Circuit Court for Baltimore City
Case Nos. T23054006 and T23054007

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2465

September Term, 2023

IN RE: SK. M. AND S.Z.M.

Arthur,
Tang,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Arthur, J.

Filed: August 27, 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).

On March 8, 2023, the Baltimore City Department of Social Services filed Petitions for Guardianship with the Right to Consent to Adoption or Long Term Care Short of Adoption for two minor children, Sk. M. and S.Z.M. Following a contested hearing on the merits, the Circuit Court for Baltimore City, sitting as a juvenile court, granted the petitions and terminated the parental rights of the children's parents. The father took this timely appeal.

QUESTIONS PRESENTED

The father presents the following questions:

> I. Did the juvenile court err in finding that the Baltimore City Department of Social Services made reasonable efforts to facilitate reunification between him and his children?
>
> II. Did the juvenile court commit error when it found that exceptional circumstances existed to warrant the termination of his parental rights?

For the reasons set forth below, we shall affirm.

PROCEDURAL AND FACTUAL BACKGROUND

The Baltimore County Case

Sk. M. and S.Z.M. are twin sisters. They were born in February of 2019. Their biological parents are S.M. ("Mother") and B.H. ("Father").

On November 6, 2019, when Sk. M. and S.Z.M. were about eight months old, the Circuit Court for Baltimore County found them both to be Children in Need of Assistance ("CINA").[1] The court placed the children in the care of C.B., a licensed foster parent. In

[1] A child in need of assistance is one who requires court intervention because the child has been abused or neglected, or has a developmental disability or mental disorder, (continued)

the record, C.B. is described as "fictive kin," a term that refers to "a non-relative with whom a foster child has developed a familial relationship." *In re Ryan W.*, 207 Md. App. 698, 723 n.16 (2012), *aff'd in part, vacated in part, rev'd in part*, 434 Md. 577 (2013).

On February 11, 2021, the children were returned to Mother. The Baltimore County case was closed, over the objection of the Baltimore County Department of Social Services.

In October 2021, Mother, who has a history of substance abuse, signed a notarized letter giving C.B. and her partner, J.M., the ability to care for the children if she was unable to do so.

The Baltimore City Case

In November 2021, Mother overdosed and was revived with Naloxone while the children were in her care. As a result, the Baltimore City Department of Social Services ("the Department") commenced an investigation into whether Mother had neglected the children.

On or about November 29, 2021, the Department filed CINA petitions with requests for shelter care for the children in the Circuit Court for Baltimore City, sitting as a juvenile court. The Department asserted that it did not know Father's whereabouts. The court held a shelter care hearing, which Father did not attend. The court placed the children with C.B. once again.

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and the child's parents, guardian, or custodian cannot or will not give proper care and attention to the child and the child's needs. Md. Code (1974, 2020 Repl. Vol.), § 3-801(f) and (g) of the Courts and Judicial Proceedings Article ("CJP").

After a preliminary hearing in December 2021, the court found that Mother had an attorney from the Office of the Public Defender. Father did not have an attorney because the office did not have current telephone information for him and was unable to contact him.

The court held an adjudication and disposition hearing on January 21, 2022. Father was not present at the hearing and was not represented by counsel. After the hearing, the court sustained the factual allegations in the CINA petitions, found each child to be a CINA, committed the children to the Department, and continued their placement with C.B. In its order, the court wrote that the parties "stipulate[d]" that:

> [The children's] father is [B.H.]. Father was previously incarcerated under ID #561496; his status per Vinelink[2] is "escaped." [The Department] attempted to reach [F]ather on a phone number from the Baltimore County case with the family, but the number is disconnected. Father's current whereabouts are unknown to [the Department]. Father has failed to provide ordinary care and support to [the children], and has not made himself available to provide care when mother is unable to do so.

In May 2022, the court conducted an initial six-month review hearing, which Father did not attend. In a written order, the court stated that Father's whereabouts were unknown and that he had no contact with the children.

The Department sent Father a letter, dated July 29, 2022. That letter, which was addressed to Father at an address on Druid Hill Avenue in Baltimore City, advised him that the Department would "be conducting a meeting to discuss the case" of his children.

[2] "VINELink" is a website used by the Department to locate individuals who are incarcerated in the United States.

The Department wrote that the children had been in foster care "for the past 10 months" and asked Father to contact Emma Williamson, a family services caseworker.

The court held a ten-month review hearing on August 19, 2022. In an order issued after the hearing, the court found that Father's whereabouts were unknown to the Department, that there had been no contact between Father and the children, and that Father had contacted the Department "once since the case was assigned to the worker."

On March 8, 2023, the Department filed petitions for guardianship for each child and sent the petitions to Father at an address on Pennsylvania Avenue in Baltimore. On March 30, 2023, Father, through an attorney, objected to the guardianship petitions. The attorney represented Father at a virtual pre-trial hearing on October 18, 2023, but Father himself did not attend that hearing.

Contested Hearing on the Termination of Father's Parental Rights

The court held a contested hearing on the termination of Father's parental rights on January 4, 2024. Father failed to appear at that hearing, but his attorney attended.

The Department had served Father with a subpoena for the hearing by serving his attorney, but the attorney claimed he did not see the subpoena before the hearing and did not make Father aware of it. The attorney could not explain to the court why Father was not present at the contested hearing.

Diana Donoho, a child protective services worker with the Department, testified that on November 27, 2021, she received a call informing her that Mother had overdosed on drugs. She was unable to contact Mother because Mother "was never home" when Donoho visited and did not answer Donoho's phone calls or return her messages.

On direct examination, Donoho testified that she had had no contact with Father because she did not know his name, address, or phone number, and because Father never contacted her. On cross-examination, however, Donoho acknowledged that by December 2, 2021, she had obtained Father's name from the foster parent, C.B., and that C.B. told her that Father had been deemed incompetent by the State. Donoho reiterated that she did not know Father's phone number or address.

Emma Williamson, a family services caseworker for the Department, was assigned to the twins' cases on or about April 1, 2022. She testified that she had no contact information for Father when she was assigned to the case, but that he contacted her by telephone "a few times" thereafter and requested visitation. Williamson testified that Father's first phone call occurred sometime after July 29, 2022, but the Department's contact notes for June 16, 2022, showed that Williamson had received a phone call from Father requesting visitation.

Williamson testified that she told the foster parent, C.B., that when Father made himself available, she would schedule a supervised visit. C.B. informed Williamson that she was concerned that Father had "limitations," that he had obtained a settlement in a lead-paint case, and that he had an attorney who handled all his affairs. Williamson told C.B. she would "let the attorney know about the newfound information."

Williamson sent the letter dated July 29, 2022, advising Father of a planned meeting to discuss the children. Williamson asked Father to provide his contact information so that she could send him an invitation to the meeting. The letter contained Williamson's contact information, a phone number for her supervisor, and a phone

number and personal identification number for Father to use "to call into the meeting[,]" but it did not disclose a date or time for the meeting.

In a subsequent telephone call, which Williamson believed was in response to the letter, Father advised her that he had been released from jail and was trying to get a job and "his own place." At the time of the call, Father was on his way to an interview and told Williamson he would call back. He did not call back.

A few weeks later, Father made contact with Williamson and her supervisor in a video call using Google Meet. The meeting was set to start at 3:00 p.m., but Father did not join the meeting "until around 3:28[,]" after Williamson called him and let him know they were waiting for him to join the call.

During the call, Williamson and her supervisor advised Father that they wanted to have a meeting at the Department's office to discuss the children's case. Father informed Williamson that he had not seen the twins for more than 18 months. They discussed visitation, and Father said that he was willing to have virtual visits with the children. Williamson and her supervisor told Father that the Department would arrange virtual visits. They also told him that he needed to provide documentation of his probation officer and updated information about his job, housing, and substance abuse treatment. The meeting lasted "less than 30 minutes." Father did not provide the Department with the information that it had requested.

Williamson testified that, "a few weeks later," she contacted Father and scheduled a time for him to visit with the children via Google Meet. The Department planned for Father to meet the twins in a virtual meeting before proceeding to in-person visits. The

virtual visit was to occur in the fall of 2022, but it did not take place because Father did not call to confirm the visit, as he had been asked to do. Williamson never received a phone call from Father about the missed visit.

Williamson testified that two phone calls and the virtual meeting using Google Meet were the only contacts she had with Father. She tried contacting him, but his phone number "kept changing."

Williamson had concerns about Father's cognitive functioning. During their conversations, Father informed her that he "had a representative." When asked what that meant, Father "said he had an attorney looking over his affairs." Father explained that "he got some money from the city because he was exposed to lead as a young child" and that "he had someone making decisions on his behalf for his financial affairs."

On cross-examination, Williamson acknowledged that one of the contact notes kept by the Department showed that the foster parent, C.B., had advised a Department worker of Father's name and expressed concern that Father had been deemed "incompetent and was unable to provide care to the children." Williamson also acknowledged that she failed to record the various phone numbers Father gave to her and her supervisor. She explained that, whenever Father "called, he would call from a different number." When she saved that number and tried to call him back, the number was "no longer active."

In March 2023, the children's case was transferred from Williamson to Shannon Parker. Parker testified that she was the children's current case manager and that, when she was assigned the case, the permanency plan for both children had already been

changed to adoption. Parker stated that she never had any contact information for Father and that he never contacted her. She acknowledged seeing a letter to Father in the case file with his address on it.

The children's foster parent, C.B., testified that, during the Baltimore County case, the twins resided with her from when they were about four months old until they were about nine months old. As of January 2024, when this contested guardianship proceeding was taking place, the twins had been living with her for slightly more than two years. The twins were almost five years old and attended full-day pre-kindergarten. C.B. is an adoptive resource for the twins, and C.B.'s boyfriend and her mother are backup care providers.

C.B. testified that Father never contacted her to arrange visits with the twins, never had any phone calls with them, and never visited them while they were in her care. Father had never asked to attend, and has never attended, any of the children's medical appointments. Nor had he ever provided any gifts, called on their birthdays or Christmas, appeared at school events, or sent any money to help support them. According to C.B., the children call her "Mom," go on vacations with her, and attend birthday parties and church services with her. When C.B. attends job-related conferences, her mother and the children accompany her, and C.B.'s mother watches the children while she attends workshops. The children were involved in swimming lessons, gymnastics, dance, and summer camps and had recently started attending some Girl Scout events.

When asked if she had ever seen Father being violent, C.B. stated that on the first and only time she met Father, which was when the children were living with Mother, she

observed him grabbing Mother "by the neck and pulling her hair and like pulling her head back and forth." C.B. yelled at him and told him to stop. Father stated that "he was just playing around," and that "she was all right." When C.B. repeated her call for Father to stop, he replied, "[O]kay, and he finally stopped."

C.B. knew that the Department was attempting to set up time for the children to have virtual meetings with Father, "but those never came to fruition."

The Court's Decision

After the hearing, the court issued written orders setting forth findings of fact and granting the guardianship petitions for each child. The court addressed each of the factors required by § 5-323(d) of the Family Law ("FL") Article of the Maryland Code (1984, 2019 Repl. Vol.) and made the same findings as to each child. After making those findings, and considering the presumption that it is in a child's best interests to maintain the parental relationship, the court determined, "by clear and convincing evidence, that exceptional circumstances exist" that would make continuing the parental relationships of both Mother and Father detrimental to the children's best interests. The court terminated the parental rights of Mother and Father to both children.[3]

STANDARD OF REVIEW

"'Maryland appellate courts apply three different but interrelated standards of review' when reviewing a juvenile court's decisions at the conclusion of a termination of

[3] Mother, who was served by publication, did not object to the petitions for guardianship and was deemed to have consented to the termination of her parental rights. She is not a party to this appeal.

parental rights proceeding." *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 47 (2019) (quoting *In re Adoption/Guardianship of Cadence B.*, 417 Md. 146, 155 (2010)). First, the appellate court will uphold the factual findings unless they are clearly erroneous. *See id.* Second, if the trial court committed an error of law, further proceedings will ordinarily be required unless the error is determined to be harmless. *See id.* Finally, if the trial court's ultimate conclusion is 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. *See id.* A court abuses its discretion if its decision "does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective." *In re Adoption/Guardianship of Jayden G.*, 433 Md. 50, 87 (2013) (citation omitted).

DISCUSSION

I.

Father contends that the court erred in finding that the Department made reasonable efforts to facilitate reunification between him and his children. In support of this argument, he cites § 3-816.1 of the Courts and Judicial Proceedings ("CJP") Article of the Maryland Code (1974, 2020 Repl. Vol.), which requires a court in a CINA proceeding to determine whether a department made reasonable efforts to prevent placement of a child in the department's custody. He also cites FL § 5-323(d)(1)(ii), which requires a court, in ruling on a petition for guardianship, to determine "the extent, nature, and timeliness of services offered by the local department to facilitate reunion" of

the family. Father argues that the Department did not make reasonable efforts towards reunification for him and his children.

Specifically, Father asserts that the Department "made functionally no effort to locate" him and "ensure his participation in the CINA case." Father also asserts that the Department had a duty to offer reunification services tailored to address needs arising from his cognitive limitations and limited competency, but failed to do so. He argues that the Department failed to make referrals designed to provide reasonable assistance with regard to housing, employment, and cognitive limitations that might affect his parenting. According to Father, "[t]his complete failure cannot constitute reasonable efforts."

Father also argues that the Department failed to establish visitation for him and the children. Citing CJP §§ 3-802(a)(3) and 3-823(e)(1)(i), he asserts that "[w]hen the [D]epartment has custody of a child under the CINA statute, it is legally obligated to protect the parent-child bond so that reunification will remain feasible."

Reasonable Efforts in CINA Proceedings

Before addressing Father's contentions, we pause to identify the nature of the proceeding that gave rise to the instant appeal. Subtitle 8 of the Courts and Judicial Proceedings Article applies in CINA proceedings, but not in guardianship proceedings. "Although 'a CINA adjudication must precede a TPR determination, it is a separate legal proceeding[]'" from the TPR proceeding. *In re Adoption/Guardianship of Jayden G.*, 433 Md. 50, 75 (2013) (quoting *In re Adoption/Guardianship of Cross H.*, 200 Md. App. 142, 150 (2011)). "The two are governed by different statutes, serve different purposes,

depend on different factors, require different standards of proof, and follow different case tracks." *Id*.

In guardianship proceedings such as the case at hand, we look to FL § 5-323(d), which addresses the required considerations for the termination of parental rights. These considerations include the "services offered to the parent before the child's placement," "the extent, nature, and timeliness of services offered" by DSS "to facilitate reunion of the child and parent[,]" and the extent to which DSS and the parent have "fulfilled their obligations under a social services agreement, if any[.]" FL § 5-323(d)(1).

Services Offered to Father Before the Children's Placement

In accordance with FL § 5-323(d)(1)(i), the court considered all services offered to Father before the children's placement. The court found that the Department "offered a sufficient number of services to Father." The court pointed to the Department's letter of July 29, 2022, and the Department's request that Father provide it with updated contact information. The court noted that Father failed to confirm the scheduled virtual visit with the children and, thereafter, failed to "follow up to set up any further meetings." The court found that the Department made attempts to contact Father, but that its workers were unable to reach him because "he did not maintain a consistent phone number." The court also found that the Department never received the documentation that it requested "in regard to [Father's] probation, housing, and employment status." The court addressed Father's challenges to the Department's efforts to locate him and send him written correspondence as follows:

> Father argues that [the Department] made no attempts to locate him prior to July of 2023. Father also argues that he was not sent any letters after July 29, 2022. While this is true, Father was on notice that [the children] were placed in foster care as of July 29, 2022. Father even contacted [the Department] after receipt of the letter but failed to make himself available for virtual visits with [the children] and did not maintain a consistent contact number. Moreover, Father has not attended a single court hearing. Father even failed to appear at the termination of parental rights hearing held on January 4, 2024. Apart from two phone calls and one virtual meeting, over the course of four years, Father has not maintained consistent, meaningful contact with [the Department] or engaged in reunifications [sic] attempts. [The children], who are almost five years of age, have had zero visits with Father. By all accounts, sufficient services were provided to Father, but those services were not utilized or accessed because Father has been unresponsive for over two years. While it is not clear from the testimony at the hearing how extensively the Department tried to locate Father, this Court does find that efforts, while not ideal, were adequate.

The record supports the court's findings. The record shows that the children were living with Mother when the second CINA case—the CINA case in Baltimore City—began. After Mother overdosed, the Department worked to ensure that the children could remain with C.B., a familiar caretaker and an appropriate resource. The Department was unable to locate Father before the CINA adjudication. In particular, the Department was unable to reach him using the phone number that it obtained from the CINA case in Baltimore County because the number had been disconnected. The Office of the Public Defender advised the court that it was unable to contact Father, "as there [was] no current telephone information for him." C.B. advised the Department of Father's name and her belief that he had been deemed incompetent, but she did not have contact information for him or know his whereabouts. When the Department researched Father's criminal

history, it learned that he had been incarcerated, but his status on "VINELink" was listed as "escaped."

The Department wrote to Father in July 2022, after it must have obtained an address for him. The letter prompted him to call and led, after some fits and starts, to the scheduling of a virtual visit that the Department arranged. The visit, however, did not occur, because Father did not call to confirm it.

On those facts, the court did not err in finding that the Department's efforts to locate Father "were adequate" and that the Department offered sufficient services to Father before the children's placement.

The Extent, Nature, and Timeliness of Services Offered to Father

In accordance with FL § 5-323(d)(1)(ii), the court considered the extent, nature, and timeliness of the services offered by the Department to facilitate the reunification of Father with the children. The court found that the Department "made sufficient efforts to facilitate reunification between Father" and the children. The court also found that, once the Department discovered Father's contact information, it scheduled the virtual visit with the children in the fall of 2022. The court concluded that "Father's failure to maintain consistent contact with the agency thwarted" the reunification efforts. In reaching that conclusion, the court noted that Father failed to make "himself available for reunification efforts in over two years[,]" failed to attend a scheduled virtual visit with the children, and failed to contact the Department except for his initial phone call after receiving the July 29, 2022 letter. The court concluded:

> As stated above, in over two years, Father has participated in only one virtual meeting with [the Department] and two phone calls. [The Department] cannot provide services to Father when he is consistently unavailable, and they cannot make any more efforts with Father when he is repeatedly unresponsive. This is a two-way street with only one traveler.

The record does not support Father's arguments that the Department "made functionally no effort to locate" and assist him, made no efforts to "ensure his participation in the CINA case[,]" and failed in its duty to search for his whereabouts. Nor does the record support his assertion that after his phone call the Department "had all the information it needed regarding" him. As previously noted, the Department sought to locate Father by using a phone number on record in the Baltimore County case, consulting C.B. as to his whereabouts and contact information, checking VINELink, obtaining a phone number from the Office of the Public Defender, sending the July 29, 2022, letter, and participating in telephone calls and a virtual meeting with him.

Although Father told Williamson that he was on his way to an interview when she managed to reach him by telephone, he never provided the Department with information about his employment status. Nor did he provide the requested documentation concerning his housing or his probation officer. In addition, Father failed to maintain a consistent telephone number.

Father argues that the Department failed to offer "to help him obtain a phone or find some other consistent way to communicate." The record shows, however, that Father agreed to attend the virtual meeting with the Department, was late to the meeting, but did not appear to have any problem joining the meeting when he did join it. Although Father did not maintain a consistent phone number, there is no evidence to show that he

advised the Department that he needed a phone, required assistance using the phone he had, or needed to communicate with Department workers or the children in some other way.

Father asserts that the Department failed to offer any services to address his known cognitive limitations and competency issues. That assertion, too, is unsupported by the record. Although Father advised the Department of his exposure to lead paint and that an attorney managed his financial affairs, Father never provided documentation pertaining to the identity of his attorney or his specific issues or limitations so that the Department could determine what services he might need to facilitate reunification.

Lastly, the record does not support Father's contention that the Department failed to establish visitation. The Department set up a virtual meeting with the children. Father failed to confirm the visit and never contacted the Department to reschedule it. In short, the facts in this record support the court's findings and its conclusion that "Father's failure to maintain consistent contact with the agency thwarted" the reunification efforts.

Service Agreement

In accordance with FL § 5-323(d)(1)(iii), the court considered the extent to which the Department and Father fulfilled their obligations under any social services agreement. Because no party offered evidence of a service agreement, the court found "that Father never entered into a service agreement with" the Department. Although Father does not challenge that finding, our review of the record shows that the court's finding was supported by the evidence. This fact is one of many that support the court's finding that

the Department could not provide services to Father when he was "consistently unavailable" and "repeatedly unresponsive."

The Department's efforts need only to be reasonable enough to enable the parents, "*within a reasonable time* . . . to care for the child in a way that does not endanger the child's welfare." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 499-500 (2007) (emphasis added). We see no clear error in the court's findings under FL § 5-323(d)(1)(i)-(iii), regarding the services offered to Father to facilitate reunification.

II.

Father contends that the court erred in finding that exceptional circumstances existed to warrant the termination of his parental rights. He maintains that the court impermissibly relied on the strong bonds between the children and C.B. and the lack of a relationship between him and the children. According to Father, the passage of time, without explicit findings that a continued relationship with Father would be detrimental to the children's best interests, was insufficient to establish exceptional circumstances. We disagree.

Termination of Parental Rights

Parents have a fundamental right to raise their children. *See*, *e.g.*, *In re Adoption/Guardianship of C.A. and D.A.*, 234 Md. App. 30, 47 (2017); *see also Santosky v. Kramer*, 455 U.S. 745, 758-59 (1982). "Nevertheless, the fundamental right of a parent to raise his [or her] child 'is not absolute and does not exclude other important considerations.'" *In re Adoption/Guardianship of C.A. and D.A.*, 234 Md. App. at 47 (quoting *In re Mark M.*, 365 Md. 687, 705 (2001)). A parent's rights "must be balanced

against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. at 497. "When it is determined that a parent cannot adequately care for a child, and efforts to reunify the parent and child have failed, the State may intercede and petition for guardianship of the child pursuant to its *parens patriae* authority." *In re Adoption/Guardianship of C.E.*, 464 Md. at 48.

"When the State seeks to terminate parental rights without the consent of the parent, the standard is whether the termination of rights would be in the best interest of the child." *In re Abiagail C.*, 138 Md. App. 570, 586 (2001). "[I]n all cases where the interests of a child are in jeopardy the paramount consideration is what will best promote the child's welfare, a consideration that is of 'transcendant [sic] importance.'" *In re Adoption/Guardianship No. A91-71A*, 334 Md. 538, 561 (1994) (quoting *Dietrich v. Anderson*, 185 Md. 103, 116 (1945)). "[T]he controlling factor . . . is not the natural parent's interest in raising the child, but rather what best serves the interest of the child." *In re Adoption/Guardianship No. 10941*, 335 Md. 99, 113 (1994).

In harmonizing these competing interests, the Court has recognized a substantive presumption that it is in the best interest of children to remain in the care and custody of their parents. *In re Adoption/Guardianship of Rashawn H.*, 402 Md. at 495. "That presumption, however, has limits[.]" *In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 734 (2014). "[T]he right of a parent to make decisions regarding the care, custody, and control of their children may be taken away where (1) the parent is deemed unfit, or extraordinary circumstances exist that would make a continued relationship

between parent and child detrimental to the child, and (2) the child's best interests would be served by ending the parental relationship." *Id.*

Before terminating parental rights, a court must consider the factors set forth in FL § 5-323(d). *In re Adoption/Guardianship of C.A. and D.A.*, 234 Md. App. at 48. Under that statute, "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[.]" FL § 5-323(d). If, after considering those factors, the court "finds by clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interests of the child[,]" the court may terminate the parental relationship and grant guardianship of the child to DSS. FL § 5-323(b).

Exceptional Circumstances

"An exceptional circumstances analysis must turn on whether the presence—or absence—of particular facts and circumstances makes continuation of the parental relationship detrimental to the child's best interests." *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 231 (2018). "In addition to being mandatory considerations prior to a termination of parental rights, the factors outlined in FL § 5-323 also serve 'as criteria for determining the kinds of exceptional circumstances that would suffice to rebut the presumption favoring a continued parental relationship and justify termination of that relationship.'" *In re Adoption/Guardianship of C.A. and D.A.*, 234 Md. App. at 50

(quoting *In re Adoption/Guardianship of Rashawn H.*, 402 Md. at 499). Other criteria relevant to an exceptional circumstances determination include:

> the length of time that the child has been with his adoptive parents; the strength of the bond between the child and the adoptive parent; the relative stability of the child's future with the parent; the age of the child at placement; the emotional effect of the adoption on the child; the effect on the child's stability of maintaining the parental relationship; whether the parent abandoned or failed to support or visit with the child; and, the behavior and character of the parent, including the parent's stability with regard to employment, housing, and compliance with the law.

Id. (citing *In re Adoption/Guardianship No. A91-71A*, 334 Md. at 562-64).

Here, the court considered each of the required factors under FL § 5-323(d) and concluded that exceptional circumstances made the continuation of Father's parental relationship detrimental to the children's best interests.

We have already set forth the court's findings with respect to FL § 5-323(d)(1)(i), (ii), and (iii).

Pursuant to FL § 5-323(d)(2)(i), the court considered the extent to which Father maintained regular contact with the children, the Department, and if feasible, the children's caregiver. The court found that Father had "not maintained regular contact with" the children and noted that "Father has not participated in a single visit" with the children in over two years, that he had not attended any court hearings, and that he had not seen the children "in 767 days[.]"

FL § 5-323(d)(2)(ii) required the court to consider Father's contribution to a reasonable part of the children's care and support, if he was financially able to do so.

The court found "that there is no evidence that Father made any meaningful financial contributions to the support and care of" the children.

FL § 5-323(d)(2)(iii) required the court to consider 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. The court found that this factor was "not relevant in the present case." The court took note of testimony that "alluded" to Father's "competency issues," but it found that the parties presented "no evidence of a disability or impairment[.]" "[A]side from a cryptic reference to some anger issues," the court wrote, nothing in the record indicated that "Father is consistently unable to care for the [children's] immediate and ongoing physical or psychological needs for long periods of time."

FL § 5-323(d)(2)(iv) required the court to consider whether additional services would be likely to bring about lasting parental adjustment so that the children could be returned to the parent within an ascertainable time not to exceed 18 months from the date of placement, unless the court makes a specific finding that it is in the children's best interests to extend the time for a specific period. The court found that the case had already extended well beyond 25 months since placement and that Father had not engaged in services, had not made himself available within the last 25 months, and did not even attend the termination of parental rights hearing on January 4, 2024. For those reasons, the court concluded that additional services would not be likely to bring about a lasting parental adjustment so that the children could be returned to him.

FL § 5-323(d)(3)(i) required the court to consider whether Father had abused or neglected the children or a minor and the seriousness of that abuse or neglect. The court found that, "while absenteeism in and of itself can be construed as neglect, there [was] no direct evidence of abuse or neglect in the present case."

FL § 5-323(d)(4)(i) required the court to consider the children's emotional ties with and feelings toward their parents, siblings, and others who may affect their best interests significantly. The court found that the children did "not have a meaningful tie with Father[,]" and that Father had "not been in contact with the children for 767 days." On the other hand, the court found that the children had "a strong emotional tie" to their foster parent, C.B., and her extended family. The court wrote that the children had "grown very attached to" C.B., that the children "are thriving" in C.B.'s care, that the children refer to C.B. as "Mom" and to C.B.'s mother as "Mama[,]" that the children "have formed a close relationship" with C.B.'s extended family, and that the children participated "in family vacations, birthday parties, and graduations" with C.B.

FL § 5-323(d)(4)(ii) required the court to consider the children's adjustment to community, home, placement, and school. The court found that the children had adjusted "extremely well to their current community, home, and placement." The court wrote:

> [The children] met [C.B.] for the first time when they were four months old, and they have lived with [C.B.] for over two years. [The children] have never lived with Father. [The children] have grown very close to [C.B.], even referring to her as "Mom." Moreover, [the children] have formed a close relationship with [C.B.'s] extended family, attending family vacations, birthday parties, and graduations. [The children] even refer to [C.B.'s] mother as "Mama." [The children] are actively involved in the community. [The children] attend all day preschool. [C.B.] participates in all of [the children's] school events, including school conferences, back to

> school night, concerts, reading events, and holiday events. [The children] also participate in a myriad of activities, including swimming lessons, gymnastics, dance lessons, and Girl Scouts. [The children] have also had the opportunity to attend educational conferences with [C.B.] and to visit Philadelphia and Washington, D.C. By all accounts, [the children] have a strong attachment to their guardian, [C.B.].

FL § 5-323(d)(4)(iii) required the court to consider the children's feelings about severing the parent-child relationship. The court found that because Father had not had any visits or contacts in over two years, it was "extraordinarily unlikely" that the children had strong feelings about the severance of the parent-child relationship. The court wrote that the children did not know Father and found that "there is no relationship between" the children and Father.

Similarly FL § 5-323(d)(4)(iv) required the court to consider the likely impact of terminating parental rights on the children's well-being. The court found that "terminating Father's rights would not have a meaningfully negative impact on [the children's] well-being." The court wrote that the children had not seen Father "in 767 days[,]" that Father had "never been a significant source of support" for the children, "financial or otherwise[,]" and that the children were thriving under C.B.'s care. The court concluded that "the likely impact of terminating parental rights is beneficial to [the children's] well-being."

After considering the required factors, the court found, "by clear and convincing evidence, that exceptional circumstances exist to overcome the presumption that [the children's] best interests are served by the continuance of the parental relationship." In reaching that conclusion, the court considered more than the mere passage of time and

the children's relationship with C.B. The court made specific findings, including a finding that as of July 29, 2022, Father was on notice that his children were in foster care. In the 17 months before the termination of parental rights hearing, Father never visited either of his children. Indeed, he had not had any contact with them for more than two years, and there was no evidence that the children had ever lived with him.

Father's failure to visit the children provided the court with "insight into [his] character, motivation or ability to fulfill responsibilities." *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 221 (2018) (quoting *In re Adoption/Guardianship No. A91-71A,* 334 Md. 538, 563 (1994)). The evidence certainly showed, and the court took note of the fact, that the girls had a strong attachment to C.B. and had adjusted "extremely well" to their placement, home, and community. The court, however, also recognized that the children had never received material or emotional support from Father, that Father had not engaged in any services, that Father had not made himself available throughout the case, that Father failed to provide the documentation requested by the Department, and that he did not even attend the hearing on the guardianship petition.[4]

[4] On a number of the required factors, the court's findings were either neutral or did not weigh against Father. FL § 5-323(d)(3)(ii) required the court to consider whether the mother, at the time of admission at the hospital for delivery, or the child, at the time of birth, tested positive for a drug as evidenced by a positive toxicology test, and whether Mother refused recommended drug treatment; the court found that this factor was irrelevant, as neither Mother nor the children "tested positive [on] a toxicology test." FL § 5-323(d)(3)(iii) required the court to consider whether Father had subjected the children to chronic abuse, chronic or life-threatening neglect, sexual abuse, or torture; the court found no evidence that Father had engaged in any such conduct. FL § 5-323(d)(3)(iv) required the court to consider whether Father had been convicted of various crimes, including a crime of violence against a minor offspring of the parent; the court found no

(continued)

The court's findings were supported by ample evidence from which it could conclude that exceptional circumstances made the continuation of Father's parental relationship detrimental to the best interests of the children. The court did not err or abuse its discretion in determining that the termination of Father's parental rights was in the best interest of each child.

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

evidence that Father had been convicted of any of the enumerated crimes. Finally, FL § 5-323(d)(3)(v) required the court to consider whether Father had lost the rights to any of his other children; the court found no evidence that he had.