

Circuit Court for Baltimore City
Case No. T 17226010

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 863

September Term, 2018

IN RE: ADOPTION/GUARDIANSHIP OF S.J.

Wright,
Berger,
Beachley,

JJ.

Opinion by Berger, J.

Filed: January 30, 2019

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

Appellant, Mr. S. (“Father”), challenges a judgment of the Circuit Court for Baltimore City, sitting as a juvenile court, terminating his parental rights with respect to his daughter, S.J., and granting guardianship to the Baltimore City Department of Social Services (the “Department”). S.J.’s mother was deemed to have consented to the termination of her parental rights and is not a party to this appeal.

Father presents a single issue for review which we have rephrased as follows:

- I. Whether the juvenile court erred by terminating Father’s parental rights.

For the reasons stated herein, we shall affirm the judgment of the Circuit Court for Baltimore City.

FACTS AND PROCEEDINGS

S.J. and her twin sister were born prematurely on September 25, 2016 to their mother, S.G. (“Mother”). Although initially it was believed that Father was the parent of both girls, paternity testing completed in November 2017 ultimately revealed that Father was the parent of S.J. but not of her twin sister. Both girls tested positive for cocaine exposure at birth. Mother admitted to hospital staff that she had used heroin during her pregnancy and speculated that the heroin was cut with cocaine. Mother had a history of substance abuse and involvement with the Department and juvenile court, including participation in the juvenile court’s Family Recovery Program. The twins’ older half-brother had been removed from Mother’s care, and custody and guardianship of the half-brother was ultimately awarded to a relative. Before the twins were discharged from

the hospital, the Department’s worker, Asha Ali, conducted a safety assessment and determined that Mother was not a viable placement option for the twins.

Ms. Ali met with Father shortly after the twins’ birth, having learned of Father’s identity from Mother. Father told Ms. Ali that he was not able to care for the twins. Father lived in a home with his mother and four to five other adults. Ms. Ali additionally spoke with Father’s mother who confirmed that she did not want to bring the twins into her home.¹ Neither Father nor the paternal grandmother provided the Department with information about any relatives who could potentially be options for placement for the twins.²

On October 6, 2016, the Department filed a Petition with a request for Shelter Care alleging that the twins were Children in Need of Assistance (“CINA”).³ The Department’s Petition alleged that the twins tested positive for drug exposure at the time of their birth, Mother had a history of substance abuse, and Father was unable to care for the children. These facts were sustained at an adjudication hearing on November 30, 2016, and on December 13, 2016, the twins were found to be CINA and committed to the Department.

¹ The paternal grandmother was seventy-two years old at the time.

² Father had identified a possible resource in Ms. W., whom Father identified as the sister of Mother’s wife. The Department requested that Mother provide a marriage certificate, but there is no documentation in the record that Mother was married to Ms. W. The Department attempted to investigate Ms. W. as a placement resource, but Ms. W. told Mary Townes, the Department’s permanency worker, that she was unable to care for the twins.

³ A CINA is “a child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” Md. Code (1974, 2013 Repl. Vol.), § 3-801(f) of the Courts and Judicial Proceedings Article.

Mary Townes became involved in the twins' case in October 2016. Ms. Townes met with Father and he informed her that he was not able to care for the children. Father did not have a proper place for them to live and was not employed. In December 2016, Ms. Townes investigated the paternal grandmother's home where Father resided, but the home was not approved. The home did not pass the assessment for various reasons, including broken windows and lack of smoke detectors. An all-glass parlor room was proposed as a sleeping place for the twins, but it was determined to be inappropriate for children. Additionally, six adults in the home needed to be fingerprinted in order for the home to potentially be approved. The paternal grandmother told Ms. Townes that she could not care for S.J. and that the other people in the home were unwilling to submit to a criminal background or child protective services background clearance. Father was not present at the time of assessment. Ms. Townes remained at the home for thirty-five minutes, but Father did not return. Father never contacted Ms. Townes to request a reassessment of the home.

Upon their discharge from the hospital in October 2016, the twins were placed in the therapeutic foster home of the R. family. Prior to the twins' discharge, Mr. and Ms. R. participated in specialized training at the hospital in order to learn how to respond to the twins' medical needs. S.J. had several medical issues, including reflux, an open wound that required care, drug exposure, and exposure to HIV and Hepatitis C. Mr. and Ms. R. were trained in how to manage S.J.'s reflux, care for S.J.'s wound, and administer S.J.'s medications.

Father's first visit with S.J. occurred on October 14, 2016 at the Department. Visits were scheduled to occur weekly on Fridays. Father only attended one additional visit in 2016. On December 11, 2016, Father was shot in the head during an apparent robbery. As a result, Father was hospitalized for four days. The circumstances of the shooting were contested at trial. When Brenda Harriel, LCSW-C, performed an evaluation of Father's fitness as a parent, Father told Ms. Harriel that he was shot and robbed while selling drugs and acknowledged a history of selling drugs. At the termination of parental rights proceeding ("TPR"), Father denied making this statement. Father testified that he was counting money at the time of the shooting and the individuals who shot him may have believed that he was selling drugs. Father did not, however, deny telling Ms. Harriel on January 16, 2018 that he had used heroin the prior day.

Between January and September of 2017, Father visited with the twins once. Throughout the first year of S.J.'s life, Father saw her only three times. The Department attempted to engage Father in visits in various ways, including by mailing him a visitation calendar. On March 21, 2017, Ms. Townes mailed a letter to Father in an attempt to reengage him in visits. Father telephoned Ms. Townes and told her he had been busy and needed to speak with his doctor before resuming visits. Father did not explain any of the circumstances of the medical issue that prevented him from visiting. Ms. Townes reminded Father that visits were scheduled for Fridays. After that visit, Father never contacted Ms. Townes to discuss the twins, to express interest in assuming care of the twins, or to request to visit the twins.

On August 21, 2017, the Department filed a petition for guardianship, to which Father filed a timely objection. On September 11, 2017, the twins' cases were assigned to caseworker Patricia Iwuorie. After the filing of the petition, Father reengaged with the Department and visits resumed. Ms. Iwuorie and her supervisor, Summer Willoughby, entered into a service agreement with Father that required Father to participate in parenting classes, engage in mental health treatment, visit the twins regularly, and secure appropriate housing.

Ms. Iwuorie contacted the Family Tree regarding Father's parenting classes. Ms. Iwuorie advised Father that he could begin free parenting classes in late November 2017, but informed Father that he had to directly contact the program to enroll. Father did not begin parenting classes in November. At trial, Father explained that "since [he] didn't know what was going to happen" with the guardianship petition, he was "feeling indifferent" and decided to "wait till after what happens [in the guardianship proceeding] and do" the parenting classes later. Father did not begin parenting classes until February 2018, the same month as the TPR trial began. Father testified on April 25, 2018 that he would be finishing the parenting class later that evening, but Father failed to provide any documentation of parenting class attendance to the Department at any time.

Father was also required, pursuant to the service agreement, to obtain mental health services. The Department initiated a referral to Uptown Hope, an agency that Father specifically identified as a place where he wanted to obtain services. Father did not pursue the referral. Father testified that he began attending therapy on February 26, 2018 at a

different mental health provider, but the Department never received any documentation that Father obtained mental health services from any provider.

The Department also referred Father for an assessment with Partners in Recovery, a drug and alcohol treatment program housed within the Department's offices. Father had told Ms. Townes that he previously had been in a drug treatment program, but Father never provided any documentation relating to drug treatment, nor did Father participate in an evaluation with Partners in Recovery. During a January 16, 2018 meeting at Court Medical Services in association with a bonding evaluation, Father informed the evaluator that he had started using cocaine and heroin at age eighteen and was last in treatment in 2015. Father also told an evaluator that his most recent use of cocaine and heroin was "last week." In addition, Father told an evaluator that he had used heroin the day before, on January 15, 2018.

When the twins initially came into the care of the Department, Father advised the Department that he was unable to care for the twins because he did not have a proper place for them to live, did not have a job, and was under a doctor's care. The Department again assessed Father's employment and source of income after Father reengaged with the Department in September of 2017. At this time, Father remained unemployed and had no source of income. He reported that he was in the process of applying for social security benefits. Father did not then or at any other point provide the Department with any documentation relating to his application for social security disability benefits.

After reengaging with the Department in September of 2017, Father began to attend visits intermittently. The Department scheduled weekly visits, but Father attended only

six. At visits, Ms. Willoughby observed that Father struggled to engage with the twins and was unable to supervise both of them. During a telephone call in October, Father expressed his reluctance to engage in the terms of the service agreement, telling Ms. Willoughby, “you want me to do all these things. How do I know that they’re my kids. I want to be tested.” At the Department’s request, the juvenile court ordered paternity testing on November 6, 2017. As discussed *supra*, the paternity testing revealed that Father is the parent of S.J. but not of her twin sister.

In December of 2017, licensed psychologist Harriet Miller, Ph.D., performed a bonding evaluation in order to assess S.J.’s bond to Father, her foster parents, and her twin sister. Dr. Miller testified as an expert in parent-child bonding and parental fitness at the TPR trial. In her report, Dr. Miller concluded that “S.J. does not share a relationship, much less a bond, with [her] biological father” and “[t]here was little affect or interaction displayed by either” S.J. or Father. Dr. Miller observed that S.J.’s “behavior was somewhat withdrawn from” Father and S.J.’s “activity level was very low” with Father. Dr. Miller further commented that “[t]here were neither smiles nor laughter.” Dr. Miller concluded that “continuation of the parental relationship is seen as detrimental to [S.J.’s] best interests.”

Social worker Ms. Harriel evaluated Father’s capacity to care for S.J. In her report, Ms. Harriel observed that Father “had no solidified plan by which he would assume care of” S.J. Ms. Harriel commented that Father described S.J. as “a happy child,” but Father told her that he “can’t tell you anything else because I see her once a [week] on Fridays for one hour.” Ms. Harriel observed that Father is financially supported by his family. Father

told Ms. Harriel, “I don’t do nothing . . . I stay home and watch TV.” Father told Ms. Harriel that he had not worked since 2010, when he suffered a pinched nerve following an automobile accident. Father explained that he “stopped going to the doctor for the pinched nerve and arthritis because I know there is nothing they can do.” Ms. Harriel concluded that Father “does not have the capacity to provide for [S.J.’s] social, emotional, developmental, educational, material and moral needs.”

In contrast to S.J.’s lack of a bond with Father, S.J. is strongly bonded to her foster parents and to her twin sister. S.J. and her twin sister were placed with Mr. and Ms. R. upon their release from the hospital and it is the only home either has ever known. While in the care of Mr. and Ms. R., S.J. has had various medical issues, including upper respiratory problems and multiple episodes of bronchitis. One episode of bronchitis required hospitalization. S.J. has adjusted well to her placement with the R. family and is bonded to her foster parents, as well as to her twin sister. Ms. R. stays home with the twins during the day. She speaks sign language with the twins, reads books, and reviews shapes and colors. Ms. R. described S.J. and her twin sister as being very close. Ms. R. further explained that S.J. is bonded to Ms. R.’s other children, whom S.J. calls “bruh-bruh” and “sis-sis.” S.J. also engages with Ms. R.’s extended family and is excited when the grandparents visit.

Dr. Miller evaluated the bond between S.J. and Mr. and Ms. R. She observed that Mr. and Ms. R. engage the twins in age-appropriate activities and the twins were “very responsive to [Mr. and Ms. R.], smiling and laughing.” Dr. Miller reported that during the evaluation, Mr. and Ms. R. “openly showed their pleasure in their play with” S.J. and her

twin sister. Both girls positively responded to Mr. and Ms. R.’s attempts to engage them in activities. At trial, Dr. Miller testified that the twins “were very close to each other.” She concluded that the twins are bonded to each other and rely on each other. Dr. Miller testified that, based upon all of her observations, both of the twins had a healthy, secure attachment to Mr. and Ms. R. Dr. Miller concluded that S.J. “belongs in the care of Mr. and Mrs. R. with her sister.” Dr. Miller further testified that it would be detrimental to S.J.’s best interests to continue the parental relationship with Father.

The juvenile court granted the Department’s petition for guardianship and terminated Father’s parental rights to S.J. The court expressly found, by clear and convincing evidence, that a continued parental relationship with Father would be detrimental to S.J. The juvenile court concluded that the Department had offered Father services to achieve reunification with S.J., but Father failed to comply with the terms of the service agreements. The court found that Father’s home was not suitable because it could not be fully assessed due to clutter in the home, the front porch/parlor room which was proposed as a room for S.J. had broken windows and a door that required repair, and multiple residents in the home were not interested in participating in a background check. The juvenile court found that the Department offered Father a drug and alcohol assessment. The court further found that Father told the Department that he was in drug rehab but failed to provide documentation. The court found that Father failed to participate in therapy or parenting classes. With respect to visits with S.J., the juvenile court found that Father participated in visits only inconsistently, having attended only ten visits in the thirty-two

weeks between September 2017 and the conclusion of the guardianship hearing in June 2018.

With respect to Father’s ability to make a lasting parental adjustment, the juvenile court found that Father “failed to take advantage of the opportunities provided over the last 21 months which includes up until today’s date” of June 18, 2018. The court found that Father “neglected [S.J.] for the majority of her life.” The court explained that Father had no contact with the Department or S.J. for a period of “at least six months,” and “[d]uring visits his ability to engage with [S.J.] at her level was lacking.” The court observed that Father had testified to “his indifference.”

The juvenile court found S.J.’s relationship with her twin sister “unique and most significant.” The court discussed S.J.’s close bond with her sister and foster parents and found that S.J. “has no bond with” Father. The court observed that Father did not engage S.J. in age-appropriate activities during visits and concluded that Father “is not a known parent to” S.J. and that S.J.’s “[o]nly familial relationship is with the caregivers whose custody and care she’s been in since October 2016.” The juvenile court found that Father was “not in the position to provide consistency and stability” for S.J.

The juvenile court separately explained that it was required to consider whether there were “such exceptional circumstances as to make a continued parental relationship detrimental to the best interest of the child as well as the kind of fitness or exceptional circumstances necessary to rebut the substantive presumption as well as relate [to] unfitness in exceptional circumstances.” In this context, the court discussed the length of time S.J. had been away from her biological parents, the possible emotional effect on S.J.

of the parental relationship with Father being terminated, the period of time that elapsed before Father sought to reunify with S.J. and Father’s efforts toward reunification, the intensity and genuineness of Father’s desire to maintain a parental relationship with S.J., and the stability and certainty of S.J.’s future if the parental relationship is continued. The court explained the ways in which each factor weighed toward granting the Department’s guardianship petition. The juvenile court referenced the case of *In re Adoption/Guardianship of Alonza D.*, 412 Md. 422, 468 (2010), while explaining that the continued parental relationship with Father would be detrimental to the best interests of S.J. For these reasons, the juvenile court granted the Department’s guardianship petition and terminated Father’s parental rights to S.J. This appeal followed.

DISCUSSION

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 [Md. Code (1984, 2012 Repl. Vol.), § 5-323 of the Family Law Article (“FL”)] subsection (d) to determine whether exceptional circumstances warranting termination of parental rights exist.” *Id.*

In child custody and termination of parental rights (“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.

In this appeal, the crux of Father's argument is premised upon the fact that the juvenile court did not specifically reference the specific phrases "exceptional circumstances" or "parental unfitness." Father acknowledges, however, that the circuit court recognized its obligation to reach a conclusion as to parental fitness or exceptional circumstances. Father further acknowledges that the circuit court concluded that the presumption of maintaining the parental relationship was rebutted. Father argues, however, that we must reverse the judgment of the circuit court because the circuit court did not specifically state that it found unfitness or exceptional circumstances. As we shall explain, our review of the record reflects that the juvenile court applied the appropriate legal standard when making its guardianship determination, and the juvenile court's factual findings were not clearly erroneous.

As we have observed, when determining whether to terminate parental rights, the juvenile court "is not required to recite the magic words of a legal test." *In re Adoption/Guardianship of Darjal C.*, 191 Md. App. 505, 532 (2010). "[T]he 'mere incantation of the "magic words" of a legal test, as an adherence to form over substance,

may not cause the Genie to appear and is neither required nor desired if actual consideration of the necessary legal considerations are apparent in the record.” *Id.* (quoting *S. Easton Neighborhood Ass’n, Inc. v. Town of Easton*, 387 Md. 468, 495, (2005)).

The best interests of the child standard is “the overriding statutory criterion in TPR cases.” *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 498 (2007). The Court of Appeals has explained:

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.

Id. at 501 (emphasis in original).

The record reflects that the circuit court understood the specific findings that were required as articulated by the Court of Appeals in *Rashawn H.* Indeed, the circuit court specifically explained that it was making findings “[a]s to the *Rashawn H.* factors” to evaluate whether there were “such exceptional circumstances as to make a continued parental relationship detrimental to the best interest of the child as well as the kind of fitness or exceptional circumstances necessary to rebut the substantive presumption as well as relate [to] unfitness in exceptional circumstances.”

As we discussed *supra*, the juvenile court expressly addressed each of the factors set forth in FL § 5-323(d). As required by *Rashawn H.*, the court expressly “articulate[d] its conclusion as to the best interest of the child” when explaining why it determined that a continued parental relationship with Father would be detrimental to S.J. The juvenile court further recognized the obligation set forth by the Court of Appeals in *Alonza D.*, *supra*, 412 Md. at 443, “to make explicit findings that a continued parental relationship would be detrimental to the best interests of the children, when concluding that ‘exceptional circumstances’ existed under the standard established in *In re Adoption/Guardianship of Rashawn H.*” The juvenile court expressly concluded:

As to Al[o]nza D . . . questions, whether continued parental relationship with the parent would be detrimental to the best interest of [S.J.], the [c]ourt concludes yes.

The record reflects that the juvenile court considered all of the requisite factors when determining whether exceptional circumstances existed that warranted the termination of Father’s parental rights to S.J. The court’s specific references to the cases of *Rashawn H.* and *Alonza D.* indicate that the juvenile court knew and understood the requirements of the law while undertaking the exceptional circumstances analysis, and the court carefully considered the evidence presented when applying the FL § 5-323(d) factors to the circumstances of S.J.’s case. We, therefore, reject Father’s assertion that the juvenile court’s failure to specifically use the “magic words” of “exceptional circumstances” constitutes reversible error in this case.

Furthermore, the ample evidence presented supports the juvenile court’s exceptional circumstances determination. Father expressed indifference about participating in S.J.’s

life and visited with her only approximately ten times in her life. Father failed to avail himself of the services offered to him by the Department, and there was no indication that Father would avail himself of services in the future. Father told Ms. Harriel that he had used illicit drugs the month before the commencement of the TPR trial and failed to provide any documentation of drug treatment to the Department. Father failed to obtain suitable housing for S.J., obtain employment, or provide any documentation relating to his disability. Perhaps most importantly, the bonding evaluation revealed that S.J. has no bond with Father, but is bonded to her foster parents, with whom she resided since birth, and S.J. shares a unique and special bond with her twin sister.

Contrary to Father’s assertion, this is not a case in which parental rights were terminated because a child could be adopted by “better” parents. Rather, there is ample evidence in this case to support the circuit court’s conclusion that a continued parental relationship with Father was detrimental to S.J.’s best interests. The juvenile court’s decision constitutes an appropriate exercise of discretion that we will not disturb on appeal.

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