

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0278

September Term, 2015

L. G. *ET VIR.*

v.

S. J.

Meredith,
Kehoe,
Hotten,

JJ.

Opinion by Kehoe, J.

Filed: October 7, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Before us is an appeal from a judgment of the Circuit Court for Howard County that denied L. G. and N. G.’s complaint for custody of L. G.’s great niece, a minor child (the “Child”).¹ The appellee is the Child’s mother, S. J.² (The Child’s father is deceased.) The G.s raise several issues on appeal but the dispositive one in our view concerns the legal standard used by the trial court in rendering its decision.

Analysis

The G.s’ primary contention on appeal is that the trial court failed to afford adequate weight to the Child’s best interest when it denied their petition for permanent custody. For reasons that we will explain, we think it best to vacate the judgment and remand the case to the trial court.

A court may only award custody to a non-biological parent upon a finding either of “lack of fitness on the parents’ part or the existence of extraordinary circumstances . . . which are significantly detrimental to the child remaining in the custody of the biological parent or parents.” *B.G. v. M.R.*, 165 Md. App. 532, 546 (2005). In undertaking this analysis, the trial court first concluded that S. J. was not an unfit parent. There is evidence in the record that supports the court’s conclusion on this issue.

In deciding that there were no exceptional circumstances warranting an award of custody to the G.s, the trial court noted that they “appear to be superb caretakers for [the

¹ This opinion will be posted on the Internet. Out of consideration for the parties’ privacy interests, we will not refer to them by name.

²S. J. has not filed a brief in this appeal.

Child] and they clearly care and nurture her needs and aspirations in very positive ways.” Moreover, the court commented that: “[i]f it were up to the Court to decide which environment was the best for [the Child], this case would not be close and [the Child] would stay with the [G.s].” Ultimately, however, the trial court decided that it was unable to transfer custody “except when the evidence shows that the natural parent should not continue under the very strict standards established by the Court of Appeals[.]”

In reaching this conclusion, the trial court relied upon the Court’s analysis in *McDermott v. Dougherty*, 385 Md. 320 (2005). In *McDermott*, the Court of Appeals set out the proposition that, unless and until a court found exceptional circumstances or parental unfitness, an examination of the best interest of the child is inappropriate. Specifically, the Court stated: “it is only upon a determination by the equity court that the parent is unfit or that there are exceptional circumstances which make custody in the parent detrimental to the best interest of the child, that the court need inquire into the best interest of the child in order to make a proper custodial disposition.” 385 Md. at 372.³

In effect, *McDermott* instructed trial courts to compartmentalize consideration of the best interests of the child from the issues of parental fitness and exceptional circumstances. This particular aspect of the *McDermott* analysis was modified by the Court in *In re Adoption*

³Consistent with this passage from *McDermott*, the trial court commented during the hearing that: “I can’t get to best interest [of the Child] until I get over the exceptional circumstances.”

of *Ta’Niya C.*, 417 Md. 90 (2010). After discussing *McDermott*, *In re Adoption/Guardianship of Rashawn H. and Tyrese H.*, 402 Md. 477 (2007), and other decisions, the Court made it clear that “despite occasional rhetoric suggesting otherwise, the child’s best interest has always been the transcendent standard in adoption, third-party custody cases, and TPR proceedings.” 417 Md. at 112 (footnote omitted).

The *Ta’Niya C.* Court emphasized that consideration of the best interest of the child is particularly important in the context of an exceptional circumstances analysis:

Since one cannot make a determination of whether there are exceptional circumstances that would overcome the presumption of parental rights and make continuation of parental rights detrimental to the child’s best interest without looking into the child’s best interest, the ultimate focus of the juvenile court’s inquiry must be on the child’s best interest.

417 Md. at 116.

In the context of the case before us, *Ta’Niya C.* tells us that a consideration of the Child’s best interest is critical to deciding whether exceptional circumstances exist to award custody to a third-party. The trial court’s written opinion and its comment during the hearing suggest that the court believed that *McDermott* barred it from considering the Child’s best interest in deciding whether exceptional circumstances are present. But *Ta’Niya C.* now clearly permits—indeed requires—trial courts to consider a child’s best interest as part of the exceptional circumstances analysis. To put it another way, in considering exceptional circumstances, the trial court should focus not only upon the biological parent’s

circumstances—such as her stability or living situation—but also on the circumstances particular to the child, for example, her relationship with the third-party, the stability that the third-party’s home offers, the child’s educational aspirations, and the child’s desire to live with the third-party. *See also In re Jayden G.*, 433 Md. 50, 102 (2013) (“[T]he best interests of the child do not permit the juvenile court to ignore the reality of a child’s life. . . . Rather, the court is to assess the reality of the children’s circumstances and make findings accordingly.”).

Under the circumstances, we vacate the trial court’s judgment and remand this case to it for a consideration of its custody award in light of *Ta’Niya C.* and, specifically, to consider the Child’s best interest in deciding whether exceptional circumstances exist that outweigh Ms. J.’s custodial rights. The court may also consider matters that have arisen since entry of its judgment.

THE JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY IS VACATED AND THE CASE REMANDED TO THAT COURT FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLEE TO PAY COSTS.