

Circuit Court for Baltimore City
Case No. T17167007

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 113

September Term, 2018

IN RE: ADOPTION/GUARDIANSHIP OF
R.R.

Graeff,
Leahy,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: December 3, 2018

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Appellant, Mr. R, appeals the decision of the Circuit Court for Baltimore City terminating his parental rights with respect to his daughter, R.R. Mr. R brings one challenge: that the juvenile court erred in terminating his parental rights. For the reasons that follow, we affirm the juvenile court's order.

FACTUAL BACKGROUND

R.R. was born in December of 2015. When she was only a few hours old, her mother, Ms. W, abandoned her at the hospital. Although Ms. W returned six days later, she was homeless and unable to care for R.R.¹ At the time of R.R.'s birth, Mr. R was incarcerated in the Baltimore City Detention Center on gun and drug charges. The Baltimore City Department of Social Services investigated various maternal and paternal relatives, but there were no suitable family members available to care for R.R. She entered shelter care and was placed with a foster family in January of 2016.

The initial permanency plan for R.R. was rapid reunification with her mother. Although Ms. W visited R.R. during January and February of 2016, she declined to sign a service agreement for reunification and eventually stopped coming to see R.R. During his incarceration, Mr. R participated in family meetings about R.R. via conference call and was brought in for her court hearings, but no reunification efforts were made. Mr. R was released from prison in June of 2016. In July, he attended the disposition hearing where

¹ Ms. W submitted an unsigned document to the juvenile court giving conditional consent to the termination of her parental rights, contingent on R.R.'s adoption by her current foster family. Ms. W did not appear at or contest the TPR proceedings. The juvenile court found that Ms. W had "stopped just short of consenting to the termination of her parental rights" and found her to be unfit. Ms. W is not a party to this proceeding.

R.R. was found to be a Child in Need of Assistance and her placement in foster care was continued. Following the hearing, Mr. R called Renee Robinson, R.R.'s lead social worker, and requested that R.R. be placed in his care. Ms. Robinson scheduled a meeting to discuss the potential placement, but Mr. R did not show up. Mr. R finally attended his first visit with R.R. in January of 2017 when she was one year old.

In addition to R.R., Mr. R has two older children who live with him—a seven-year-old son and a six-year-old daughter. Mr. R largely relies on his mother for their care and has acknowledged that it would be hard to care for his children on his own. Mr. R was diagnosed with depression when he was 14 years old, but he has never received treatment as an adult. Mr. R has several sources of income. He receives monthly social security disability payments (“SSI”) for an undisclosed disability.² He also receives temporary cash assistance and food stamps for his two older children, and assistance from a city housing program to pay his rent. In addition, Mr. R earns “under-the-table” income working with an aunt and uncle making small sweatsuits they sell from a clothing store in Baltimore City.

Mr. R began participating in reunification efforts in 2017 and signed two service agreements with the Department. The agreements required Mr. R to participate in parenting classes, to be evaluated and treated for drug use, to find suitable housing, and, most notably to the matter before us, to maintain contact with R.R. by attending weekly visits.

² Mr. R testified during the TPR hearing that his mother and great grandmother applied for the disability benefits when he was a child. He told the juvenile court that he doesn't know what his disability is, but he completes paperwork every two years to continue receiving benefits.

The evidence at the TPR hearing established that Mr. R only partially complied with the service agreements. He did not immediately agree to attend parenting classes, although he eventually relented when he realized that he needed to demonstrate greater compliance to obtain custody of R.R. Mr. R completed parenting classes on August 30, 2017. Mr. R failed to complete a drug treatment program despite being referred twice. At the TPR hearing, Mr. R explained that he did not complete the drug evaluation and treatment because he had stopped using marijuana, and it was his view that he did not need to comply with that requirement.

Mr. R completed a resident readiness training program through the housing authority and succeeded in obtaining suitable housing, however, the lease he submitted to the juvenile court had expired in January 2018. At the TPR hearing Mr. R testified that he had not yet signed the new lease. He also acknowledged that although he and his two older children were the only occupants listed on the lease, he had been allowing his mother to live in the apartment. Ms. Robinson testified that during a home visit the week before the TPR proceedings, she observed not only Mr. R's mother, but also Ms. W and Ms. W's oldest daughter living in the apartment.

The most notable evidence at the TPR hearing was about Mr. R's sporadic visitation with R.R. and his difficulty in establishing a relationship with her. Under the service agreements, the Department scheduled weekly visitation with R.R., but Mr. R rarely attended. In 2017, Mr. R visited with R.R. once in January, once February, twice in June, once in July, once in August, twice in September, and once in October. Mr. R's last visit with R.R. prior to the February 2018 TPR proceeding was in October 2017.

During the visits that Mr. R did attend, R.R. was not receptive to spending time with him, and the results did not improve over time. She often cried, and when Mr. R attempted to touch or hold her, she would pull away or cling to Ms. Robinson. Ms. Robinson testified that Mr. R had difficulty engaging with and nurturing R.R., and did not understand how to relate to her. Ms. Robinson repeatedly stressed to Mr. R the importance of his regular attendance so that R.R. could form an attachment to him. Ms. Robinson described that Mr. R did not know what to do when R.R. cried and turned her head away from him, when she refused to make eye contact when he tried to hold her, or when she held her breath when Ms. Robinson left her alone with him. He did not understand that R.R. was more willing to engage with Ms. Robinson because of the consistency with which R.R. saw Ms. Robinson. Ms. Robinson tried to help Mr. R by explaining that he needed to physically get down on R.R.'s level and play with the kinds of things toddlers enjoy, but Mr. R sometimes became angry with Ms. Robinson when she offered advice. Ms. Robinson described that eventually R.R. began associating her with the visits to Mr. R, and R.R. would become upset when she saw Ms. Robinson and cry on the way to visitation.

Because R.R. remained unreceptive to Mr. R, Ms. Robinson ordered a bonding study. The study was completed in October 2017, when R.R. was 22 months old. Dr. Ruth Zajdel, who conducted the study, described that R.R. did not respond negatively when asked to enter the toy room with Mr. R, but she needed verbal encouragement from her foster mother. Once inside the toy room, R.R. played independently most of the time. R.R. tried to engage Mr. R by bringing toys to him and looking at him to get him involved. Dr. Zajdel observed “some disconnect” between Mr. R and R.R. Mr. R picked up toys a few

times but was not very interactive, and the two did not play together with the same toy until the very end of the session. Throughout the study, R.R. did not need behavioral redirection and the session ended without incident. Based on these observations, Dr. Zajdel saw no evidence of a secure bond between R.R. and Mr. R. Dr. Zajdel testified that it was possible for R.R. to still form a secure bond with Mr. R if he became consistently and reliably available to her, but she was concerned that he had not done so.

Conversely, the bonding study of R.R. and her foster family showed that she was very interactive with them and chose to play with them rather than independently. Dr. Zajdel testified that in her professional opinion R.R. had a secure attachment to her foster family and they were able to provide for R.R.'s needs in an appropriate manner.

STANDARD OF REVIEW

To review a juvenile court's decision to terminate parental rights, we apply three interrelated standards of review: we review the court's factual findings to determine whether they are clearly erroneous; we review the court's legal conclusions without deference; and we review the court's ultimate conclusion for a clear abuse of discretion. *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214 (2018); *In re Adoption of Ta'Niya C.*, 417 Md. 90, 100 (2010); *In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. 30, 45 (2017). An abuse of discretion would occur if the court's decision was "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *In re C.A. & D.A.*, 234 Md. App. at 45 (cleaned up). We assume the truth of all evidence tending to support the factual conclusions of the juvenile court, and make all reasonable inferences therefrom. *Id.* at 46. In addition,

we give great respect and deference to the juvenile court’s opportunity to see and hear the witnesses, and to evaluate their character and demeanor. *Id.*

DISCUSSION

Parents “have a fundamental right to raise their children and make decisions about their custody and care” without unwarranted interference from the State. *In re H.W.*, 460 Md. at 215-16; *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 495 (2007). When there is a custody dispute between a parent and a third party, there is a substantive legal and factual presumption “that it is in the best interest of children to remain in the care and custody of their parents.” *Rashawn H.*, 402 Md. at 495. But this parental right is not absolute. It must be balanced against the State’s fundamental responsibility to protect children. *In re H.W.*, 460 Md. at 216; *Rashawn H.*, 402 Md. at 497. A “child’s welfare is a consideration that is of transcendent importance,” and the best interest of a child will always take precedence over a parent’s liberty interest in raising that child. *Rashawn H.*, 402 Md. at 497 (quoting *In re Yve S.*, 373 Md. 551, 570 (2003)) (internal quotation and citation omitted).

The legal preference for keeping a child with a parent can be rebutted by a showing either that “the parent is unfit to continue the relationship, or exceptional circumstances make the continued relationship detrimental to the child’s best interests.” *In re H.W.*, 460 Md. at 217 (citing *Rashawn W.*, 402 Md. at 499). Such a showing is not, by itself, sufficient to terminate parental rights, but only serves to overcome the presumption that it is in the best interest of the child to maintain the parent-child relationship. *In re H.W.*, 460 Md. at

218-19. The ultimate decision of whether to terminate parental rights must rest on a determination of the best interests of the child. *Id.*

The General Assembly has carefully outlined the role of the courts in a TPR proceeding. *In re H.W.*, 460 Md. at 218. The primary consideration of the court must be “the health and safety of the child.” MD. CODE, FAM. LAW (“FL”) § 5-323(d). The other factors mandated by statute are, in relevant part: (1) the extent, nature, and timeliness of the services offered to the parent; (2) the extent to which the Department and parent have fulfilled their obligations under the social service agreements; (3) the parent’s efforts to adjust his circumstances, condition, or conduct to make it in the child’s best interest to be returned to his home; (4) the extent to which the parent has maintained regular contact with the child, the department, and the child’s caregiver; (5) the parent’s financial contributions to the child’s care and support; (6) whether the parent has a disability that would make them consistently unable to care for the child’s needs; (7) whether additional services would likely bring about a lasting parental adjustment so that the child could be returned to the parent within a reasonable time; (8) whether the parent has abused or neglected the child or another minor; (9) whether the parent has involuntarily lost parental rights to a sibling; (10) the child’s emotional ties with and feelings toward the parent and others who may affect the child’s best interests; (11) the child’s adjustment to community, home, placement, and school; and (12) the child’s feelings about severing the parent-child relationship and the likely impact this severance would have on the child’s well-being. FL § 5-323(d); *In re C.A. & D.A.*, 234 Md. App. at 49–50.

The statutory factors serve both as mandatory considerations for terminating parental rights and as criteria for determining whether there are exceptional circumstances sufficient to rebut the presumption in favor of maintaining the parental relationship. *In re H.W.*, 460 Md. at 218; *In re C.A. & D.A.*, 234 Md. App. at 50. If, after consideration of the proscribed factors, “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 interest of the child such that terminating the rights of the parent is in the child’s best interests, the juvenile court may grant guardianship of the child without consent.” FL § 5-323(b). In a TPR proceeding, the court must strike the appropriate balance between the parent’s interest and the best interest of the child:

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).

Viewing the juvenile court’s decision in light of the statutory scheme, we must conclude that the court did not err or abuse its discretion in terminating Mr. R’s parental

rights. In its findings, the juvenile court carefully considered the appropriate statutory factors and, in weighing the evidence, acknowledged that this is a difficult case, stating: “Mr. [R]’s case is extremely complicated. While Mr. [R] has failed to do all that he could or should have done, he appears genuinely devoted to the opportunity to raise his daughter [R.R]. One of the problems with Mr. [R]’s case is that his emotional devotion greatly exceeds his acts of devotion.”

The juvenile court’s findings acknowledged that Mr. R partially complied with his obligations under the service agreements. He attended a parenting class, moved into appropriate housing, and maintained some contact with R.R. through the Department. Despite those successes, the court was troubled that Mr. R’s circumstances were not entirely stable. The lease Mr. R submitted had expired, and the evidence showed that regardless of whether it had been renewed, Mr. R was in violation of the terms and could be subject to immediate eviction due to the number of additional people living in the apartment. The court expressed concern that Mr. R’s unreported income could jeopardize his rent subsidy, which would adversely impact his ability to provide a suitable living arrangement for R.R. Moreover, although Mr. R did not appear to be affected by a disability that made him unable to care for his children, without knowing what that undisclosed disability was, the court could not determine whether it might adversely impact R.R. in the future. In addition, the juvenile court noted that although Mr. R “reportedly suffers from depression” and admitted to experiencing symptoms such as sadness and daily headaches and sleeping a lot, he was not receiving treatment. The court further noted that despite having two drug-related convictions and admitting to marijuana use, Mr. R explicitly

declined to comply with his agreement to complete drug evaluation and treatment, and had failed to submit to urinalysis to resolve the question of whether drug treatment was in fact necessary.

While Mr. R challenges the speculative nature of the court’s concerns and argues that none of these issues make him presently unfit to care for R.R., these concerns are nonetheless relevant to Mr. R’s obligations under the service agreements, his efforts to adjust his circumstances and conduct to facilitate reunification with R.R., and his ability to consistently care for R.R. in the future. FL § 5-323(d)(2). Mr. R depended on his mother to provide care for his children, and he was relying on what the court considered to be an “untenable expectation” that once he had custody of R.R., he could persuade Ms. W to become the parent she never had been to any of her other children. The court thus had serious concerns about Mr. R’s plans for raising R.R. and his continuing ability to care for her. The stability of Mr. R’s housing, income, and mental health were therefore relevant considerations, and the court’s concerns were amply supported by evidence in the record.

The most notable obstacle to Mr. R assuming parental responsibility for R.R. is the complete lack of any parental relationship or bond. FL § 5-323(d)(4). Mr. R has never had custody of R.R. The court found there is no secure bond between R.R. and Mr. R, or between R.R. and any of her biological family. R.R. has never had an unsupervised visit or spent a night in the care of Mr. R. She has never seen or spoken with Mr. R’s older children. The Department scheduled visitation with R.R. every week for more than 18 months, but Mr. R only attended sporadically, fewer than 20 times. In comparison, R.R. has lived with her pre-adoptive foster family since January of 2016. It is the only home

R.R. has ever known, and there is a mutual attachment between R.R. and her foster parents and step-siblings.

Neither the passage of time alone nor a successful foster placement is sufficient to constitute an exceptional circumstance that rebuts the presumption in favor of maintaining the parental relationship. *In re Adoption/Guardianship of Alonzo D., Jr.*, 412 Md. 442, 463-64 (2010). Those circumstances must be accompanied by specific findings that the continued parental relationship would prove detrimental to the best interest of the child. *Id.* We disagree with Mr. R’s assertion that the juvenile court made the length of time that R.R. had been in shelter care the primary consideration in the decision to terminate his parental rights. Rather, the juvenile court’s focus was on whether during that time Mr. R had made any progress toward reunification, and the likelihood that additional services would bring about any lasting change that would allow R.R. to enter his care within a reasonable time. FL § 5-323(d)(1)(iii), (d)(2)(iv).

“[C]hildren have a right to reasonable stability in their lives.” *Rashawn H.*, 402 Md. at 501. Here, the court found that over the course of two years—R.R.’s entire life—Mr. R made no progress toward establishing a bond with her, and that there was no indication from the evidence that further efforts would have any different result. FL § 5-323(d)(2). Based on the evidence, the court was not required to continue the “legal relationship in the hope that [Mr. R] might make changes in his life to permit reunification [that were] unlikely based on [his] past behavior.” *In re H.W.*, 460 Md. at 233.

Our role is not to determine whether we might have reached a different conclusion, but to decide whether there was clear and convincing evidence to support the juvenile

court’s determination that it was the best interest of the child to terminate parental rights. *In re C.A. & D.A.*, 234 Md. App. at 46. The juvenile court concluded that it was not in R.R.’s best interests to “sever a secure bond in favor of a relationship that has no basis to form a bond.” Accordingly, the court found by clear and convincing evidence that Mr. R is “unfit to engage in or remain in the parental relationship with [R.R.]” and that “exceptional circumstances exist that would make continuation of the parental relationship detrimental to the best interest of [R.R.]” We cannot hold that this was an abuse of the juvenile court’s discretion.

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