UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0863

September Term, 2015

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IN RE: ADOPTION/GUARDIANSHIP OF
H.L.N.B. & H.C.M.B.

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Meredith,
Reed,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

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Opinion by Reed, J.

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Filed: March 4, 2016

This is an appeal from an order of the Circuit Court for Cecil County, sitting as a juvenile court, terminating the parental rights of Christopher B. ("Father") and Michelle B. ("Mother") over their children H.L.N.B. and H.C.M.B. (collectively, "the children"). On May 9, 2013, the Cecil County Department of Social Services ("the Department") removed the children from an uncle with whom they had been residing pursuant to a safety plan and six days later, placed them into a foster home where they still reside. Nearly a month later, the juvenile court found the children to be Children In Need of Assistance ("CINA") and committed them to the custody of the Department due to neglect, Mother's untreated substance abuse, and Father's general absence.

For nearly a year, the permanency plan remained unification with parents until the juvenile court changed the plan to adoption by a nonrelative on May 7, 2014. On July 28, 2014, the Department filed a termination of parental rights ("TPR") petition, and both parents objected. The matter was tried over three days, on February 11, 12, and 27, 2015, and followed up with memoranda of law from counsel.

On June 15, 2015, the juvenile court issued written findings of fact and entered decrees of guardianship, terminating both parents' rights. The juvenile court, based on the factors outlined in Md. Code (2012 Repl. Vol., 2015 Supp.), § 5-323 of the Family Law Article ("FL"), found, by clear and convincing evidence, that the parents were "unfit" to care for the children and that "exceptional circumstances" existed that made a continuation of their parental relationship detrimental to the best interests of the children, and that

terminating the parental rights were in the best interests of the children. Father noted an appeal,[1] and presents the following question for our consideration:

> Did the court err by finding that unfitness and exceptional circumstances warranted terminating the father's parental rights?

For the reasons outlined below, we answer in the negative, and accordingly, affirm the judgment of the juvenile court.

## FACTUAL AND PROCEDURAL BACKGROUND

In a two-month span in late 2004, Father and Mother met in Cecil County, became involved in a romantic relationship, and became pregnant with H.L.N.B. Shortly thereafter, Father joined the Army in April 2005, and was briefly stationed in Fort Sam Houston, Texas, after completing basic training in Missouri. During his time in Texas, Father requested leave and came back to Cecil County for a weekend to marry Mother, in order to ensure she had proper medical benefits to cover the pregnancy.

H.L.N.B. was born in November 2005, shortly before Father was sent to his first duty station in Fort Drum, New York. Father was present at her birth and home for a month while participating in hometown recruiting. Because Father was scheduled to be deployed shortly thereafter, Father did not procure housing for Mother and H.L.N.B., so they lived with either Mother's mother or Father's mother during that time.

Father was deployed to Afghanistan in late 2005/early 2006, where he "was assigned to security detail for the General and Sergeant Major and worked as an Army

[1] Mother also noted an appeal, but rather than file a brief she instead filed a line adopting Father's brief and noted her support for Father's reunification efforts.

combat medic." Early into his deployment, he learned that Mother was pregnant with H.C.M.B. He secured two weeks of mid-tour leave and narrowly missed H.C.M.B.'s birth by three hours in October 2006.

In mid-2007, Father returned from Afghanistan, finished his term of service, received an honorable discharge, reenlisted, and requested a transfer to Aberdeen Proving Ground in Maryland. Later that year he received his assignment there and obtained on-base housing for himself, Mother, and the children.

While Father was ultimately stationed in Aberdeen for two years, the family only resided under the same roof for the first few months, as Father and Mother's relationship rapidly deteriorated. Father's accusations of infidelity against Mother with someone in Father's unit led to such heated arguments that neighbors complained and the military police needed to come to the house and separate the two. Despite conflicting accounts of the severity of their arguments, the military police required Father to vacate and live off-base. In total, Father only lived with the children for approximately six to eight months, and has not lived with them since.

In 2008, Mother filed for a protective order against Father, and two days later, Father filed for custody of the children. Father did not contest the protective order request, so the order was granted and ran from July 2008 to July 2009. Additionally, Mother was awarded custody of the children and Father was ordered to pay child support and allowed every-other-weekend visits with the children.

On October 10, 2009, Father was stationed in Alaska. Father was unable to visit the children during his time at Fort Richardson, and had very little contact with the children at

all due to the fact that Mother had lost her house and had no consistent phone number. Eventually, Father began experiencing difficulties with his superiors and was given a general discharge in August 2010. He remains eligible for VA benefits, including the GI Bill and Army College Fund, but has not taken advantage of them.

After leaving the military, Father chose to move to Texas to live with his brother because "[h]is brother was fighting legal issues and needed someone to help him so his sister-in-law could work and go to school." Father lived there for the next four years, initially taking odd jobs and eventually taking a job in sales. Father continued to pay child support throughout his time there and saw the girls "twice a year, every year" during the summer and Christmas. But, according to Father, "his phone access [to the children] was hindered by the mother changing phone numbers frequently" and "[h]e was not able to send the girls letters or gifts because the mother no longer had a physical address." Accordingly, Father relied entirely on Mother to contact him in order to speak to the children, and he would often go months without speaking to them.

The few visits that did occur were set up through a mutual friend of Mother's on Facebook. None of his visits occurred in the children's house, and Father never went to the children's house to see their living arrangements. Father claimed that he "didn't have any reason to believe there was anything wrong with [the children's] circumstances" because, as Father stated: "[The children] never told me they were being beaten or abused or not fed, so I had no reason to believe they were in bad care." During this same time, however, the children were not in school due to a lack of immunizations, and Father's grandmother,

who lived down the street from Mother and was in regular contact with Father, had concerns about Mother being intoxicated when she saw her.

The last time Father saw the children before the Department became involved was Easter 2012. According to Father, after the "first month or two" of "consistent contact" with the children, "it dropped off completely" and "[h]e did not have any way to get a hold of them." At some point, Father's grandmother reported to Father that she had "disappeared" after she had gone to Mother's house and saw that it was "empty." Father's only apparent means to get in contact with Mother was through a mutual friend on Facebook, from whom he learned in May 2012 that Mother had moved out of the house but had no idea how to contact her. In Father's words, "[h]e was not initially concerned because they argued about money during the prior visit and he believed that [Mother] was still upset with him."

It was during this time that the Department became involved in the case, as they began investigating allegations of Mother's substance abuse and coinciding neglect and failure to supervise the children. On May 24, 2012, the Department entered into a safety plan with Mother, providing that "there shall be no drug use while caring for the children or in the presence of children," that Mother complete random drug screening, and Mother shall ensure the children were always supervised. Subsequently, all of the adults in the house, including Mother, tested positive for drugs. Accordingly, on July 5, 2012, Mother agreed to second safety plan that removed the children from the house and placed them with a maternal uncle ("Uncle"). The parties agreed to continue the placement at a Family Involvement Meeting ("FIM") later that month, and Uncle agreed to enroll the children in

school and preschool. The Department did not file a CINA petition, because at that point, Uncle planned to seek custody of the children.

According to Father, the first time he learned that the children were living with anyone other than Mother was in January 2013, when he noticed Uncle's name on his child support paperwork. Father called the child support office but did not receive any additional information, and, despite the fact that he had met Uncle and was familiar with him, Father made no efforts to contact him or the children. Father then contacted his grandmother, who informed him that she had "read something in the newspaper about the mother's house being raided," and his mother, who informed him that she had discovered "that there was a child protective services case."

The children remained with Uncle for a total of approximately ten months, until May of 2013, when Uncle reported that he could no longer care for the children. The Department accordingly placed the children in shelter care on May 15, 2013 in the foster home in which they still reside at the time of this appeal. On June 5, 2013, the juvenile court found each child to be a CINA and committed them to the custody of the Department due to neglect, Mother's untreated substance abuse, and Father's absence. Father claims that he never received notice of either of those events.

The first contact between Father and the Department occurred in September 2013. After informing the caseworker that he wanted the children to come live with him in Texas, the caseworker explained to him that he would need to go through the Interstate Compact on the Placement of Children ("ICPC") process in order for that to happen. She further explained to him that in order for that to happen, he would need to provide her with the

names, birth dates, and Social Security numbers for all adults in the house, in addition to the address of the house and number of bedrooms in the house, in order for her to start the process. According to Father, he "gave her a portion of the information that she requested but not all of it," despite several follow-up attempts by the Department, because he was waiting on the outcome of a review hearing to be held in December 2013 to decide whether or not he would pursue the ICPC or move back to Maryland.

During his visit for that hearing, with the primary permanency plan still being that of reunification, Father signed a Service Agreement, requiring that Father: (1) "maintain safe and appropriate housing in order to provide his children a stable living environment," (2) "maintain stable employment in order to provide for the basic needs of his children," (3) maintain contact with the Department and provide and update contact information as necessary," and (4) "follow all recommendations as ordered by the court." Also during his visit, Father indicated to the Department that he was going to pursue the ICPC, despite receiving legal advice that he should move back to Maryland.

On January 14, 2014, however, Father apparently changed his mind and indicated to the Department that he would be moving back to Maryland and to stop the ICPC process. Over three months later, with no action being taken, Father attended an FIM by phone on April 21, 2014, where Father indicated that he changed his mind again, and requested the ICPC process be reinitiated to bring the children to him in Texas.

On May 7, 2014, the juvenile court conducted a permanency plan hearing that Father attended with counsel. After testimony, the court changed the children's permanency plans to adoption by a nonrelative, finding that "it is clear that [Father] has made no real effort

to take responsibility for the children since they have been brought into care" and that the children "would be subjected to potential emotional, developmental and educational harm if moved from their current placement." Father did not appeal that decision.

In July 2014, Father moved back from Texas into his grandmother's one-bedroom apartment in Maryland. Very shortly thereafter, Father met with the Department and set up visitation. Although the permanency plan had changed to nonrelative adoption, Father signed a second service agreement, wherein he agreed to the same conditions as the first, with the additional requirements of: (1) completing a "parenting/psychological evaluation and follow all recommendations," and (2) completing "parenting classes and be able to demonstrate safe and appropriate parenting though engagement with his children."

In its May 14, 2015 opinion that ultimately terminated both parents' rights, the juvenile court made the following findings of fact regarding what took place once Father returned to Maryland:

> After arrival in Maryland, the father began visitation with the children, and signed a new service agreement on September 9, 2014. The primary task identified for the father was to "secure and maintain safe, stable and appropriate housing in order to provide his children a stable living environment." The father took up residence with his grandmother, in North East, Maryland. This is a one bedroom apartment not suitable for any return of the children to the father's care. Within a short time, the father advised the Department that he had a lease on a four bedroom home in Harford County that would be suitable. However, he refused to provide a copy of the lease to the Department, or to reveal the location of the home. This stalemate continued for four months, until shortly before the first scheduled date of the TPR hearing, on January 9, 2015. Father's counsel provided a copy of the lease approximately one week prior to the hearing.
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> The Department caseworkers responded by immediately driving to the home for an inspection. They met and were able to talk to the owner of the home, and to tour the premises. What they discovered was that there was no evidence of any occupation by the father. The owner continued to reside

in the home. He acknowledged that he had signed the lease with the father so as to help him out with his legal problems. However, the terms of the lease were not being enforced. The father had not paid the $2,000.00 security deposit specified in the lease, nor had he made any of the $1,500.00 monthly rental payments.

The owner testified at the trial that he was still willing to help the father, if needed, but that the owner had several personal family problems that would be impediments to any long term occupancy by the father and his children. In any case, the lease itself was only for six (6) months, and expired on March 1, 2015. In spite of this, the father appeared to testify that this property should still be considered as a housing option for him and the children. The court finds that this lease was never intended to be an enforceable contract, as is obvious by the complete lack of any payment whatsoever by the tenant, and the tenant's failure to occupy the property.

The second task on the father's service agreement date September 9, 2014, was for the father to ". . . maintain stable employment in order to provide for the basic needs of this children." The father secured a part-time job at the Sunglass Hut at the Christiana Mall in Delaware. Pay stubs were introduced into evidence showing that the father's gross pay was approximately $1,000.00 per month. This figure was also confirmed by the father's financial statement filed in January 2015, in an effort to seek a modification of his child support payments. In addition to any normal deductions, the father has significant child support arrearages to deal with. He has arrearages of over $3,000.00 for each of the respondent children, and over $10,000.00 for an older child with a different mother.

The father produced no evidence at trial as to his financial ability to care for himself or the children. He listed no expenses on his financial statement other than $297.00 per month for child support. He testified that his vehicle was owned by his girlfriend in Texas, and that he only paid $25.00 per month for insurance. His mother pays his cell phone bill. He did not attempt to itemize any other regular monthly expenses such as rent, utilities, food, car payments, gars, clothing, medical coverage, and the like. In other words, father made no attempt to demonstrate that he had given any thought whatsoever to the financial requirements that he would face should he assume the care of his children, or as to how he might satisfy those requirements.

The third task on the father's service agreement was to obtain a psychological evaluation. This was originally scheduled by the Department. However, the father missed the appointment, resulting in a no-show fee paid by the Department. After this, the Department refused to pay for the evaluation, and it was eventually done by a Dr. Kraft through the Public Defender's Office. Dr. Kraft testified at trial, and his report was admitted into evidence. Dr. Kraft essentially concluded that the father had no

> psychological impediments to reunification with his children. However, it is clear from the report that the father was less than truthful during this evaluation. For example, he told Dr. Kraft that he was residing in a four bedroom house in Harford County.
>
> In short, although the father expresses the desire to care for his children, the testimony and evidence shows that he has not established any demonstrable ability to do so, nor does he have any actual plan to achieve a real ability to care for the children in the foreseeable future.

These findings of fact were adduced at the TPR hearing conducted by the juvenile court on January 9, February 11, 12, and 27, 2015. Rather than entering a decision on the record, the juvenile court requested proposed statements of facts and conclusions of law from all parties.

On May 14, 2015, the juvenile court issued its written opinion. After examining each of the factors found in FL § 5-323(d), the court found, by clear and convincing evidence, that both Father and Mother were unfit and that exceptional circumstances existed that made continuation of the parental relationship detrimental to the children's best interests. In the court's view, "[t]he guiding principle of child welfare is that a child needs permanency," and that "there comes a point where the legal relationship between the natural parent and the child must be severed in order for the child to move forward." The court found that the children, "ages 9 and 8 respectively," "have now been in the same foster home for two years, and are safe and secure in this home." Specifically regarding Parents, the court concluded:

> The statute requires that a determination to terminate parental rights be by clear and convincing evidence. As noted above, mother failed to appear at the hearing, and she has provided no evidence to this court of her intentions or willingness to care for the [children], nor of any efforts that she has made towards reunification. It seems clear that the mother has not addressed her drug addiction, homelessness or financial instability, and is not able to care

> for the children. In regard to the father, he has had only sporadic contact with the children since the parents separated in the [s]ummer of 2008. The father appears to believe that he has the legal right to ignore all of this missed time, and to take charge of the children, without having to show any real ability to care for the children in an appropriate manner. The father lacks housing, and lacks the finances to care for himself and the children. The father could have worked on these issues during the CINA case. He chose instead to waste a year arguing for placement in Texas, while failing to provide the required information for a Home Study. Then, he chose to rest his case on a lie about a lease on a four bedroom house.
>
> The court finds that the father prevented any real consideration of himself as a resource for the children. He failed to exercise his parental responsibilities for years, and was completely unaware of the children's existence in a drug infested-household, [*sic*] with their mother, and other relatives. He was unaware of their placement with an uncle, which lasted ten months, and he was unaware of their entry into foster care for four months. In short, he was a parent in name only. He took no responsibility for actually monitoring the health and well being [*sic*] of the children.

Parents filed timely appeal.

Additional facts will be supplemented in the discussion as necessary.

## DISCUSSION

### A. Parties' Contentions

Father first argues that "the court erred by concluding that both unfitness and exceptional circumstances warranted terminating the father's rights." After examining the factors discussed in *McDermott v. Dougherty*, 385 Md. 320 (2005), regarding "the factors to consider when determining whether exceptional circumstances existed to warrant terminating a parent's rights in a third-party custody case," Father contends, "[t]he question of whether parental rights should be terminated because a child placed in foster care would be better off in their foster home is not an appropriate ground for an exceptional circumstances finding, neither is the length of time they have been in placement." Father

then goes on to argue that the court erred by concluding that he was unfit to parent his daughters, which in Father's view, "relied on three factors, the father's income, his housing, and the court's inappropriate belief that the father abandoned his children for a period of time before the father contacted the Department and involved himself in the CINA case." Father believes any absence from his children's lives was the fault of the Department, "given the continuing obligation of the Department and the court to look for him," and that "[t]he dereliction is an extreme one given that the father was paying child support via a court order in Maryland." Father argues the court abused its discretion because his "limited income and the fact that his grandmother's apartment was small constituted an insufficient basis for concluding that he was unfit to parent."

The children argue that "[t]he court's decision to grant TPR was based upon factual findings that were not clearly erroneous, was based upon the proper legal standard, and was not an abuse of discretion." After examining the relevant case law and standard of review in TPR cases, the children argue that "there was not really any material dispute as to the evidence on four main issues: One, the father's lack of contact with the child[ren] prior to their removal from the mother's custody; two, the father's inconsistent contact with the children after they were in care[;] three, the father's lack of employment and lack of suitable income to provide for himself and the children; and four, the father's lack of housing." The children argue that "there was no reasonably foreseeable likelihood that either parent was going to be able to care for the children" because "[t]he parents were relying upon the largess of others to provide for themselves."

The Department contends that the juvenile court properly exercised its discretion when it terminated Parents' rights. The Department argues that the factors discussed in *McDermott* are inapposite because they apply to third-party guardianship cases, not contested guardianship cases, and that the court properly focused on the statutory factors in FL § 5-323(d) in determining whether exceptional circumstances existed. The Department then avers that exceptional circumstances did in fact exist, and that the court properly "focused on [Father's] continued abdication of responsibility for his children," including his decision to move to Texas after leaving the military and his failure to provide the basic information to initiate the ICPC proceedings. In the Department's view, the court's finding of exceptional circumstances was not clearly erroneous, given Father's absence and lack of progress. The Department contends that Father should be faulted for the lack of communication between them, because "the reality is that, within four months of the CINA case beginning, [Father] and the caseworker were in communication . . . [and Father] inexplicably allowed ten months to go by without supplying the required [ICPC] information." The Department then goes on to argue that the juvenile court properly concluded that Father was unfit because, "based on the record, it was not clearly erroneous for the court to find that [father] did not have a plan for how to care for the children."

The Department concludes:

> In this case, [Parents'] failure to put themselves in a position to care for the children, the children's two years in foster care and desire for permanency, [Father's] continued abdication of parental responsibilities and absence from the children's lives after leaving the military, the children's positive adjustment to their foster home, their bond with the foster family who wish to adopt them, and [Father's] inability to provide a plan for the children's care in the foreseeable future, when considered in the totality of

> the circumstances, constituted parental unfitness and exceptional circumstances supporting the termination of their parental rights.

Accordingly, the Department believes the decision was "supported by clear and convincing evidence, was legally correct and reasonable, and constituted a sound exercise of discretion."

**B. Standard of Review**

In reviewing the decision of a juvenile court to terminate parental rights, we employ three different, but interrelated, standards of review. *See In re Adoption of Ta'Niya C.*, 417 Md. 90, 100 (2010).

> Namely, [w]hen the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8–131(c)] applies. [Second,] [i]f it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

*Id.* at 100-101 (alterations in original) (citations omitted).

According to Father, "[t]hus, this Court should apply the abuse of discretion standard in analyzing the sole issue raised on appeal." In applying that standard, "we must be mindful that '[q]uestions within the discretion of the trial court are much better decided by the trial judges than by appellate courts, and the decisions of such judges should only be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred.'" *In re Shirley B.*, 419 Md. 1, 19 (2011) (quoting *In re Yve S.*, 373 Md. 551, 583-84 (2003)). An abuse of discretion occurs when "the decision under consideration [is] . . . well removed from any center mark imagined by the reviewing court and beyond

the fringe of what that court deems minimally acceptable." *Shirley B.*, 419 Md. at 19 (quoting *Yve S.*, 373 Md. at 583-84) (internal quotation marks omitted).

**C. Analysis**

In Maryland, it is a well-established principle that "parents have a fundamental, Constitutionally-based right to raise their children free from undue and unwarranted interference on the part of the State, including its courts." *In re Rashawn H.*, 402 Md. 477, 495 (2007). However, as Judge Wilner explained in *Rashawn H.*:

> We have created that harmony [(between the best interest of the child and the parental right)] by recognizing a substantive presumption—a presumption of law and fact—that it is in the best interest of children to remain in the care and custody of their parents. The parental right is not absolute, however. The presumption that protects it may be rebutted upon a showing either that the parent is "unfit" or that "exceptional circumstances" exist which would make continued custody with the parent detrimental to the best interest of the child.

*Id.* In what the Court of Appeals has since described as the "harmonizing synthesis of law" that "should be the touchstone for courts in TPR cases," *Ta'Niya C.*, 417 Md. at 111, Judge Wilner, in *Rashawn H.*, summed up a juvenile court's role:

> The court's role in TPR cases 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. If the court does that—*articulates its conclusion as to the best interest of the child in that manner*—the parental rights we have recognized and the statutory basis for terminating those rights are in proper and harmonious balance.

*Rashawn H.*, 402 Md. at 501 (emphasis in original).

In response to *Rashawn H.*, the General Assembly amended the TPR statute to codify the parental presumption. *See In re Adoption of Jayden G.*, 433 Md. 50, 95 (2013). FL § 5-323(b) reads:

> (b) If, after consideration of factors as required in this section, a juvenile court finds by clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interests of the child such that terminating the rights of the parent is in a child's best interests, the juvenile court may grant guardianship of the child without consent otherwise required under this subtitle and over the child's objection.

However, even after determining that a parent is unfit or that exceptional circumstances exist that would overcome the parental presumption, "[o]nce the parental presumption is overcome, the juvenile court must still decide if terminating parental rights is in the child's best interests. The only way to do that is to consider all of the factors enumerated in FL § 5–323(d)." *Jayden G.*, 433 Md. at 96.

Recently, in *In re Adoption of K'Amora K.*, 218 Md. App. 287, 304 (2014), Judge Nazarian explained that "[o]n its face, the disjunctive wording in § 5–323(b) ('a parent is unfit . . . *or* . . . exceptional circumstances' exist) authorizes the court to terminate a parent's rights even *absent* a specific finding that a parent is unfit to care for her child." He further noted that "although the statute lists the factors the court must consider, it does not define 'exceptional circumstances,' and no published decision of this Court or the Court of Appeals has found exceptional circumstances in a TPR case independently of unfitness." *Id*. at 305. Because there is no settled definition of "exceptional circumstances" in this particular context, Judge Nazarian was left only to examine the differences between cases

in which the Court of Appeals *has* found "exceptional circumstances," and the cases in which the Court *has not*. For example, in *In re Alonza D.*,

> the Court of Appeals held that the trial court had erred by basing its decision almost solely on the father's absence from his children's lives over time, even though the father had a fulltime job and a home that could accommodate the children: "Passage of time, without explicit findings that the continued relationship with [the father] would prove detrimental to the best interests of the children, is not sufficient to constitute exceptional circumstances."

*K'Amora*, 218 Md. App. 287, 305-06 (2014) (quoting *In re Alonza D.*, 412 Md. 442, 463 (2010).

On the other hand—cases in which the Court *has* found exceptional circumstances—Judge Nazarian in *K'Amora* noted that the Court of Appeals "has also directed trial courts to consider a parent's 'behavior or character' in the exceptional circumstances analysis" and "suggested . . . that exceptional circumstances *can* exist where a parent's behavior might not rise to the level of unfitness, but nonetheless contributes to a broader picture that could justify termination," *K'Amora*, 218 Md. App. at 306 (citing *In re Adoption/Guardianship No. A91-79A*, 334 Md. 538, 563 (1994)). Similarly Judge Nazarian also described how the Court of Appeals "has emphasized the importance of stability and permanency for the child in the TPR analysis" and noted that "a parent's *actions* and *failures to act* both can bear on the presence of exceptional circumstances and the question of whether continuing the parent-child relationship serves the child's best interests." *K'Amora*, 218 Md. App. at 307 (citing *In re Jayden G.*, 433 Md. 50, 83-84 (2013)).

In *K'Amora* itself, the Circuit Court for Baltimore City terminated the mother's rights, based solely on exceptional circumstances, based on (1) the mother's refusal to allow physicians to administer HIV medicine to K'Amora after being exposed to it at birth, (2) nearly 2 years of unsuccessful efforts to involve the mother in her daughter's life, (3) the mother's "historical inability to provide a safe environment for her other children," and (4) K'Amora's "positive and healthy experience with her foster family." *K'Amora*, 218 Md. App. at 288-89. After noting that "many of the family pathologies common to TPR cases were absent here," such as no allegation of abuse, direct neglect, drug use, or unstable housing situation, Judge Nazarian explained:

> The circuit court expressed some doubt about whether the evidence supported a finding by clear and convincing evidence that Mother is an unfit parent. But as in *Jayden G.,* a *failure* to parent can do as much damage as bad parenting. 433 Md. at 103, 70 A.3d 276 (noting that " continuing to hold on to this concept of a parental relationship any longer—in the face of the Mother's persistent inability to take charge of her life—was contrary to Jayden's best interest"). And the court grounded its findings that exceptional circumstances were present and that K'Amora's best interests were served by terminating her parental relationship with Mother in a life-long series of failures and refusals on Mother's part[.]

*K'Amora*, 218 Md. App. at 309.

Although this case is admittedly factually distinct from *K'Amora*—in that Father has not done anything to directly put the Children in medically dangerous situation, nor has he had the same mental health issues as the mother in that case—we believe that the holding in *K'Amora* is no less appropriate as applied to this case. As a starting point, we note our slight disagreement with the juvenile court's finding that Father has been absent since the summer of 2008—Father's time in the military certainly should not be held

against him. That being said, we are equally comfortable with the proposition that he has been, for all intents and purposes, absent from the Children's lives since leaving the military in August 2010 and moving to Texas with his brother. The juvenile court found that Father *chose* to live in Texas, for four years, with only sporadic contact with the Children—all while the Children became the subject of CINA proceedings due to neglect and prevalent drug use by every member of the house. Though his intentions to help his brother and sister-in-law may have been noble, he was there by *choice*, not by necessity, and he has done nothing to explain why that was more important than the upbringing of his own children.

Moreover, after months of handwringing with the ICPC proceedings, he ultimately moved back to Maryland in July 2014, but did nothing to change the "persistent inability to take charge of [his] life," like the parents in *Jayden* and *K'Amora*. The juvenile court found, by clear and convincing evidence, that Father had "prevented any real consideration of himself as a resource for the children," because (1) his grandmother's one-bedroom apartment with another adult was inadequate housing, (2) his job, coupled with his ongoing substantial child support arrearages, demonstrated an inadequate income, (3) rather than find adequate housing, he instead concocted an illegitimate lease with a man that did not seriously plan on having Father actually move there, and (4) above all, Father could not even demonstrate to the court that he had any semblance of a plan to rectify any of these problems. All the while, the Children have been happy and thriving in the care of the foster mother. While Father has not necessarily done anything to prove that he is "unfit," at least

in the commonly-used sense of the word in TPR proceedings,[2] we believe "[t]he exceptional circumstances alternative is meant to cover situations, such as this, in which a child's transcendent best interests are not served by continuing a relationship with a parent who might not be clearly and convincingly unfit." *K'Amora*, 218 Md. App. at 311.

**Conclusion**

We hold that the ultimate conclusion of the juvenile court was founded upon sound legal principles and based upon factual findings that were not clearly erroneous, and that the juvenile court's decision did not commit a clear abuse of discretion in choosing to terminate Parents' rights. Father's inability to provide for the Children and general absence from their lives, coupled with (1) the children's positive adjustment to their foster home, (2) their wish for permanency, and (3) their bond with their foster parents who wish to adopt them lead us to conclude that it is not in the Children's best interests to maintain the parental relationship with Parents. Accordingly, we affirm the judgment of the juvenile court.

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

[2] *See, e.g.*, *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 718-19 (2011) (affirming the juvenile court's finding that the mother's substance abuse was the "'key issue' as to her parental unfitness").