Circuit Court for Anne Arundel County
Case No. C-02-JV-22-000136

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2234

September Term, 2023

IN RE: G.W.

Leahy,
Friedman,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: August 12, 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).

This is the second time that appellant, S.B. ("Mother"), has appealed an order from the Circuit Court for Anne Arundel County, sitting as a juvenile court, which provided for the termination of her parental rights over one of her children, G.W. In this appeal, Mother presents a single question for our review, which we have rephrased as follows:[1]

Did the court err in terminating Mother's parental rights?

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

FACTUAL AND PROCEDURAL BACKGROUND

Mother has seven children. This case involves G.W., her youngest child, who was born in April of 2020. The other six children, who are all half-siblings to G.W., are between one and twelve years older than G.W.

In July of 2020, Mother fatally stabbed "Mr. D.", the father of the six older children. She was convicted of manslaughter and was given an eight-year executed sentence commencing on July 5, 2020.

On October 7, 2020, G.W. was adjudicated to be a Child in Need of Assistance ("CINA").[2] The initial permanency plan was reunification with G.W.'s biological father

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[1] Mother presents the following question in her brief:

> Did insufficient evidence support the juvenile court's TPR decision, and as a result, did the court err as a matter of law and ultimately abuse its discretion when concluding that TPR was in G.W.'s best interests?

[2] A "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 (1974, 2020 Repl. Vol.), § 3-801(f) of the Courts and Judicial Proceedings Article ("CJP").

("Father"). Father was initially involved in the CINA case and was provided reunification services by the Anne Arundel County Department of Social Services ("Department"). Unfortunately, he died on September 18, 2021. The Department explored another potential relative placement, to no avail.

On May 20, 2022, G.W.'s permanency plan was changed to adoption by a non-relative. On June 16, 2022, the Department filed a petition for guardianship with the right to consent to adoption or long term care short of adoption.

The court held a two-day termination of parental rights ("TPR") hearing in November of 2022. Mother was represented by counsel, as was G.W. On December 20, 2022, the court entered an order granting the Department's petition for guardianship and effectively terminating Mother's parental rights ("First TPR Order").

Mother appealed the First TPR Order to this Court. *In Re: G.W.*, Nos. 2022 & 454, Sept. Term 2022 (filed Dec. 4, 2023). The appeal was dismissed as untimely, but the case was remanded for further proceedings on a procedural matter. *Id.*, slip op. at 25. On remand, the parties consented to the issuance of a new TPR order and stipulated that there had been no material change in circumstances since the hearing in November of 2022. On January 18, 2024, the court issued a second order terminating Mother's parental rights ("Second TPR Order), the terms of which are essentially identical to the terms of the First TPR Order. Mother filed this timely appeal from the Second TPR Order.

Evidence Introduced at the TPR Hearing

Because the parties stipulated that there had been no material change in

circumstances since the hearing in November of 2022, the Second TPR Order was based solely on evidence introduced at that hearing. The Department's evidence consisted of a five-page written stipulation of facts, and testimony from two social workers who had been assigned to G.W.'s case.[3] G.W.'s foster parent was called as a witness by counsel for G.W. Mother testified in her case and also presented testimony of a friend, "Ms. P." The following is a summary of the evidence considered by the juvenile court.

a. Department's Involvement Prior to G.W.'s birth

The Department's first interaction with Mother and her family was in 2016. At that time, the Department conducted a family assessment, and the case was closed.

In April of 2017, the Department was again involved with the family after Mother tested positive for cannabis upon the birth of her fifth child. Mother was referred for a substance abuse assessment. She was also provided with information about discipline practices, birth control, and applying for temporary cash assistance. That case was closed on or about May 26, 2017.

In November of 2019, Mother reported that she felt overwhelmed by caring for the children. The Department was concerned that the children were experiencing hunger, were inadequately supervised in the home, and were exposed to domestic violence between Mother and Mr. D. Mother was referred to the Community Resource Initiative Care Team

[3] Although the written stipulation was entered into evidence, Mother disputed allegations that she "made statements of self-harm in front of her children; was abusing alcohol and sleeping all day; and was not meeting the children's basic needs of care and supervision." The court reserved judgment on this issue but did not return to it. This dispute is not material to the resolution of the appeal.

(CRICT)[4] to address "neglect concerns" regarding all of her children. As a result of this referral, the family was provided with services, including therapy; financial assistance for after-school programs for the children; financial assistance with utility bills; help with applying for child support, food stamps, and temporary cash assistance; help with reactivating medical assistance; transportation to food and baby supply pantries; bedding for the children; and household/personal hygiene supplies.

In January of 2020, three months before G.W. was born, the Department provided Mother with emergency family services. A family assessment was conducted on February 25, 2020. The Department again recommended that Mother participate in CRICT services. The family was provided with a car seat and gift cards to purchase baby items. The school-aged children received help from school staff with their weekly assignments.

b. G.W. is Born Prematurely

Mother did not receive prenatal care while pregnant with G.W. In April of 2020, G.W. was born prematurely, at home and without medical help. He was determined to have "Failure to Thrive."[5]

After G.W.'s birth, the Department continued to provide Mother with services to

[4] According to the parties' stipulation, "[t]he CRICT team assists and makes referrals for additional community services when children are in the school system or involved with the Department of Juvenile Services, and the family is in need of extra support."

[5] Failure to thrive is "[a] medical and psychological condition in which a child's height, weight, and motor development fall significantly below average growth rates." *Failure to Thrive*, BLACK'S LAW DICTIONARY (12th ed. 2024).

address concerns it had about G.W.'s health and to "assess further needs." G.W. had missed several appointments for medical care. The other six children had outstanding medical, dental, and vision care needs. Mother had not participated in mental health treatment that had been recommended, and there was a "need to address" her financial situation. The Department located a pediatrician for G.W., scheduled medical appointments, applied for and transported G.W. to and from appointments, paid for the initial medical appointment, secured medical assistance for G.W., and applied for G.W.'s birth certificate and social security number. The Department also scheduled and transported the older children to a pediatrician for physicals and immunizations.

c. Mother is Charged with Murder

On July 5, 2020, Mr. D., the father of G.W.'s half-siblings, died after suffering a stab wound to his chest. Mother was arrested and charged with second degree murder and possession of a dangerous weapon with intent to injure. According to the statement of probable cause introduced into evidence, Mother told police that she asked Mr. D. to leave the house but he "kept coming back[.]" She armed herself with a kitchen knife and held it up as Mr. D. "advanced on her" in an encounter outside the house. Mother told police that Mr. D.'s chest "collided with the knife" but that the knife blade bent and did not penetrate his body. She said that Mr. D. walked away and that she went back inside the house. A short time later, she went outside and observed that Mr. D. was lying on the ground and was "unresponsive." Mother did not call 911. The parties stipulated that the four oldest children may have witnessed the stabbing of their father.

d. CINA Petition and Adjudication

On July 30, 2020, the Department filed a petition seeking a determination that G.W. was a CINA. The Department alleged that, after Mother's arrest, a safety plan was created, with Mother's input, for the care of the seven children. G.W.'s care was entrusted jointly to Father and Mr. C., who was identified as a godparent. [6] Father was unable to care for G.W. by himself because he was undergoing dialysis treatment for kidney disease.

The Department alleged that Mr. C. failed to take G.W. to a scheduled medical appointment on July 17, 2020. On July 23, 2020, the Department discovered that the "family home" where Mr. C. had been residing was "boarded up and closed." The Department called Mr. C., who said that he was visiting family in Philadelphia, and had taken G.W. with him. G.W.'s medical appointment was rescheduled for July 29, 2020, and Mr. C. promised to take G.W. to the appointment. Mr. C. did not do as he promised, however, and told the Department that he would not return the child to Maryland unless Mother directed him to do so. The Department alleged that G.W. was in need of medical care and that there was "grave[] concern[]" for his safety.

On August 6, 2020, the Department filed a third amended CINA petition in which it alleged that, the day after the initial CINA petition was filed, Mr. C. took G.W. to a police station in Pennsylvania. G.W. was transported to a hospital and examined. The examination revealed that he only weighed 11 pounds, had "failure to thrive," and had "a

[6] Three of G.W.'s half-siblings were placed in care of their paternal grandmother, two were placed with godparents, and one was declared a CINA.

suspected femur and rib fracture." There were no family members who were willing and able to care for G.W. at that time. G.W. was placed in the care of his current foster parent on August 1, 2020.

On October 7, 2020, the court issued an order declaring G.W. to be a CINA. The initial permanency plan was reunification with Father. Mother and Father were ordered to (1) participate in substance abuse assessments and comply with all recommendations; (2) undergo a psychological evaluation and comply with all treatment recommendations; (3) participate and complete parenting classes; (4) participate and complete anger management classes; and (5) participate and complete individual/family therapy and comply with all treatment recommendations.

The court ordered supervised visitation during Mother's incarceration only if "the facility allows for meaningful face-to-face contact." Face-to-face visits could be "supplemented" with virtual visitation, if allowed by the facility.

e. Mother Pleads Guilty to Manslaughter

On July 19, 2021, Mother pleaded guilty to manslaughter and possession of a dangerous weapon with intent to injure.[7] On August 20, 2021, she was sentenced to 10 years of incarceration, with all but eight years suspended. The sentence began to run on July 5, 2020, the date of her arrest.

[7] The parties' stipulation incorrectly states that Mother pleaded guilty to second degree murder.

f. Efforts to Place G.W. with a Relative

When G.W. first came into care in August of 2020, the Department explored G.W.'s maternal grandmother ("Grandmother") as a potential placement, but she was ruled out at that time because she was homeless and living in a shelter. Father's sister said that she was unable to be the primary caretaker but would be willing to help Father if reunification occurred. Mother did not provide the Department with any other relative resources.

After Father's death, the Department attempted to contact Father's sister to revisit the possibility of placement with her, but she did not respond to the Department's letters or voice messages. The Department also contacted Grandmother to determine if she had acquired stable housing. Grandmother said that she was living with her adult daughter and that she was interested in being a resource.

In October 2021, the Department conducted a home assessment of the two-bedroom apartment Grandmother shared with her daughter. There were no safety issues observed.

Grandmother was not employed. She was physically disabled and received disability income. Her daughter worked full-time outside the home.

As part of the assessment process, Grandmother was asked about any physical limitations. Grandmother said that she had an inactive brain tumor that impacted her mobility, and that she needed a walker to walk long distances. The caseworker observed that Grandmother used a walker in the home and remained seated on it while her daughter showed the caseworker around the apartment. Grandmother was asked if she would be willing to sign a release for her medical records, so that the Department could "clarify her

medical condition and any limitations[,] in order to better evaluate her as a caregiver." Grandmother agreed to sign a release, and the caseworker mailed the forms to her.

Grandmother had one visit with G.W. in December of 2021, which, according to the caseworker, "went pretty well." The Department did not offer subsequent visits because Grandmother was not cooperating with the Department's efforts to complete the home assessment process. Although she had initially agreed to sign a release for her medical records, she then indicated that she wanted to have them reviewed by her lawyer before signing. The caseworker made multiple attempts to contact Grandmother by phone and by text to follow up regarding the release. On February 24, 2022, Grandmother told the caseworker to stop contacting her, and said that she would be in touch after she reviewed the forms with her lawyer. Grandmother did not contact the Department again, nor did any lawyer acting on her behalf. On April 25, 2022, the Department sent Grandmother a letter stating that, because she had not provided the requested release, she had been denied as a relative resource. Grandmother did not respond, and has had no other contact with the Department since that time.

The Department was unable to locate any other relatives who were willing or able to be a placement resource. Sometime after July of 2022, Mother suggested placement with her friend, Ms. P. Ms. P. told the Department that she was willing to be a placement resource, but the social worker advised her that it was probably not an option because G.W.'s permanency plan at that point was adoption.

g. Reunification Services Unavailable at Correctional Facilities Due to COVID-19

According to the parties' stipulation, service agreements were drafted by the Department, but the Department "confirmed that Mother could not receive services in the correctional facilities where she was incarcerated." The only court-ordered service available to Mother was a parenting class, which she completed in November 2021. According to the testimony of the caseworker who was assigned to the case at the time of the TPR hearing, court-ordered services were still unavailable at the correctional facility.

The Department sent Mother bi-monthly letters to keep her informed about G.W.'s health and well-being. In each letter, the Department reminded Mother of the services that she had been ordered to participate in and told Mother to contact the Department if she became eligible to enroll in programs offered in the correctional facility. In a letter to Mother dated November 3, 2021, the caseworker wrote:

> I have made multiple attempts to contact your case manager, Ms. Pearson[,] but I have not heard back [from] her. Please ask her to give me a call or send me an email so we can share updates. I have also left a message for the case manager supervisor. I am interested in finding out more about programs offered at the facility and also to find out the current visitation policy and COVID-19 protocols for young children.

Mother participated in other programs that were available in the facility, including GED (General Educational Development) classes; a "woman empowerment" class; an "employment to success" course; and an "alternative to violence" class. She worked as a food server at the facility. She told the Department that she was going to apply to be transferred to a different facility that offered a drug treatment program that would begin in April of 2023.

h. Visitation

The parties stipulated that, due to Mother's incarceration and the COVID-related restrictions at the correctional facilities, Mother was unable to have face-to-face visitation with G.W. from her arrest on July 5, 2020, until June of 2022. As of June, 2022, the correctional facility allowed in-person visitation with restrictions. Visitors were required to be at least 12 years old or fully vaccinated.[8]

Mother had virtual visits with G.W. in May, June, September, and October of 2022.[9] According to the caseworkers who observed the virtual visits, Mother made appropriate efforts to interact with G.W., but G.W. did not appear to recognize her. There has been no contact, virtual or otherwise, between G.W. and Mother since October of 2022.

i. Permanency Plan Changed to Adoption

On May 20, 2022, the court ordered that G.W.'s permanency plan be changed to adoption by a non-relative. The court ordered that Mother's visitation "shall occur virtually[.]"

j. G.W.'s status

According to the testimony of the caseworkers assigned to the case, G.W.'s foster placement was "appropriate" for his needs. He had his own room, which was "very organized," and age-appropriate clothes and toys. He attended a daycare program with an

[8] There is no information in the record regarding G.W.'s vaccination status.

[9] A virtual visit scheduled for July of 2022 did not take place because of technical difficulties on the part of the correctional facility. A visit on August 18, 2022, did not go forward because the social worker at the correctional facility was unavailable.

educational curriculum and was doing well. G.W.'s foster parent took him to parks and other outings. There were no concerns about his medical care. He had a speech delay which was improving with bi-monthly services.

G.W. had become "attached" to his foster parent, whom he referred to as "mom." He immediately ran to her when he needed comforting after a minor fall during a home visit and became upset when she briefly left the room. His foster parent was willing to adopt him.

G.W. participated in monthly in-person visits with one of his half-siblings, who was also in the care of the Department. He engaged in bi-monthly virtual visits with the rest of his half-siblings. The caseworker who supervised the visits testified that, because of G.W.'s young age, he did not interact with the other children during the visits, but did "his own thing."

k. Foster Parent's Testimony

G.W.'s foster parent testified that she was willing to adopt G.W. She had been a foster parent for seven years, and had previously fostered three other children. When asked about her feelings for G.W., she said, "I love him, he's a sweet little kid. He's been with me for a couple of years, so I've seen him grow. . . . [H]e has a good personality. He's sweet, he's very sweet."

l. Mother's Testimony

Mother testified that she wanted to maintain her parental rights. She acknowledged that she "made a mistake," but did not think it was "right" for her to be judged "on who

[she is] as a mother . . . because of that."

Mother asked the court to let her continue to have contact with G.W., stating "it's important to me." She said, "it's not like I'm going away for a lifetime . . . . I still have a second chance to come out and do what I'm supposed to do and be a mother to him." Mother testified that she was currently eligible for parole in 2026, but that, if she continued to work in the facility, she could become eligible for parole in 2024. She asked the court to place G.W. with Grandmother until she was able to regain custody of him.

On cross-examination, Mother was asked about the circumstances that led to G.W.'s birth at home. Mother testified that she was not able to "make it to the hospital." She said that hospitals in the surrounding area were not accepting new patients, but the court struck that statement on hearsay grounds.

On the second day of the hearing, just before closing arguments, counsel for Mother advised the court that Mother no longer wanted to participate in the hearing and wished to withdraw her objection to the termination of her parental rights. After engaging in a colloquy with Mother, the court stated that it was within her rights to choose not to participate in the hearing, but, because she had not consented to the termination of her parental rights, the hearing would proceed to its conclusion.[10] Mother then left the courtroom and did not return.

[10] In closing argument, counsel for Mother stated that the only reason Mother attempted to withdraw her objection to the termination of her parental rights was because of the "legal implications" of the finding, ostensibly referring to the effect that an involuntary termination of her parental rights over G.W. would have in a pending CINA proceeding involving another one of her children. The court replied that the statute

The Juvenile Court's Findings

At the conclusion of the hearing, the court summarized the history of the case and the evidence presented at the hearing, and rendered its findings and conclusions from the bench. The court analyzed all of the statutory factors set forth in Md. Code (1984, Repl. Vol. 2019), § 5-323(d) of the Family Law Article ("FL") (discussed *infra*), many of them in detail.

The court expressly incorporated the stipulated facts into its decision. It found that the Department provided services to Mother before G.W. was placed into foster care, including placement with a godparent, making appointments for medical care, and providing transportation. The court noted that the Department explored Grandmother as a placement resource after placement with the godparent failed. As far as non-relative placement, the court found no evidence that Ms. P. took steps to become a placement resource or that she was interested in being a guardian or adoptive resource.

The court found that the Department investigated the availability of services where Mother was incarcerated, but that services had been discontinued because of COVID, as had visitation. The court expressly rejected Mother's position that the Department failed to provide reasonable reunification services:

> One of the overriding theories . . . that seemed to come through this case. . . was that the Department . . . should have tried harder[.] . . . They should have tried harder to connect with [Grandmother]. They should have tried harder with the Department of Corrections to ensure that there were visits. They should have tried harder to make sure that [Mother]

governing guardianship proceedings did not contemplate the withdrawal of an objection at the conclusion of a guardianship hearing.

> was getting [court-ordered services] while she was incarcerated. . . . I don't find that . . . is the standard, nor do I find that [the Department has] fallen short[.]

The court found that the Department made "more than reasonable efforts" in "very difficult circumstance[s]" to communicate with the correctional facility. The court observed that Mother "put herself in the position which then created the barriers for her[,]" but that it was not an "overriding factor[.]"

The court found that Mother had not fulfilled her obligations under the service agreement prepared by the Department because she had been unable to receive services. The court accepted that Mother had completed a parenting class as well as GED and other classes.

In addressing FL § 5-323(d)(2)(iv), which requires the court to consider "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[,]" the court noted that it was "not possible," alluding to the fact that G.W. had already been in foster care for more than 18 months. The court found that it was not in G.W.'s best interest to extend his time in placement to allow Mother to receive services because there was no "ascertainable" date by which Mother would be released from incarceration and complete all court-ordered tasks so that G.W. could be returned to her.

In addressing FL § 5-323(d)(3)(i) (whether the parent has abused or neglected the child and the seriousness of the abuse or neglect), the court found that Mother neglected

G.W., and that the neglect was serious. The court found that Mother failed to get appropriate pre- and post-natal care, and that G.W. was born prematurely and was underweight and malnourished after birth. The court did not believe Mother's explanation as to why she did not go to the hospital when G.W. was born, stating that, although her testimony that area hospitals were not "accepting new patients" was hearsay, her suggestion that she would be turned away while in labor "belies logic." The court found that Mother put G.W. "further in harm's way" by choosing Mr. C. as the initial placement resource.

The court also considered the circumstances that led to G.W. being placed into care, as reflected in the statement of probable cause that was admitted into evidence. The court said that, although the statute only requires consideration of a conviction for a crime of violence against another parent of the child, and Mr. D. was not G.W.'s parent, the court would still consider "the nature of . . . that violent action as . . . certainly weighing against [Mother's] ability to provide proper care for [G.W.]" The court found that if domestic violence was involved, as Mother had "hinted," she "took steps that were inappropriate[.]" The court stated that the Department was already involved with the family, and found that Mother had access to resources to help extricate herself and the children from a domestic violence situation. The court noted that, although Mother claimed that the knife did not penetrate Mr. D.'s body, she later observed him on the ground, unresponsive, but failed to call 911. The court remarked, "[i]t's that part of the statement of [] probable cause that concerns me[,] . . . the callousness [with] which she allowed [Mr. D.] to essentially bleed

out on her lawn." The court found that Mother's failure to summon medical help for Mr. D. was "consistent" with her failure to ensure that G.W. had proper medical care.

In addressing FL § 5-323(d)(4), which requires the court to consider the child's emotional ties, the court found that G.W. was "certainly adjusted" to his current placement, and that it would be detrimental to him if he were removed from "the only home that [he] knows." The court found that Mother's contact with G.W. had been "minimal[,]" there was no parent/child relationship between them, and that terminating Mother's parental rights would have a "de minimus [sic] impact" on G.W. The court found that G.W. did not have regular contact with his half-siblings, but acknowledged that the sibling relationship was being "maintain[ed]."

After explaining its findings and their effect on its ultimate decision, the court found, by clear and convincing evidence, that Mother was unfit. The court also found that Mother's incarceration and lack of progress in completing reunification services constituted exceptional circumstances that would make a continuation of the relationship detrimental to G.W. The court ultimately concluded that terminating Mother's parental rights was in G.W.'s best interests, stating that "[i]t is patently unfair to [G.W.'s] future to be kept in limbo . . . until such time as [Mother] may be available." As noted earlier in this opinion, on December 20, 2022, the court issued the First TPR Order, which memorialized the court's decision and granted the Department's petition for guardianship.

First Appeal and Proceedings on Remand

On January 23, 2023, Mother filed a notice of appeal from the First TPR Order. On March 15, 2023, while the first appeal was pending in this Court, Mother filed a motion to revise the First TPR Order based on assertions that her counsel had no record of receiving physical or electronic service of it. Mother urged the court to reissue the order to give her an opportunity to file a timely appeal. Following a hearing, the court denied the motion. Mother filed a timely appeal from the order denying the motion to revise, and the two appeals were consolidated in this Court.

In an unreported opinion, a panel of this Court dismissed the appeal from the First TPR Order as untimely, pursuant to the Department's motion. But the order denying Mother's motion to revise the judgment was vacated, and the case was remanded for further proceedings.

On remand, the juvenile court held a hearing, at which the parties consented to the entry of an order which vacated the First TPR Order. The court then issued the Second TPR Order, the terms of which are identical to the First TPR order, except for the addition of the following stipulated facts: (1) there had been no material change in circumstances since the TPR hearing in November 2022; (2) Mother remained incarcerated and had not visited with G.W., and (3) G.W. had remained in out-of-home placement with the same foster parent "without issue." Mother filed this timely appeal. We shall provide additional facts as necessary.

DISCUSSION

Standard of Review

Our review of a decision to terminate parental rights "involves three interrelated standards: (1) a clearly erroneous standard, applicable to the juvenile court's factual findings; (2) a *de novo* standard, applicable to the juvenile court's legal conclusions; and (3) an abuse of discretion standard, applicable to the juvenile court's ultimate decision." *In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. 30, 45 (2017) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)).

The juvenile court's factual findings are not clearly erroneous if there is any "competent material evidence" in the record to support them. *In re Ryan W.*, 434 Md. 577, 593-94 (2013) (quoting *Figgins v. Cochrane*, 403 Md. 392, 409 (2008)). "In making this decision, we must assume the truth of all of the evidence, and of the favorable inferences fairly deducible therefrom, tending to support the factual conclusion of the trial court." *In re Adoption/Guardianship No. J970013*, 128 Md. App. 242, 247 (1999) (quoting *In re Adoption No. 09598*, 77 Md. App. 511, 518 (1989)).

"[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." *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 47 (2019) (second alteration in original) (quoting *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 100 (2010)). "In reviewing whether the juvenile court abused its discretion[,] . . . [w]e 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 the court deems minimally acceptable.'" *Id*. at 47-48 (quoting *In re Adoption of Cadence B.*, 417 Md. 146, 155-56 (2010)).

Applicable Law

It is well-established that parents have a fundamental right to raise their children. *C.A. & D.A*., 234 Md. App. at 47; *see also Santosky v. Kramer*, 455 U.S. 745, 758-59 (1982). "Nevertheless, the fundamental right of a parent to raise [their] child 'is not absolute.'" *C.A. & D.A.*, 234 Md. App. at 47 (quoting *In re Mark M.*, 365 Md. 687, 705 (2001)). "In deciding whether parental rights should be terminated, the juvenile court's overriding consideration is the best interest of the child." *In re K.H.*, 253 Md. App. 134, 158 (2021). Although "[t]he law presumes that a child's best interests are served by maintaining a parental relationship between the child and the child's parents," the presumption may be overcome if the Department establishes, by clear and convincing evidence, (1) "that the parent is unfit," or (2) "that exceptional circumstances exist that would make continuing the parental relationship detrimental to the child's best interests." *Id.* (citing *C.E*., 464 Md. at 50); *see also* FL § 5-323(b).

The Maryland General Assembly created a list of factors that a court must consider in determining whether a parent is unfit, whether exceptional circumstances exist, and whether it is in the best interest of a child to terminate the relationship. *In re Adoption/Guardianship of Rashawn H*., 402 Md. 477, 499 (2007). The factors are set forth in FL § 5-323(d), which provides:

[I]n ruling on a petition for guardianship of a child, a juvenile court shall give primary consideration to the health and safety of the child and consideration to all other factors needed to determine whether terminating a parent's rights is in the child's best interests, including:

(1)(i) all services offered to the parent before the child's placement, whether offered by a local department, another agency, or a professional;

(ii) the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent; and

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

(2) the results of the parent's effort to adjust the parent's circumstances, condition, or conduct to make it in the child's best interests for the child to be returned to the parent's home, including:

(i) the extent to which the parent has maintained regular contact with:

1. the child;

2. the local department to which the child is committed; and

3. if feasible, the child's caregiver;

(ii) the parent's contribution to a reasonable part of the child's care and support, if the parent is financially able to do so;

(iii) the existence of a parental disability that makes the parent consistently unable to care for the child's immediate and ongoing physical or psychological needs for long periods of time; and

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

(3) whether:

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

(ii) 1. A. on admission to a hospital for the child's delivery, the mother tested positive for a drug 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 . . . or by a physician or psychologist . . . [;]

(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.

FL § 5-323(d). The role of the juvenile court is:

> to give the most careful consideration to the relevant statutory factors, to make specific findings based on the evidence with respect to each of them, and, mindful of the presumption favoring a continuation of the parental relationship, determine expressly whether those findings suffice either to show an unfitness on the part of the parent to remain in a parental relationship with the child or to constitute an exceptional circumstance that would make a continuation of the parental relationship detrimental to the best interest of the child, and, if so, how.

Rashawn H., 402 Md. at 501.

Mother's Contentions

Mother asserts that the court's decision to terminate her parental rights was based on clearly erroneous findings. Her substantive arguments relate to the court's findings with respect to the following factors: FL § 5-323(d)(1) (services offered by the Department to facilitate reunion of the child and parent); FL § 5-323(d)(2) (the results of the parent's

efforts toward reunification); FL § 5-323(d)(3) ("aggravating circumstances"); and FL § 5-323(d)(4) (child's emotional ties with and feelings toward parents and siblings).

Mother further asserts that the court erred in terminating her parental rights because her incarceration and the COVID-related restrictions on services in the detention center and correctional facility deprived her of a meaningful opportunity to be reunited with G.W.

The Department and G.W., through counsel, maintain that the court appropriately considered the statutory factors and that its order should be affirmed.

Analysis

I. Services Offered by the Department to Facilitate Reunification

Mother contends that the court erred in finding that the Department made reasonable efforts to provide her with opportunities to visit with G.W. and participate in court-ordered reunification services. She claims that "evidentiary deficiencies" in the Department's case, combined with the impact of the COVID-19 pandemic on reunification services in the correctional facility, compelled the court to find that the Department failed to make reasonable efforts. We disagree.

Pursuant to FL § 5-323(d)(1)(ii), the court is required to consider the "extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent[.]" "Implicit 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[.]" *Rashawn H.*, 402 Md. at 500.

"[R]eunification services need not be offered by [the Department] under every

conceivable set of circumstances." *No. J970013*, 128 Md. App. at 255 (citing *In re Adoption/Guardianship No. 10941*, 335 Md. 99, 117 (1994)). "[R]eunification efforts must be judged within the context of the resources available to the agency, with the agency receiving the benefit of the doubt when resources are limited." *In re Shirley B.*, 419 Md. 1, 27 (2011) (quoting Kathleen S. Bean, *Reasonable Efforts: What State Courts Think*, 36 Univ. Tol. L. Rev. 321, 365 (2005)).

We perceive no clear error in the court's finding of reasonable efforts on the part of the Department. Regarding visitation, it was stipulated that in-person visitation was not available to Mother at the correctional facility until June of 2022, and that G.W. did not meet age requirements once in-person visitation was resumed. Once the visitation order was changed to virtual visitation in May of 2022, monthly virtual visits were offered thereafter. Mother claims that the court's finding was nonetheless erroneous because there was no evidence to explain why virtual contact was not offered earlier. Until May of 2022, however, the court's order provided for virtual visitation only as a supplement to "meaningful face-to-face" contact, which was not available. There was no evidence that Mother or G.W., through his counsel, requested virtual visitation before that time. Moreover, in the context of reasonable efforts, the stipulation provided that "[t]he Department repeatedly followed up with the correctional facilities to determine if visitation was allowed[.]"

Mother also argues that the Department's efforts were patently unreasonable because it declined to allow G.W. to participate in a "baby bonding" program. According

to the caseworker's testimony, the program was not available until September of 2022. The Department recommended against the baby bonding program for then two-year-old G.W. because he had not had any physical contact with Mother since he was four months old. We do not agree with Mother than this evidence compelled the court to find that the Department failed to make reasonable efforts to provide visitation.

Regarding other reunification services, Mother urges that the court's finding was erroneous because there was no evidence that the Department attempted to determine the availability of programming in the correctional facilities after its letter to Mother dated November 3, 2021. We perceive no error. The caseworker assigned to G.W.'s case at the time of the TPR hearing in November of 2022 testified that the court-ordered services were still unavailable at that time. Mother did not challenge this evidence, and she stipulated that there had been no material change of circumstances since November of 2022. Assuming the truth of this evidence, as we must, the record demonstrates that services remained unavailable when the Second TPR Order was entered in January of 2024.

Mother further asserts that the court erred in finding the Department's efforts to be reasonable because there was no evidence that it attempted to provide Mother with virtual services. We are not able to conclude that the Department acted unreasonably in failing to arrange for a virtual psychological evaluation or therapy services as those tasks were to be completed only after Mother's release from incarceration. Furthermore, the Department was "consistently" advised by the social worker at the correctional facility that substance abuse services were not available, which, it could be reasonably inferred, included virtual

substance abuse programs.[11]

Mother argues that in addition to the "evidentiary deficiencies" in the Department's case, the court failed to consider that the COVID-19 pandemic interfered with her ability to receive reunification services. In support of this argument, she cites *Matter of A.M.*, 485 P.3d 316 (Or. Ct. App. 2021), in which an order changing a permanency plan from reunification to guardianship was reversed because pandemic restrictions prevented the parents from receiving in-person training to address their child's "serious and complicated" feeding disorder. *Id.* at 319. The court held that, because the parents' inability to manage the child's feeding issue was "[t]he specific impediment to reunification," it could not conclude that the parents were afforded a "reasonable opportunity to become minimally adequate parents[.]" *Id*. In that case, although other children had been returned to the parents, the pandemic prevented the parents from receiving the in-person training necessary to address their three-year-old daughter's feeding disorder. *Id.* We are not persuaded that the same logic applies in this case. Here, the "specific impediment" to reunification between Mother and G.W. was Mother's incarceration, which could not be addressed with any level of services. *See C.A. & D.A*., 234 Md. App. at 55 (Where parent's incarceration and impending deportation were the "primary obstacle" to parent's ability to care for the children, which "no amount of services would have alleviated[,]" the court's

[11] Mother also claims that the court's finding was erroneous because there was no evidence that the Department helped her apply for an off-site drug program she expressed interest in. There was no evidence, however, that Mother needed assistance from the Department to effectuate entry into that program, or that the Department would have been able intervene in such a decision.

determination that the department's provision of services was reasonable was not clearly erroneous.). Moreover, the evidence demonstrated that visitation and other reunification services were unavailable to Mother because of continuing restrictions imposed by the correctional facility. There was no evidence to suggest that the Department would not have been able to provide Mother with services had she not been incarcerated.

II. Mother's Efforts Toward Reunification Goals

In discussing FL § 5-323(d)(2), which requires the court to consider "the results of the parent's effort to adjust the parent's circumstances, condition, or conduct," the court stated:

> Obviously [Mother] has not fulfilled her obligations under the [service] agreement. She has not received the services that were required in order for her to be able to move forward, that being the substance abuse treatment, the individual counseling[,] . . . the psychotherapy counseling[,] and the anger management program.

The court noted that it was "keenly aware" that services were stopped at detention centers and correctional facilities because of COVID.

To be sure, Mother made some efforts as contemplated by FL § 5-323(d)(2) during her incarceration. The court gave Mother credit for completing a parenting program and taking GED and other classes, and the court commented that Mother's job as a food server was "certainly . . . an effort on her part." Despite these efforts, the court noted that Mother's incarceration as a result of committing a violent crime made it "impossible" for her to maintain regular contact with G.W. or to participate in services necessary for him to return to her care. The court did not err in concluding that additional services would not "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." FL § 5-323(d)(2)(iv). "A critical factor in determining what is in the best interest of a child is the desire for permanency in the child's life." *In re Adoption/Guardianship of Jayden G.*, 433 Md. 50, 82 (2013). The Maryland Supreme Court has recognized that "'[l]ong periods of foster care' are harmful to . . . children and prevent them from reaching their full potential." *Id.* at 83 (quoting *In re Adoption of Victor A.*, 157 Md. App. 412, 427 (2004)). "[T]he overriding theme" of FL § 5-343 "is that a child should have permanency in his or her life. The valid premise is that it is in a child's best interest to be placed in a permanent home and to spend as little time as possible in foster care." *Id.* at 84 (quoting *No. 10941*, 335 Md. at 106).

The 18-month limit set forth in FL § 5-323(d)(2)(iv) protects children from long and indefinite periods of foster care. Although a court may extend the 18-month time limit by making "a specific finding that it is in the child's best interests to extend the time for a specified period[,]" FL § 5-323(d)(2)(iv), the court here found "no discernible time" period for G.W. to be returned to Mother's care. The court appropriately considered not only that G.W. had been in care for more than three years, but that he would remain in care during Mother's indeterminate incarceration. We discern no error in the court's conclusion that "[i]t is patently unfair to the child's future to be kept in limbo . . . until such time as his mother may be available." *See No. J970013*, 128 Md. App. at 252 ("[I]ncarceration may indeed, under the facts of a particular case, be a critical factor in permitting the termination

of parental rights[.]"). That determination is consistent with Maryland law that the child's best interest is the "transcendent standard" that "trumps all other considerations." *Ta'Niya C.*, 417 Md. at 111-12.

III. Existence and Severity of Aggravating Circumstances

Mother argues that the court erred in concluding that Mother's neglect of G.W. and her conviction for manslaughter weighed in favor of termination of her parental rights. She acknowledges that the basis for the CINA proceeding was her failure to get adequate pre- and post-natal care, and she accepts responsibility for placing G.W. in the care of Mr. C., who, she concedes, was "ultimately unsuitable[.]" She also accepts responsibility for causing the death of Mr. D. She argues, however, that the court erred in terminating her parental rights without allowing her to "make another arrangement for G.W.'s care." This argument is unavailing. "Decisions relating to the children's placement are not appropriate during a TPR determination, when the appropriate inquiry is whether the parent has the ability 'to care for the child[ren] in a way that does not endanger the child[ren]'s welfare.'" *K.H.*, 253 Md. App. at 156-57 (alterations in original) (quoting *C.E.*, 464 Md. at 52.)[12]

In related arguments, Mother claims that the circumstances of her conviction, and

[12] Even if we were to agree with Mother's argument that a TPR court should be able to consider whether an incarcerated parent can arrange for the care of their child while they serve their sentence, our conclusion would be no different. Mother's proposed arrangement was for G.W. be placed with Grandmother until she was released. Grandmother could not be approved as a placement resource, however, because she refused to complete the assessment process and terminated all contact with the Department. Moreover, contrary to Mother's argument that she could arrange for Ms. P. to care for G.W., the evidence supports the court's finding that Ms. P. had taken no steps to become a placement resource.

the length of her incarceration, did not warrant the termination of her parental rights. We disagree. As the court noted, although Mother "hinted" that she acted in self-defense, she was already involved with the Department and arguably had access to resources to help extricate herself and the children from a domestic violence situation. Moreover, it was not inappropriate for the court to consider the violent nature of her actions, or her "callous[]" disregard for Mr. D.'s need for emergency medical assistance, especially in light of evidence that she had also failed to ensure that G.W. had proper medical care.[13] With respect to the length of her incarceration, we have stated that "incarceration may indeed, under the facts of a particular case, be a critical factor in permitting the termination of parental rights, because the incarcerated parent cannot provide for the long-term care of the child." *No. J970013*, 128 Md. App. at 252. Here, the court made it clear that Mother's incarceration would not, in and of itself, determine the outcome of the case, but that the length of her confinement, and the minimal contact with G.W. during that time, would have to be considered in reaching a conclusion as to what would be in G.W.'s best interest. It was not improper for the court to consider those factors in deciding whether it was in G.W.'s best interest to terminate Mother's parental rights.

[13] Mother asserts that it would be "illogical" to conclude that her "isolated" conviction warranted termination of her parental rights over G.W., but "did not warrant intervention" in her parental relationship with her other six children. This argument ignores the fact that, following Mr. D.'s death, another one of Mother's children had been placed in the care of the Department and was still in foster care at the time of the TPR hearing. The other five children did not require court intervention because they were being cared for by their paternal grandmother and godparents.

IV. G.W.'s Emotional Ties

Mother's final contention is that the court "should have given less weight" to the lack of a parental bond because the pandemic "hindered [her] ability to access meaningful contact with G.W."[14] As an initial matter, it does not appear that the pandemic was the sole reason for the lack of contact in the three-and-a-half years between Mother's incarceration in July of 2020 and the entry of the Second TPR Order in January of 2024. As stated earlier in this opinion, there was no evidence that, outside of correctional facilities, COVID-19-related restrictions on visitation were still in effect past the initial lockdown phase. Indeed, it appears that the Department was trying to contact the social worker at the facility about the possibility of in-person visitation at least as early as November of 2021, which suggests that, but for Mother's incarceration, she would have had an opportunity for "meaningful contact."

The court commented that it was "a shame" that lack of contact, while not determinative in itself, would weigh against Mother, and that it would "minimize the lack of contact as being a fault factor with mom[.]" Based on the facts and circumstances of this case, however, it was not inappropriate for the court to consider the lack of a bond between G.W. and Mother in determining whether a termination of rights was in G.W.'s best interest. *See In re Ashley S.*, 431 Md. 678, 712 (2013) ("[T]he task of the juvenile

[14] Mother also contends that the Department "hindered" meaningful contact between her and G.W. As we concluded earlier in this opinion, however, the evidence supports the court's finding that the Department made reasonable efforts to facilitate visitation.

court is not to remedy unfairness to the mother, but to weigh any unfairness in light of the best interests of her children." (citing *Yve S.*, 373 Md. at 569)).

CONCLUSION

In this case, "'the court . . . review[ed] all relevant factors and consider[ed] them together'" to determine what was in the best interests of the child, "without presumptively giving one factor more weight than another." *See In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 736-37 (2014) (quoting *In re Adoption/Guardianship No. 94339058/CAD*, 120 Md. App. 88, 105 (1998)). Based on our review of the record, we conclude that there was no clear error in the court's findings, no misapplication or misinterpretation of law, and no abuse of discretion in the ultimate decision that it was in the best interest of G.W. to grant the Department's petition for guardianship and terminate Mother's parental rights.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.