Circuit Court for Prince George's County
Case No. CPF. 7911010078

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 769

September Term, 2018

In Re: Adoption/Guardianship of J.Z.

Reed,
Friedman,
Alpert,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: January 14, 2019

On April 17, 2018, the Circuit Court for Prince George's County ordered that terminating Ms. Z's (hereinafter "Appellant") parental rights was in the best interest of J.Z., her daughter. The circuit court found that the continuation of Appellant's parental rights would be detrimental to J.Z. It is from this denial that Appellant files this timely appeal. In doing so, Appellant brings one question for our review, which we have rephrased for clarity:[1]

I. Did the circuit court err by concluding that exceptional circumstances existed, which warranted a conclusion that terminating Appellant's parental rights were in the best interest of the child?

For the following reason, we answer in the negative and affirm the decision of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2014, Appellant gave birth to a premature daughter, J.Z., at Prince George's Hospital in Prince George's County. Prior to delivery, both mother and child tested positive for marijuana and cocaine. At the time of J.Z.'s birth, she weighed only 3.7 pounds and spent two weeks in the neonatal intensive care unit. After giving birth, Appellant signed documents, which established that J.Z. was an abandoned child pursuant

[1] Appellant presents the following question:

1. Did the court err by concluding that exceptional circumstances existed, which warranted a conclusion that terminating Ms. Z's parental rights was in J.Z.'s best interests?

to Maryland Safe Haven Law.[2] Subsequently, J.Z. was discharged to the Prince George's County Department of Social Services (hereinafter "the Department").

The Department took temporary custody of J.Z. and petitioned the juvenile court for shelter care and temporary custody of J.Z. The juvenile court granted the petition and found J.Z. to be a "Child in Need of Assistance" ("CINA"). On January 25, 2014, J.Z. was placed in the care of foster parents (hereinafter the "Is").

J.Z. Permanency Plan: Reunification

After J.Z. was placed in the care of the Is, Appellant told the Department that she wanted to reunite with J.Z. and that she did not want to put her child up for adoption. On February 28, 2014, Appellant and the Department entered into a Service Agreement (hereinafter "the Agreement") outlining specific duties that Appellant had to perform in order to be reunited with J.Z. Appellant "agreed that she would undergo a substance abuse assessment and follow its recommendations, that she would engage in mental health treatment, that she would maintain contact with the Department, and that she would maintain regular visitation with J.Z." The Department also agreed to make referrals "for [Appellant] for [sic] substance abuse assessment and treatment, for mental health treatment and for parenting classes, and agreed to facilitate and monitor visitation between Ms. Z and J.Z."

[2] "The purpose of the Maryland Safe Haven Program is to provide the mother of the newborn the opportunity to provide a safe abandonment of her newborn by [p]roviding immunity from civil liability and criminal prosecution for a mother who leaves an unharmed newborn with a responsible adult person under certain circumstances . . ." COMAR 07.02.27.01.

In March 2014, an addiction specialist at the Department assessed Appellant and recommended that she undergo inpatient substance abuse treatment. The Department made a referral for Appellant to attend a 28-day in-patient treatment program. Appellant successfully completed the program in June 2014. Appellant was then referred to further inpatient substance abuse treatment. In August 2014, Appellant began an in-patient substance abuse treatment at Chrysalis House, but was discharged in September 14, 2014. Following her discharge, Appellant returned to Washington County to stay with friends of her family to help her with her drug addiction and her efforts to stay drug free.

Following her move to Washington County, Appellant requested that the Department change her plan to place J.Z. with the family friends with whom she was living so that Appellant could be closer to her daughter. On June 19 2014, a permanency planning review hearing was held. The juvenile court changed J.Z.'s permanency plan to custody and guardianship to a non-relative (hereinafter "the Ms") and ordered that a guardianship study be completed. Subsequently, Mrs. M began driving from Washington County to Prince George's County to visit J.Z. at the Department. Appellant did not accompany Mrs. M on any of those trips. The guardianship study process started in May 2014, but by December 2014, the process remained incomplete due to Mr. M's failure to provide required documentation.

In December 2014, Appellant began out-patient substance abuse treatment at the Washington County Health Department ("WCHD") and after a referral from the Department Appellant completed a parenting class. Appellant also traveled monthly to Prince George's County to receive treatment for bipolar disorder and depression by her

mental health provider. Although, Appellant's case worker advised her to visit J.Z. while Appellant was in Prince George's County Appellant refused to do so.

By the end of 2014, Appellant breached the agreement she entered into with the Department. Appellant had not re-entered in-patient substance abuse treatment, had not provided documentation of treatment, and had not visited J.Z. regularly as she agreed to in the agreement. As a result, on January 15, 2015, the juvenile court changed J.Z.'s permanency plan to adoption. In February 2015, Appellant contacted the Department requesting that she be reunifed with J.Z. According to J.Z.'s case worker there were several reasons why Appellant should not be reunified with her daughter: "[Appellant's] inconsistent visitation with J.Z.; [Appellant's] need for continuing intensive substance abuse treatment and uranalysis testing; [Appellant's] continuing need for more frequent mental health treatment and medication management; and [Appellant's] refusal to enter into a new service agreement with the Department."

In March 2015, Appellant signed a new Service Agreement (hereinafter "Second Agreement") with the Department. Appellant complied with the Second Agreement's required substance abuse treatment and mental health treatment.[3] However, Appellant failed to comply with the required visits with J.Z. The Department tried to work with Appellant by scheduling more visits and mailing her calendars, which listed the dates of

[3] Appellant still had not re-entered or completed inpatient treatment or complied with ordered urinalysis. Appellant did not attend the recommended health treatment either.

each visit. Appellant continued to miss or cancel visits. Of twelve of the scheduled visits, Appellant attended only four.[4]

Despite the Second Agreement, in March 2015 the Department filed its first petition for guardianship and termination of Appellant's parental rights. Appellant filed an objection and a trial was conducted in November 2015. At the conclusion of the trial, the trial court denied the Department's petition to terminate Appellant's parental rights for lack of expert testimony at trial.[5] During the trial, Appellant testified that it was her intention to move back to Prince George's County so that she could be reunified with J.Z. However, Appellant did not move back to Prince George's County.

After the trial, Appellant continued to fail to comply with the Department throughout 2016 and into 2017. Specifically, Appellant failed to sign an updated Service Agreement. She continued her pattern of cancelling or skipping visits with J.Z. and failed to appear for required substance abuse testing. For instance, the juvenile court found that Appellant failed to appear for substance abuse testing between December 2016 and April 2017. Moreover, Appellant missed visits that were scheduled with an independent social worker to assess Appellant's ability to parent.

[4] The pattern of cancelled visits continued in 2016; Appellant visited J.Z. six times in 2016 for a total of twelve hours.

[5] Appellant acknowledged in the second termination of parental rights trial that the first trial had given her an opportunity to parent her child, but that she had not taken advantage of that opportunity.

In February 2017, the Department filed its second Petition for Guardianship and Termination of Parental Rights. Appellant filed an objection to the petition and a trial was held before the Honorable Karen Mason on November 13 and 14, 2017, and February 22, 2018.

At trial, the juvenile court "heard from seven witnesses, admitted documentary evidence, observed the parties and witnesses, and took judicial notice of J.Z.'s CINA court file, the court file from J.Z's first [court] proceeding, and the court files of the CINA cases of J.Z.'s old siblings, A.R. and B.Z." The first witnesses to appear before the court were the Department's case workers. The case workers described how J.Z. came into the care of the Department, their interactions with Appellant and J.Z., the referrals given to Appellant, and their attempts to verify the services Appellant claimed to be receiving. Further, the workers testified about their numerous attempts to facilitate visits between Appellant and J.Z., and Appellant's failure to attend the visits.

The court also heard testimony from Mrs. I, J.Z.'s foster mother. Mrs. I testified that J.Z., who is almost four years old, lived with her since J.Z. was twelve days old. Mrs. I described "J.Z. as an energetic, bright, and social child who had attended the same daycare preschool since she was 10 weeks old." Mrs. I also testified that J.Z. was an accepted member of her family.

Additionally, the court heard testimony from two independent social workers, who observed J.Z. with Appellant. Diana McFarlane, an expert in child and adult psychotherapy with an emphasis in attachment theory, testified. Ms. McFarlane testified that she observed their relationship to ascertain if Appellant had the capacity to parent. Ms. McFarlane

testified to the clinical significance of Appellant missing so many scheduled visits, stating that Appellant was "exhibiting that [she] is not committed, whether it's willingly or [she] is incapable of committing or maintaining regular contact with [her] child." Ms. McFarlane opined about the missed visits that "[I]t significantly affects the relationship that the child and the parent have or the lack of relationship that the child and the parent have." She explained that the attachment between child and parent usually forms between birth and two years old.

Ms. McFarlane also testified that when Appellant visited J.Z. she brought other adults with her. Ms. McFarlane observed that Appellant would sit back while the other adults interacted with J.Z. When Appellant was alone with J.Z., Appellant seemed uncomfortable and would end visits early. Having made those observations, Ms. McFarlane testified that the relationship between J.Z. and Appellant is one of a familiar family member, not that of a parent. Thus, Ms. McFarlane concluded that Appellant did not have the capacity to make appropriate judgment calls for everyday parenting. Ms. McFarlane concluded "to a reasonable degree of professional certainty, that there would be no significant impact if the parent-child relationship between J.Z. and Appellant were terminated.

Ms. McFarlane also observed J.Z. with her foster parents, Mr. and Mrs. I. Ms. McFarlane observed J.Z. identify Mrs. I as her primary care giver and the primary person who met her needs. Ms. McFarlane concluded that J.Z. had a "healthy, secure attachment" with the Is that lead to a parent-child relationship with them. Overall, Ms. McFarlane opined to a reasonable degree of professional certainty that if J.Z. were removed from her

foster parents that it would be "significantly detrimental to her overall well-being." Ms. McFarlane concluded that if J.Z. were removed from her foster parents, she would suffer emotional harm.

The Department then called Cary Tompkins as an expert in child and adult psychotherapy with an emphasis in attachment-based theory. Ms. Tompkins conducted bonding studies between J.Z and Appellant and J.Z. and the Is. Appellant never completed all her sessions with Ms. Tompkins.[6] However, Ms. Tompkins did gather enough information to make a clinical conclusion as to J.Z. and Appellant's relationship. Ms. Tompkins opined to a reasonable degree of professional certainty that because Appellant had difficulty scheduling and keeping appointments to see J.Z. that Appellant may have been demonstrating avoidance or shame.[7] She explained that J.Z. has a healthy, secure attachment to her caregivers, the Is. Furthermore, Tompkins concluded to a reasonable degree of professional certainty that "if J.Z. were to be separated from her foster parents, she would experience an attachment disruption that would create developmental trauma and impact brain development, learning, and her ability to regulate emotions and create healthy relationships." Ms. Tompkins opined that J.Z. does not have a strong attachment to Appellant. Ms. Tompkins concluded to a reasonable degree of professional certainty that

[6] Ms. Tompkins planned on observing three sessions for each study, but Appellant only completed two, while the Is completed all three.

[7] During the observation, when J.Z.'s foster parents left the room, J.Z. became upset, cried, screamed, and pounded on the door. J.Z. was not able to go about playing until her foster parents returned and consoled her.

"if parental rights were terminated, J.Z. would not experience trauma, grief, or loss." Ultimately, Ms. Tompkins concluded that J.Z. should remain with her foster parents.

On April 17, 2018, the Circuit Court for Prince George's County delivered its decision, finding that "exceptional circumstances existed that a continuation of the parent-child relationship would be detrimental to J.Z." This appeal followed.

DISCUSSION

A. Parties Contentions

Appellant contends that the juvenile court erred by concluding that exceptional circumstances existed, which warranted a conclusion that terminating Appellant's parental rights was in J.Z.'s best interest. Appellant contends that neither Ms. Tompkins nor Ms. McFarlene "testified that [J.Z.] would a suffer long-term detriment from a removal and attempt to reunify [Appellant] and [J.Z.]." Appellant maintains that J.Z.'s bond to her foster parents was formed by her spending more time with them and J.Z.'s lack of bond with Appellant is due to the lack of opportunities J.Z. was given to bond with Appellant. Appellant asserts that the Court of Appeals holding *In Adoption/Guardianship of Alonza D., Jr.*, 412 Md. 442 (2010) that, "the juvenile court improperly based its finding of exceptional circumstances on the amount of time the children had spent in foster care", has some bearing on this case. Appellant maintains that this Court should apply the holding in *Alonza* to this case because the facts in *Alonza* are similar to this case.

Appellant argues that the Circuit Court for Prince George's County improperly terminated Appellant's parental rights pursuant to Md. Code Ann., FAM. LAW, § 5-323(b). Specifically, Appellant asserts that "the evidence presented in this case demonstrates that

exceptional circumstances did not exist at the time of the [court] ruling, which would make the continuation of the parental relationship detrimental to J.Z.'s best interest." Appellant maintains that there was no evidence supporting the conclusion that she was unfit to have a parental relationship with J.Z. Appellant argues that no exceptional circumstances existed in the present case warranting the termination of her parental rights. Appellant contends that the juvenile court was mainly persuaded by and used "the passage of time [J.Z. spent] in foster care" to terminate Appellant's parental rights. Appellant maintains that the other factors considered by the court do not support a finding of exceptional circumstances, to the contrary they support a conclusion that "the Department never meaningfully attempted to reunify" Appellant and J.Z. Appellant contends that the Department failed to place J.Z. in the care of the Ms, the non-relatives Appellant was staying with in Washington County. As such, Appellant argues that the Department's intentions were not to reunify Appellant and J.Z. In the alternative, Appellant argues that even if the reunification plan with the Ms failed the Department made no other attempt to reunify Appellant and J.Z. Instead Appellant argues that the Department "sought a plan change while purporting to respond to [Appellant's] request for reunification." Furthermore, Appellant asserts that the facts in this case do not support concluding that terminating Appellant's parental rights was in J.Z.'s best interest.

The Department responds that Appellant's argument that the juvenile court erred when it found that exceptional circumstances existed, to terminate Appellant's parental rights has no merit. Specifically, the Department contends that Appellant's argument fails because the juvenile court made findings by clear and convincing evidence pursuant to Md.

Code Ann., FAM. LAW, § 5-323. For instance, the Department argues that "although [Appellant] expressed her desire to reunify with J.Z., she failed to maintain regular contact with J.Z. and this failed to make forming a bond with J.Z. a priority in her life." The Department argues that during the course of two years Appellant spent just 20 hours with J.Z. The Department maintains that "the evidence before the trial court demonstrated that the lack of consistent visitation and the lack of a parent-child relationship that resulted was a basis for the determination that exceptional circumstances existed."

The Department asserts that it offered Appellant multiple services to help with Appellant's substance addiction. However, it is not the Department's priority to ensure that Appellant take advantage of those services. In fact, the Department argues that the Department's main priority is to ensure that the health and safety of children are protected. Finally, the Department argues that J.Z. remaining with her foster parents, the Is, would be in her best interest. Specifically, the Department asserts that in November 2017, at the time of the court proceeding, J.Z. had been in foster care for three years and ten months. The Department maintains that during that period J.Z. developed a secure relationship with the Is. We agree.

B. Standard of Review

When reviewing termination of parental rights cases, "Maryland appellate courts apply three different but interrelated standards of review." *In Re Adoption/Guardianship of Cadence B.*, 471 Md. 146, 155 (2010). "When the appellate court scrutinizes factual findings, the clearly erroneous standard ... applies. [Secondly,] if it appears that the [juvenile 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 [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [juvenile court's] decision should be disturbed only if there has been a clear abuse of discretion." *In Re Yve S.*, 373 Md. 551, 586 (2003).

In this case, Appellant argues that the juvenile court's ultimate decision rather than its fact finding should be the subject of the appeal. Therefore, we must determine whether the juvenile court abused its discretion. Using an abuse of discretion standard this Court 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. Therefore, to be reversed the decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *In Re Yve S.*, 373 Md. at 583-584.

C. Analysis

Exceptional Circumstances

Appellant argues that the juvenile court erred by concluding that exceptional circumstances existed, which warranted a conclusion that terminating Appellant's parental rights was in J.Z.'s best interest. Appellant contends that neither Ms. Tompkins nor Ms. McFarlene "testified that [J.Z.] would suffer a long-term detriment from a removal and

attempt to reunify [Appellant] and [J.Z.].” Appellant also argues that the Department failed in making any attempts to reunify Appellant and J.Z.

Md. Code Ann., FAM. LAW, § 5-323(d) prescribes the factors that the juvenile court must consider when terminating parental rights. It states the following:

> (d) Except as provided in subsection (c) of this section, in ruling on a petition for guardianship of a child, a juvenile court shall give primary consideration to the health and safety of the child and consideration to all other factors needed to determine whether terminating a parent's rights is in the child's best interests, including:
>
> (1)(i) *all services offered to the parent before the child's placement, whether offered by a local department, another agency, or a professional*;
> (ii) the extent, nature, and timeliness of services offered by a local department to *facilitate reunion of the child and parent*; and
> (iii) the *extent* to which a local department and parent have fulfilled their *obligations* under a social services agreement, if any;
>
> (2) the *results* of the parent's effort to adjust the parent's circumstances, condition, or conduct to make it in the child's best interests for the child to be returned to the parent's home, including:
> (i) the extent to which the *parent has maintained regular* contact with:
> 1. the child;
> 2. the local department to which the child is committed; and
> 3. if feasible, the child's caregiver;
>
> (ii) the parent's contribution to a reasonable part of the child's care and support, if the parent is financially able to do so;
> (iii) the existence of a parental disability that makes the parent consistently unable to care for the child's immediate and ongoing physical or psychological needs for long periods of time; and
> (iv) whether additional services would be likely to bring about a lasting parental adjustment so that the child could be returned to the parent within an ascertainable time not to exceed 18 months from the date of placement unless the juvenile court makes a specific finding that it is in the child's best interests to extend the time for a specified period;
>
> (3) whether:

> (i) the parent has abused or neglected the child or a minor and the seriousness of the abuse or neglect;
> (ii) 1. A. *on admission to a hospital for the child's delivery, the mother tested positive for a drug as evidenced by a positive toxicology test*.

Md. Code Ann., FAM. LAW, § 5-323(d) (emphasis added).

The Court of Appeals has stated *In re Adoption/Guardianship of Rashawn H. and Tyrese H.*, 402 Md. 477 (2007) and *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 723 (2011) that the juvenile court must consider the factors set forth in Md. Code Ann., FAM. LAW, § 5-323(d). In *Amber R.*, the Court of Appeals stated the following:

> The same factors that a court uses to determine whether termination of parental rights is in the child's best interest under the termination of parental rights statute equally serve to determine whether exceptional circumstances exist. In its words [the] factors, though couched as considerations in determining whether termination is in the child's best interest serve also as criteria for determining the kinds of exceptional circumstances that would suffice to rebut the presumption favoring a continued parental relationship and justify termination of that relationship.

Amber R., 417 Md. at 723.

The Court of Appeals has also stated in *Pastore v. Sharp*, 81 Md. App. 314, 320 (1989) that the juvenile court may also consider a parent's age and the mental capacity of a parent to provide for the "emotional, social, moral, material, and educational needs of the child." *Id.* Moreover, in weighing whether the proper efforts were made by a department, the juvenile court considers the extent, nature, timeliness, and the extent a department and parent fulfilled their obligations under service agreements. *In re Adoption/Guardianship of Darjal C.*, 191 Md. App. 505, 518 (2010). This Court in *In re Adoption/Guardianship of*

Darjal C., held that "implicit in that requirement is that a reasonable level of those services, designed to address both the root causes and effect of the problem, must be offered." *Id.*

Here, Appellant's argument, that it is required that a showing that J.Z. will suffer a long-term detriment if she was removed from the Is' home, has no merit. A juvenile court is not required to make a finding that J.Z. will suffer a "long–term" detriment if J.Z. is removed from the Is' home. The juvenile court was only required to make a finding that J.Z. would suffer a detriment if she was removed from the Is' home. Additionally, the Department extended numerous services to Appellant to aid with her drug and mental health problems and to reunify her with J.Z. Appellant's argument that the Department failed to place J.Z. in the Ms' home also has no merit because Mr. M failed to provide the required documentation that was necessary to place J.Z. in M's home.

Additionally, the Department executed and attempted to execute at least four Service Agreements with Appellant, despite Appellant not fully complying with the Service Agreements. The Court of Special Appeals has held that termination of parental rights is warranted when the "mother entered [into] several service agreements and safety plans requiring her to complete drug treatment, [yet] mother failed to fulfill her obligations . . . and although there was [a] relationship between child and his mother, it was not a parental bond." *In re Adoption/Guardianship No. T00032005, 2001*, 141 Md. App. 570 (2001). Here, Appellant failed to adhere to and complete the stipulations set forth in any of the agreements, which included drug abuse treatment and mental health treatment. We find there is great significance in Appellant's inconsistent visitation with J.Z. At trial, the expert witnesses testified that, based on Appellant's actions, she is not committed to having a

relationship with J.Z., nor has she created any sort of parent-child relationship. Specifically, Ms. McFarlane, an expert witness, testified that she observed J.Z. and Appellant's relationship and found that Appellant missing so many scheduled visits showed that Appellant was not committed to having a parent-child relationship with J.Z. Ms. McFarlane opined that the missed visits "[i]t significantly affects the relationship that the child and the parent have or the lack of relationship that the child and the parent have." She explained that the attachment between child and parent usually forms between birth and two years old. J.Z. was born in January, 2014. Moreover, the Department offered transportation services to Appellant to help get her to and from mental health treatments and visits with J.Z. Further, the Department supported Appellant's drug abuse treatment by offering both in-patient and out-patient treatments. Thus, the Department did offer the Appellant a reasonable amount of services to help her in her efforts to reunite with J.Z.

Finally, the juvenile court had sufficient facts to conclude that exceptional circumstances existed and that terminating Appellant's parental rights was in the best interest of J.Z. Specifically, the court found that some of the factors set forth in Md. Code Ann., FAM. LAW, § 5-323(d) were met. The juvenile court found the following:

- Appellant tested positive for substance abuse when J.Z. was born.
- J.Z. has been in the care of the Is from the moment she was born and has developed a familial relationship with the Is.
- The Department has tried to make reasonable efforts to reunify Appellant and J.Z.
- Appellant's contact with J.Z. has been inconsistent.

- The expert witnesses testified at trial that J.Z. is familiar with Appellant. However, there is no parent-child relationship attachment between J.Z. and Appellant and if J.Z. were to be removed from the Is' home it would be detrimental for J.Z.

This Court has held that in determining exceptional circumstances, a court should consider "the strength of the bond between the child and the adoptive parent." *In re Adoption/Guardianship of C.A. and D.A.*, 234 Md. App. 30 (2017). Here, it is in the best interest of J.Z. to remain with her foster parents, the Is, and in the community in which she has grown up. The expert witnesses testified that J.Z. has a strong bond with her foster parents, that of a parent-child relationship. The experts based their opinions on their observations of J.Z's. interaction with her foster parents that revealed J.Z. seeks love and affection from them. Conversely, the experts testified that they observed J.Z.'s relationship with the Appellant to be that of a familiar family member, not a parent, and that J.Z. did not have a strong connection to her.

Accordingly, the juvenile court did not err when it found by clear and convincing evidence exceptional circumstances existed and that terminating Appellant's parental rights were in the best interest of J.Z.

The judgment of the Circuit Court for Prince George's County is affirmed.

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