource. We agree with the Department.

“[A] CINA permanency hearing and a TPR hearing are seeking to resolve related, but, ultimately distinct issues.” *C.E.*, 464 Md. at 64. “The purpose of CINA proceedings is ‘[t]o provide for the care, protection, safety, and mental and physical development’ of CINA children; ‘conserve and strengthen the child’s family ties;’ ‘remedy the circumstances that required the court’s intervention;’ and ‘achieve a timely, permanent placement for the child consistent with the child’s best interests.’” *Id.* (citation omitted). “A TPR, conversely, is initiated once the Department is seeking to terminate the existing parental relationship.” *Id.* As our Supreme Court has explained, “the appropriate focus of [a] TPR hearing [is] not the potential suitability of [a relative] as a placement for [the child]—as this [is] an issue properly addressed in the CINA case—but rather, the fitness of [the parents].” *Id.* (citation omitted).

In any event, the court found that Mother’s family was not supportive and that it was “particularly striking” that the family members who testified in Mother’s case were “not involved enough” to know who was caring for S.W. when Mother was incarcerated. Contrary to Mother’s claim that S.W. had a “large, caring, willing, and able family” available to care for him, the undisputed evidence demonstrated that all relative resources who responded to the Department’s inquiries were explored, and none were found to be appropriate.

Even Mother’s niece, who is singled out in Mother’s brief as a relative with the “means, time, and desire to care for S.W. full time[,]” testified that she never completed the fingerprint process to become a placement resource because she decided that she could

not care for S.W. at that time. Although she testified at the TPR hearing that she could now be a resource, the Department had concerns about her criminal record.

The Department was also generally concerned about relative placement due to Mother’s belief that it would allow her unrestricted access to S.W. and her previous behavior when S.W. was placed with S.W.’s paternal grandmother. Furthermore, the Department’s expert testified that a change in placement would negatively impact S.W. On this record, we cannot conclude that the court erred in not considering whether placement with a relative was in S.W.’s best interest.

### III.

#### **In-Person Visitation**

Mother’s final contention is that the court erred in finding that the Department made reasonable efforts to facilitate reunification. Specifically, Mother asserts that the court’s finding was erroneous because the evidence demonstrated that the Department “fail[ed] to provide in-person visits.” According to Mother, the Department “denied all in-person visits after October 2021,” refused her request for in-person visits during her incarceration from April 2022 to October 2023, and did not resume visits after her release.<sup>11</sup> We perceive no error.

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<sup>11</sup> The Department argues that the law does not require the TPR court to consider the reasonableness of reunification efforts, but only the “extent, nature, and timeliness” of such services. We do not agree. *See Rashawn H.*, 402 Md. at 500 (“The court is required to consider the timeliness, nature, and extent of the services offered by DSS or other support agencies,” and “[i]mplicit in that requirement is that a reasonable level of those services, designed to address both the root causes and the effect of the problem, must be offered[.]”)

While Mother was not incarcerated between November 3, 2021, and April 22, 2022, Mother visited S.W. on November 18, 2021, but missed a scheduled visit on March 15, 2022. The Department reported difficulty in scheduling visits during this period, and Mother admitted to intentionally avoiding contact with the Department because she was evading arrest.

After Mother was reincarcerated on April 22, 2022, the Department attempted to coordinate in-person visits, but the correctional facility did not allow it. After Mother was transferred to a different facility, the Department was able to set up monthly virtual visitation, but they did not go well, according to the Department. The Department considered Mother’s request for in-person visits at the correctional facility and ultimately concluded, after consulting S.W.’s therapist, that it would not be in S.W.’s best interest. The Department requested that Mother’s visitation remain virtual due to her “historical lack of visitation and [S.W.’s] poor response during visitation.”

Even after Mother was released from incarceration on October 7, 2023, she missed her scheduled virtual visits with S.W. despite efforts by the Department to help her with the videoconferencing technology. Although the Department denied Mother’s request for in-person visits upon her release, it was due to concern that such a visit would be detrimental to S.W. based on his negative behaviors during virtual visits.

Based on this evidence, we cannot conclude that the court erred in finding that the Department’s efforts to facilitate reunification with Mother were reasonable.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE COUNTY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**