Circuit Court for Prince George's County
Case Nos. TPR 16-005;
TPR 16-0006; TPR 16-0007

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 165

September Term, 2018

IN RE: P.T., D.T., AND E.T.

Berger,
Friedman,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: November 30, 2018

Appellant, E.T., Senior ("Father"), challenges a judgment of the Circuit Court for Prince George's County, sitting as a juvenile court, terminating his parental rights with respect to his children, E.T., P.T., and D.T. (collectively, the "Children"), and granting guardianship to the Prince George's County Department of Social Services (the "Department"). The Children's mother consented to the termination of her parental rights.

Father presents four issues for our review, which we have consolidated and rephrased slightly as follows:

> I. Whether the juvenile court erred by admitting testimony regarding the Children's out-of-court statements as evidence of their emotional ties with and feelings towards Father.
>
> II. Whether the juvenile court erred by admitting the Department's CINA court reports, contact notes, and CPS disposition reports.
>
> III. Whether the juvenile court erred by terminating Father's parental rights.

For the foregoing reasons, we shall affirm the judgment of the Circuit Court for Prince George's County.

FACTS AND PROCEEDINGS

Background

Father and L.P.T. ("Mother") are the parents of E.T., born November 2009, P.T., born October 2010, and D.T., born March 2013. The Department's first involvement with the family occurred in 2011, when the parents were found responsible for indicated child

neglect.[1] The basis for the indicated neglect was a loaded unsecured firearm kept in the apartment, in addition to marijuana plants found in the apartment. In May 2014, Mother physically abused the Children. Mother was subsequently hospitalized and diagnosed with schizophrenia. Father took the children to live with him in Washington D.C., at a home he shared with his girlfriend.

On June 18, 2014, Father was arrested after driving a vehicle the wrong way down a one-way street in Washington, D.C. Father was found to be intoxicated at the time. The Children, who were then five, four, and one year old, were passengers in the car. The Children were not secured by seatbelts or child restraints. When police stopped Father's vehicle, Father attempted to walk away without the Children. Police officers detected an odor of alcohol emanating from Father. Officers also observed marijuana in the car. The Children were placed in the care of the Department at that time. Father was subsequently indicated for neglect by the Department and convicted of second-degree cruelty to children in the District of Columbia.

The Children's Progress in Foster Care

Since their removal in 2014, the Children have remained in the custody of the Department. E.T. was placed in the therapeutic foster home of Mr. and Ms. G., where he has remained. D.T. and P.T. were placed in the foster home of Mr. and Ms. B., where they have remained.

[1] Pursuant to Maryland Code (1984, 2012 Repl. Vol.), § 5-701(m) of the Family Law Article ("FL"), an individual is found responsible for indicated child neglect where "there is credible evidence, which has not been satisfactorily refuted, that abuse, neglect, or sexual abuse did occur."

E.T. is autistic and has various other special needs, including a history of febrile seizures, global developmental delays, and a speech impediment. When E.T. entered foster care, he was nonverbal and not toilet trained. He cried often throughout the day, and engaged in self-injuring behavior, including banging his head on walls and pinching and hitting himself. E.T. also ran around uncontrollably, had temper tantrums, and was extremely angry. By May 2015, E.T. was fully toilet trained. While in the care of Mr. and Ms. G., E.T.'s speech improved and self-injurious behaviors decreased. E.T. attends a special education program**.** E.T.'s foster parents meet his needs and are nurturing, caring, supportive, loving, attentive, and parental toward E.T. E.T. is well adjusted to the home of his foster parents and has a strong emotional bond to his foster parents.

P.T. and D.T. both adjusted well to their placement with Mr. and Ms. B. P.T. and D.T. both call Mr. and Ms. B. "Mommy" and "Daddy." Both children are affectionate with their foster parents and go to them for emotional comfort and support. Both children tell Mr. and Ms. B. that they love them, and both children have expressed that they want to remain with their foster parents.

When the Children first came into foster care, Father cooperated with the Department and was progressing toward reunification. The Department assisted Father with obtaining housing and facilitated supervised visits for Father with the Children. Both E.T. and P.T. initially expressed their desire to visit with Father and looked forward to visits with him. Social worker Barbara Cooper-Geiger, the children's primary social worker, supervised over twenty of the Children's visits with Father and found Father to be attentive and appropriate with the Children during supervised visits.

E.T., then age four-and-one-half, would say, "[G]o see [D]addy Friday" several days in advance of a visit. E.T. would continue to remind his foster mother about visiting with Father and his siblings. E.T.'s feelings about visiting with Father changed dramatically after he began unsupervised visits in May 2015. While in the car with Ms. G. on the way to his third unsupervised visit with Father, E.T. kicked the back of his foster mother's seat while saying, "no, no see [D]addy." E.T. stopped praying for Father at bedtime, but would still ask when he would see his siblings. E.T. seemed angry and had temper tantrums and displayed regressive behavior at daycare.

When E.T. returned to his foster home after his third supervised visit, E.T. appeared scared. E.T. experienced a significant regression in his toilet training. Although he had been fully toilet trained before the visit, afterwards he began having accidents at school and daycare. E.T. also began to attempt to play with his feces and urine, a behavior that he had not exhibited previously. He also started touching his private parts in public. E.T. exhibited a decrease in his spoken language and an increase in tantrums and self-injurious behavior.

The Department stopped E.T.'s visits with Father in June 2015 and opened a Child Protective Services ("CPS") investigation. E.T. eventually resumed supervised visits with Father, but the visits ceased after November 6, 2015. After the visits ceased, E.T.'s behavior improved significantly.

P.T. was three-and-one-half years old when she entered foster care in June 2014. She initially looked forward to visits with Father, but she began to resist visits with Father during the summer of 2015. P.T. was unable to sleep the night before a visit and would

wet the bed during nights leading up to the visits. P.T. would run away and hide when a family support worker arrived to pick her up for a visit and physically resist the worker's attempts to transport her. After visits with Father, P.T. would exhibit very uncharacteristically aggressive behaviors. In October and November 2015, P.T. told a magistrate and her therapist, Aziz Heard, that she no longer wanted to visit with Father.

D.T. had his first unsupervised visit with Father on November 13-16, 2015. Up to that point, D.T. was a happy, loving, and playful child. His demeanor and behavior changed dramatically after this visit. D.T. had been toilet trained but began to have accidents following the visit. D.T. stopped sleeping through the night and would go around the house at night to check the doors and turn on lights. D.T. told his foster parents that a "yucky monster" was trying to get him. At one point, D.T. pointed to the family dog's penis and said, "that's where the white stuff comes out" or something similar. He had made no similar comments in the past.

D.T. also began to have difficulty at daycare. D.T. began fighting with other children and calling them names. D.T. also began trying to kiss other children. The Department enrolled D.T. in play therapy with Dr. Heard and opened a second CPS investigation. The CPS investigation resulted in an unsubstantiated finding.[2] None of the Children have visited with Father since November 2015 pursuant to the Department's policy of not forcing children to visit with parents when the children refuse.

[2] "'Unsubstantiated' means a finding that there is an insufficient amount of evidence to support a finding of indicated or ruled out." FL § 5-701(aa).

Father's Reaction to the Children's Changes in Behavior

On June 4, 2015, Ms. Cooper-Geiger met with Father to discuss the concerning changes in E.T.'s behavior. Ms. Cooper-Geiger told Father that E.T. had been urinating and defecating on himself and touching his genitals in public. Ms. Cooper-Geiger asked Father if anything had happened during E.T.'s visit with Father that may have caused the changes in behavior. Father immediately became very defensive. Father asked Ms. Cooper-Geiger "what proof did [she] have" and "[w]hat pictures did [she] have"? Father banged his fists on the desk and yelled, and, as a result, Father was escorted out of the room by security. The meeting resumed after Father had calmed down. At this point, Ms. Cooper-Geiger's supervisor, Brandi Hill, joined the meeting.

During the second portion of the meeting, Father offered various potential causes of E.T.'s change in behavior. Father mentioned that he had seen E.T. in the back seat of a car with his foster parents and another man. Father told Ms. Cooper-Geiger that he thought the other man was gay and was looking at E.T. in a strange manner. Ms. Cooper-Geiger asked Father what that had to do with E.T.'s changes in behavior, and Father lowered his head into his hands. After raising his head, Father's "voice was different and he was speaking as if he was a child." Father said, "Sometimes at night someone touches my foot. I cannot see that person but I know they are there. Maybe it is that person that is doing something to [E.T.]." Father asked Ms. Cooper-Geiger if she could "go to the housing department and find out if anyone had died in [his] apartment prior to [his] moving in," because "[m]aybe it is that ghost or spirit who is doing something to E.[T.]." Later, Father

claimed that he was being sarcastic when he made this statement.[3] Ms. Cooper-Geiger and Ms. Hill each testified that Father was very serious during this meeting and that there was nothing about his demeanor that suggested he was joking. Due to concerns about Father's aggressiveness and possible delusional behavior, Ms. Cooper-Geiger referred Father for a psychological assessment and individual therapy. Father refused to participate in the assessment or therapy.

In July of 2015, Father confronted P.T. about her desire not to see him. Father video-recorded a conversation he had with P.T. in which Father asked P.T. why she had told people she did not want to see him. P.T. denied making such a statement. Father pressed P.T. to answer truthfully, and P.T. responded that she was angry with him for not apologizing to Mother. Father told P.T. that she needed to stop telling people that she did not want to visit with him because it could result in them not seeing each other anymore. Beauford McKinney, a family support worker for the Department who was supervising this visit, viewed this exchange as Father "coaching" or putting pressure on P.T.

The Termination of Parental Rights Trial

On May 16, 2016, the Department filed a guardianship petitions for each child. A termination of parental rights ("TPR") trial was held over ten days in 2017 and 2018.[4] At

[3] In addition, Father insisted that Ms. Hill was not present for this meeting. Father continued to maintain this position even after the Children's attorney read him portions of the transcript of Father's prior testimony from a 2016 permanency planning review hearing at which Father discussed Ms. Hill's presence at this meeting.

[4] The trial was held on February 27 and 28, 2017, March 1, 2, and 3, 2017, August 1, 2017, November 27 and 28, 2017, and January 12, 2018.

the trial, the court heard testimony from various expert witnesses, including multiple Department social workers, the Children's Court Appointed Special Advocate ("CASA") Daneen Banks, therapist Aziz Heard, and pediatrician Dr. Allison Jackson.

Dr. Jackson is the Chief of the Child and Adolescent Protection Center at Children's National Health System in Washington, D.C. She is also an attending child abuse pediatrician. Dr. Jackson testified as an expert in the detection, diagnosis, and treatment of sexual abuse.

E.T. saw Dr. Jackson for an evaluation in July 2015, after he experience behavior changes following unsupervised visits with Father. Dr. Jackson found E.T. to be minimally communicative and unable to answer her questions. She found E.T.'s behaviors concerning for sexual abuse. Dr. Jackson observed that the start and stop of E.T.'s problematic behaviors correlated when his unsupervised visits with Father started and ended. Dr. Jackson explained that sexual abuse does not necessarily result in the presence of physical injury. She further explained that the "odds are that children will have a normal exam even when they have been sexually abused."

Dr. Jackson also met with D.T. after receiving a referral from D.T.'s primary care physician in November 2015. Dr. Jackson's history of D.T. noted that D.T. had difficulty sleeping and appetite changes, threw food, had accidents despite being toilet trained previously, and exhibited sexualized behavior toward another child. Dr. Jackson noted D.T.'s comments about a "yucky monster" coming to get him, as well as D.T.'s comment about the family dog's penis. D.T.'s physical examination was normal, but Dr. Jackson noted that a "normal exam does not exclude the possibility of sexual victimization."

Dr. Jackson observed that D.T. was quite communicative at the age of two-and-one-half years, and, therefore, Dr. Jackson spoke with D.T. alone. Dr. Jackson asked D.T. if anyone had hurt him, and D.T. responded that he had been hurt when someone pushed him on the bed. Dr. Jackson asked D.T. who had pushed him, but D.T. responded that he did not know. Dr. Jackson asked D.T. what happened. D.T. responded that "the snake came out, the snake fell up and got sick." Dr. Jackson asked D.T. if the snake had hurt him. D.T. nodded and pointed to his thigh. D.T. spontaneously stated that the "snake had a big mouth." Dr. Jackson found D.T.'s statements "very worrisome" and "concerning in particular for sexual abuse."

After meeting with D.T., Dr. Jackson revisited her conclusions regarding E.T. Dr. Jackson observed that both boys had similar traumatic exposures on separate occasions and considered E.T.'s developmental limitations in making a disclosure. Dr. Jackson concluded, to a reasonable degree of medical certainty, that E.T.'s behaviors were also concerning for sexual abuse.

The juvenile court also heard testimony from P.T. and D.T.'s therapist, licensed certified professional counselor Aziz Heard. Mr. Heard testified as an expert in counseling, child mental health, child behavioral health, and child development. Mr. Heard testified that it was in both P.T.'s and D.T.'s best interests to remain in their foster home. Mr. Heard testified that P.T. exhibited abnormal "parentalized" behaviors and took on the responsibility of maintaining the family's well-being. Mr. Heard concluded that P.T. had an adjustment disorder with anxiety correlating to having had a traumatic experience. Mr. Heard explained that visiting with Father triggered P.T.'s aggressive behavior toward

authority figures and peers and that thoughts of visiting with Father triggered P.T.'s anxiety and fear, which caused a rise in her traumatic stress level. Mr. Heard testified that, in his opinion, ending the parental relationship would serve P.T.'s best interests and improve her well-being.

Mr. Heard testified that D.T. was initially diagnosed with an acute stress disorder and was later diagnosed with post-traumatic stress disorder. Mr. Heard testified that, by the time of the TPR trial, D.T. had begun to develop coping techniques for his ongoing anxiety. Mr. Heard explained that visits with Father trigger a response of anxiety for D.T. Mr. Heard testified that D.T. wished to remain with his foster parents, and, in Mr. Heard's opinion, this was therapeutically indicated.

Social worker Brandi Hill testified as an expert in child welfare, adoption, and permanency. Ms. Hill testified that, in her expert opinion, it was in the best interests of the Children for Father's parental rights to be terminated and for the Children to be adopted by their current foster parents. Ms. Hill testified that, in her professional opinion, additional services would be unlikely to bring about a lasting parental adjustment such that the Children could be returned to Father's care in an ascertainable amount of time. Ms. Hill emphasized that none of the Children wanted to visit with Father. Ms. Hill specifically testified that terminating Father's parental rights would have a positive impact on E.T.'s and D.T.'s well-being. With respect to the effect of the termination of parental rights on P.T.'s well-being, Ms. Hill testified that it was in P.T.'s best interest to be adopted, and that termination of Father's parental rights would reduce P.T.'s anxiety. Ms. Cooper-

Geiger testified consistently with Ms. Hill that the termination of Father's parental rights and subsequent adoption by their foster parents would serve the Children's best interests.

The Juvenile Court's Conclusions

The juvenile court found, by clear and convincing evidence, that the termination of Father's parental rights was in the best interests of each child. The court found that Father's neglect was the cause of the Children's initial removal by the Department and observed that the Children had been in out-of-home care for forty-three months. The juvenile court further observed that all three Children are strongly bonded to their foster parents.

The juvenile court explained that it "cannot determine what precisely happened" during the Children's unsupervised visits with Father in 2015. Nonetheless, the court found that "something bad and traumatic happened to the [C]hildren during their visits with [Father] in 2015 that caused trauma and traumatic reactions in the [C]hildren." The juvenile court found that the traumatic experience and the Children's traumatic reactions constituted "an exceptional circumstance that supports the [c]ourt's conclusion that it is in the best interest of the [C]hildren to have the parental rights of [Father] terminated." In addition, the juvenile court addressed each of the statutory factors set forth in Maryland Code (1984, 2012 Repl. Vol.), § 5-323 of the Family Law Article ("FL") when determining that the termination of Father's parental rights and adoption of the Children by their foster parents was in the best interest of the Children. This appeal followed.

DISCUSSION

I.

The first two issues raised by Father on appeal are based upon the juvenile court's evidentiary determinations. We ordinary review rulings on the admissibility of evidence applying the abuse of discretion standard of review. *Gordon v. State*, 431 Md. 527, 533 (2013). When reviewing a trial court's ruling regarding the admission of out-of-court statements, or "hearsay," we use a two-pronged approach. The determination of whether evidence is hearsay is an issue of law that we review *de novo*. *Id.* "[A] circuit court has no discretion to admit hearsay in the absence of a provision providing for its admissibility." *Bernadyn v. State*, 390 Md. 1, 8 (2005). The determination of whether hearsay evidence is admissible under an exception to the hearsay rule may involve both legal and factual findings. *Id.* at 536. When considering the application of a hearsay exception, we review a trial court's legal conclusions *de novo*, but we review its factual conclusions only for clear error. *Id.* at 538 ("[T]he trial court's ultimate determination of whether particular evidence is hearsay or whether it is admissible under a hearsay exception is owed no deference on appeal, but the factual findings underpinning this legal conclusion necessitate a more deferential standard of review.").

Father raises multiple hearsay arguments in this appeal. Father asserts that the circuit court improperly allowed witnesses to testify regarding the Children's out-of-court statements about their emotional ties with and feelings towards Father. Father further asserts that the juvenile court erred by admitting the Department's CINA court reports,

contact notes, and CPS disposition reports. As we shall explain, we are not persuaded by Father's allegations of error.

A. Testimony of Various Witnesses Regarding the Children's Out-Of-Court Statements

Specifically, Father takes issue with the testimony of various Department employees, the foster parents, Court Appointed Special Advocate Ms. Banks, and therapist Mr. Heard. Father specifically challenges the following testimony:

- Social worker Barbara Cooper-Geiger testified that P.T. stated that she did not want to visit with Father; that D.T.'s foster parent reported that D.T. pointed to the family dog's penis and said, "[s]queeze it until the pus comes out"; that P.T. wanted to live with her "white mother and father," referring to her foster parents; and that P.T. told Ms. Cooper-Geiger that her biological family hurts her.

- Social worker Beauford McKinney testified that P.T. told him that she wanted to live with her foster parents.

- Social worker Tawa Mustapha testified that P.T. asked Ms. Mustapha whether she was going to take her away and P.T. was "afraid" and "wants to remain with" her foster parents.

- D.T. and E.T.'s foster mother, Ms. B., testified that D.T. was afraid of a "yucky monster" that would come into his room and that D.T. pointed to the family dog's penis and said, "that's where the white yucky stuff comes out." Ms. B. testified that D.T. told her on January 16, 2017 that the "yucky monster" was Father. Ms. B. also testified that P.T. said that she was scared of Father and Father hurts her.

- D.T. and E.T.'s foster father, Mr. B., testified that D.T. pointed to the family dog's penis and said, "that's the dog's pee-pee and that's where stuff, white stuff comes out."

- CASA Daneen Banks testified that the Children desired to remain in their foster homes.

- Therapist Aziz Heard testified about D.T.'s comments about the "yucky monster," that D.T. did not want to see

> his biological parents and considered them "creepy," and that P.T. did not want to live with or have any contact with Father.

Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). Hearsay is not admissible "[e]xcept as otherwise provided by [the Maryland] rules or permitted by applicable constitutional provisions or statutes." Md. Rule 5-802. "If the declaration is not a statement, or if it is not offered for the truth of the matter asserted, it is not hearsay and it will not be excluded under the hearsay rule." *Stoddard v. State*, 389 Md. 681, 689 (2005). One exception to the rule against hearsay is the exception for statements of a declarant's then existing state of mind. Md. Rule 5-803(b)(3). The Rule provides:

> A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), offered to prove the declarant's then existing condition or the declarant's future action, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

All of the statements Father points to as examples of inappropriately admitted hearsay are non-hearsay or statements admitted as evidence of the Children's state of mind. The Children's various statements to their therapist, their foster parents, and the Department's social workers about their fears, preferences, and desires are admissible pursuant to Md. Rule 5-803(b)(3) because they are expressions of the Children's emotions and feelings about Father. We have explained:

> When the declarant's state of mind is relevant, . . . the declarant's assertion as to his or her state of mind is admissible

> to prove that the declarant had that particular state of mind (emotion, feeling, etc.) and therefore also had it at the time relevant to the case . . . . Direct assertions by the declarant as to the declarant's state of mind are admissible under this hearsay exception.

Edery v. Edery, 193 Md. App. 215, 234 (2010) (quoting 6a Lynn McLain, Maryland Evidence § 803(3):1 at 198-99 (2001) (footnotes omitted)) (omission in *Eldery*).

Father asserts that the Children's out-of-court statements about their then existing state of mind are not admissible pursuant to Md. Rule 5-803(b)(3) because they were not offered as a declaration of the Children's past, present, or future intent to perform a certain action, but rather, were offered to demonstrate that something had occurred in the past. First, we strongly disagree with Father's characterization of the reason these statements were offered. They were not offered to prove a particular past occurrence. Rather, the statements were offered to demonstrate the Children's feelings about Father, their desire to remain with their foster parents -- matters that are critically important in a termination of parental rights case.

Furthermore, Father seems to conflate the two alternative bases for the admission of a statement of a declarant's then existing state of mind, emotion, sensation, or physical condition by arguing that the Children's declarations of their state of mind was admissible only to the extent that they demonstrated intent to perform an action. A declaration of then existing state of mind may be offered to prove the declarant's then existing condition OR the declarant's future action. Here, the statements were introduced only to prove the Children's then existing condition and not any future action. Accordingly, Father's reliance on *Conrad v. Gamble*, 183 Md. App. 539, 566 (2008), is misplaced. *Conrad*

involves the application of "forward looking state of mind" evidence and is inapplicable to the present case. In the present case, the statements were introduced to prove the Children's then existing condition and not any future action.

In this termination of parental rights case, the juvenile court was tasked with determining whether exceptional circumstances existed and whether the termination of Father's parental rights served the Children's best interests. The state of mind of the Children, therefore, was critically relevant to the court's determination of the critical issues. Accordingly, the juvenile court did not err by permitting testimony about the Children's out-of-court statements regarding their desire to remain in their foster homes, their desire not to visit with Father, and their fear of Father.

The juvenile court also did not err by admitting testimony about D.T.'s comments about the family dog and the "yucky monster." Ms. Cooper-Geiger and Mr. and Ms. B. testified regarding D.T.'s comments about the family dog's penis, but these comments did not constitute hearsay because they were not offered for the truth of the matter asserted. D.T.'s statement about "pus" or "yucky white stuff" coming out of the dog's penis were not offered to prove anything about the dog's genitalia, but rather to prove that D.T. made an unusual comment that potentially demonstrated sexual knowledge inappropriate for D.T.'s age. Because this statement was non-hearsay, the juvenile court properly permitted the witnesses to testify to it.

D.T.'s out-of-court statements about the "yucky monster" are similarly non-hearsay and/or admissible as evidence of D.T.'s then existing state of mind. This evidence was not introduced to prove that D.T. was afraid of a literal "yucky monster" or that Father was, in

fact, a "yucky monster." The statement identifying Father as the "yucky monster" was not offered for the truth of the matter asserted. Accordingly, the various "yucky monster" statements were non-hearsay. Alternatively, D.T.'s fear of a "yucky monster" and identification of Father as the "yucky monster" were offered to show D.T.'s fear of Father and feelings about Father and were admissible pursuant ot the state of mind exception to the rule against hearsay. *See Edery*, *supra*, 193 Md. App. at 234 (quoting McLain, *supra*, *Maryland Evidence* § 803(3):1 198-99 (2001)) ("Statements that provide circumstantial evidence of the declarant's state of mind are not excluded by the hearsay rule . . . because they are nonhearsay, as they are not offered to prove the truth of the matter asserted."). Accordingly the juvenile court did not err by admitting the challenged evidence.[5]

[5] Father asserts that the juvenile court erred by failing to comply with Md. Code (2001, 2008 Repl. Vol.), § 11-303 of the Criminal Procedure Article ("CP"). CP § 11-303 is known as the "tender years exception" and permits, under certain circumstances, the admission of out-of-court statements of children of tender years to prove the truth of the matter asserted when the statement is not admissible under any other hearsay exception. As we have explained, the Children's out-of-court statements in this case were nonhearsay or admitted pursuant to the state of mind exception to the hearsay rule. The tender years exception, therefore, is inapplicable.

We further observe that there are several examples in the record of cumulative evidence of the Children's fears of Father and the Children's desire to remain with their foster parents to which Father did not object at trial. For example, Father admitted that he was aware that P.T. was "telling people that she didn't want to come home." Ms. B. testified, without objection, that P.T. fought visiting with Father, explaining that P.T. "would bite, she would run, she would hide, she would kick. She refused to go." Social worker Ms. Mustapha testified, without objection, that P.T. continues to refuse to visit with Father, and Mr. Heard testified, without objection, that D.T. continues to refuse to visit with Father.

B. The Admission of the Department's Reports and Notes

Father further asserts that the juvenile court erred by admitting the Department's CINA court reports, contact notes, and CPS disposition reports. Father argues that the documents were "position papers" representing the Department's position in the Children's CINA cases. For this reason, Father maintains that the hearsay exception for public records should not apply because the Department's reports and notes were not neutral documents such as a birth certificate. Father further argues that the reports contain hearsay-within-hearsay.

We recently rejected a similar argument in the case of *In Re: H.R., E.R. & J.R.*, ___ Md. App. ___, No. 1742, Sept. Term 2017 (filed Aug. 29, 2018). In *H.R.*, we held that CINA court reports were admissible under the public records exception to the rule against hearsay. We explained that "[u]nder pertinent provisions of Rule 5-803(b)(8)(A), 'a memorandum, report, record, statement, or data compilation made by a public agency setting forth . . . matters observed pursuant to a duty imposed by law, as to which matters there was a duty to report" is not excluded from evidence as hearsay." *In Re: H.R.*, slip op. at 32. We further quoted from Md. Rule 5-803(b)(8)(B) when explaining that "[a] record offered pursuant to paragraph (A) may be excluded [by the court] if the source of information or the method or circumstance of the preparation of the record indicate that the record or the information in the record lacks trustworthiness." *Id.* at 33 (quoting Md. Rule 5-803(b)(8)(B)).

In *In Re: H.R.*, the father argued that "the juvenile court erred by admitting the Court Reports under the public records exception to the rule against hearsay because they were

'prepared in anticipation of litigation' with 'cherry pick[ed] facts from a much larger record for an adversarial proceeding.'" *Id.* at 34. We rejected this argument, explaining that the reports

> document the activities of the Department in furtherance of the children's permanency plans to meet the children's needs. They were prepared by the Department pursuant to a duty imposed by law. *See* Md. Code (1973, 2013 Repl. Vol.), § 3-826(a)(1) of the Courts & Judicial Proceedings Article (requiring the Department to "provide all parties with a written report at least 10 days before any scheduled disposition, permanency planning, or review hearing . . . "); COMAR 07.02.11.20 (requiring the Department to "[p]repare a written report setting forth the local department's recommendations; and . . . [p]rovide the report to the court, the child's attorney, and the child's parents or legal guardian" at least ten days before a permanency planning hearing). Thus, the Court Reports were presumptively admissible under Rule 5-803(b)(8)(A) unless Father could show that they were unreliable.

Id. at 34-35.

We further held that the father had not satisfied his burden to show that the reports lacked trustworthiness, explaining that the reports "largely comprise factual recitations about routine matters, such as the children's academic progress, their medical appointments, the dates and times of contacts between the Department and the parents, and referrals made for the parents and the children." *Id.* at 35. The same reasoning applies to the challenged documents in this case. Father's broad characterization of the Department's reports and notes as "position papers" is insufficient to demonstrate unreliability.

Although *In Re: H.R.* applied specifically to CINA reports, the same reasoning applies to the Department's contact notes and CPS disposition reports. Maryland

regulations require the Department to maintain a case file for each child, including a record of "each agency contact, or attempted contact, with the child, parents, foster parents, and any other individual with whom the agency has contact regarding or on behalf of the child," as well as copies of "any correspondence or reports written or received in regard to the child." COMAR 07.02.11.19. The Department's CPS disposition reports were also prepared pursuant to a legal duty. *See* FL § 5-706 (requiring local departments to complete a thorough investigation of reports of suspected abuse or neglect); COMAR 07.02.07.13B (requiring that the local department prepare reports "[n]o later than 30 days after completing [an] investigation").

Furthermore, with respect to Father's argument that the documents contained second-level hearsay, the juvenile court explained that the statements recounted within the reports from sources such as daycare providers and school staff were "not necessarily offered for the truth of the matter asserted, but to support why the [social workers] did what [they] did." In addition, to the extent that the Department's reports and notes may have contained out-of-court statements not admissible pursuant to any hearsay exception and considered by the juvenile court for the truth of the matter asserted, any error in admitting them was harmless. We reached the same conclusion in *In Re: H.R.*, explaining:

> Finally, to the extent that any portions of the Court Reports containing the social workers' conclusions and opinions may not have been admissible under the public records exception, any error in admitting them was harmless. The opinions offered in the Court Reports about the children's attachment to their caregivers and to Father, Father's inability to parent the children, and Father's mental health were cumulative of the opinion testimony given by [witnesses] at the TPR hearing, which was subject to cross-examination.

Slip op. at 35-36. In the present case, the opinions and statements in the Department's CINA court reports, contact notes, and CPS disposition reports were similarly cumulative to the testimony given by the medical expert, therapist, social workers, and foster parents during the TPR trial. We, therefore, reject Father's assertion that the admission of the Department's CINA court reports, contact notes, and CPS disposition reports into evidence constitutes reversible error.

II.

Father further asserts that the juvenile court erred by finding that exceptional circumstances existed that warranted the termination of Father's parental rights to the Children. Again, we are not persuaded by Father's contentions.

In child custody and TPR cases, this court utilizes three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003). The Court of Appeals described the three interrelated standards as follows:

> We point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131 (c)] applies. [Second,] if 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 586.

A juvenile court may grant a petition for guardianship if, after considering the applicable statutory factors, it finds by clear and convincing evidence that exceptional

circumstances exist that would make a continued parental relationship detrimental to the best interests of the child. *In re Adoption of Ta'Niya C.*, 417 Md. 90, 103-04 (2010). "[T]he trial court must consider the statutory factors listed in [FL § 5-323] subsection (d) to determine whether exceptional circumstances warranting termination of parental rights exist." *Id.*

Father does not assert that the juvenile court failed to consider the requisite factors. Indeed, such an argument would be unavailing, as the record reflects that the juvenile court carefully considered each statutory factor. Rather, Father emphasizes generally his fundamental right in the care and custody of his Children and argues that the juvenile Court's exceptional circumstances determination was based upon inadmissible hearsay. As we have discussed *supra* in Part I., the juvenile court did not err nor abuse its discretion with respect to its evidentiary determinations.

The juvenile court based its exceptional circumstances determination on various factors, but particularly emphasized the trauma suffered by the Children after their unsupervised visits with Father in 2015. The juvenile court recognized that it was unable to "determine what precisely happened," but found that "something bad and traumatic happened to the [C]hildren during their visits with [Father] in 2015 that caused trauma and traumatic reactions in the [C]hildren." The juvenile court explained that the trauma suffered by the Children constituted "an exceptional circumstance that supports the [c]ourt's conclusion that it is in the best interest of the [C]hildren to have the parental rights of [Father] terminated."

Contrary to Father's assertions, the juvenile court's conclusions were based upon reliable testimonial and documentary evidence that each of the Children feared Father and had suffered symptoms of trauma after unsupervised visits with him. This finding was supported by both lay and expert testimony from social workers, foster parents, a physician, and the Children's therapist. This testimony was summarized at length *supra*. These findings support the juvenile court's decision to grant guardianship based upon exceptional circumstances. The record as a whole demonstrates ample evidentiary support for the juvenile court's conclusion that the continuation of the parental relationship with Father would be detrimental to the Children. Father has failed to establish any error or abuse of discretion. Accordingly, we affirm.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.