Circuit Court for Harford County
Case No. C-12-JV-18-000243

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1034

September Term, 2019

IN RE: O. Y.

Arthur,
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: February 10, 2020

On August 1, 2019, the Circuit Court for Harford County granted guardianship of one-year-old O. to the Harford County Department of Social Services, with the right to consent to adoption. At the same time, the court terminated the parental rights of O.'s biological father. The father appealed. We affirm.

FACTUAL AND PROCEDURAL HISTORY

O. was born in July 2018. At birth, O. had been exposed to drugs and alcohol.

The Harford County Department of Social Services (the "Department") removed O. from the custody of his mother ("Mother") and placed him in foster care shortly after his birth because of Mother's drug use and inability to care for him. O.'s father ("Father") was not identified as O.'s biological parent at the time of birth.

In August 2018, a juvenile court found that O. was a child in need of assistance ("CINA")[1] and ordered a permanency plan[2] of parental reunification. The court changed the permanency plan to adoption on September 26, 2018, because Mother had consented to adoption, and the biological father's identity was still unknown.

[1] A child in need of assistance 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., 2018 Supp.), § 3-801(f) of the Courts and Judicial Proceedings Article.

[2] A court must create a permanency plan "when a child is removed from the home for health or safety reasons and put in an out-of-home placement." *In re James G.*, 178 Md. App. 543, 568 (2008). The plan is "'an integral part of the statutory scheme designed to expedite the movement of Maryland's children from foster care to a permanent living . . . arrangement.'" *Id.* at 571 (quoting *In re Damon M.*, 362 Md. 429, 436 (2001)). The plan "'provides the goal to which the parties and the court are committed to work.'" *Id.* (quoting *In re Damon M.*, 362 Md. at 436).

The Department filed a petition for guardianship on November 1, 2018. In response, Mother consented to the termination of her parental rights on the condition that O.'s foster parents would adopt him.

After O.'s birth, Mother indicated to a social worker that Father, among other persons, might be O.'s biological father. When Mother had previously revealed to Father that she was pregnant, he threatened to set her on fire and "get the baby out" if she did not have an abortion. Father attacked two police officers who were called in response to the threats and was later convicted for assaulting the officers.

Father was incarcerated at the time the Department removed O. from Mother's custody. On August 29, 2018, the court had Father transported from jail to attend a CINA adjudication hearing, where he agreed to take a paternity test. Father, however, failed to appear at a CINA hearing on September 26, 2018, and failed to appear for a paternity test on December 18, 2018, even though he was not incarcerated at either time. Father's paternity was established in February 2019, yet he continued to miss CINA review hearings thereafter.

Between O.'s birth (in July 2018) and the court's decision to terminate Father's parental rights (on August 1, 2019), Father had been out of jail for only two discrete periods of time: from September 8, 2018, until the end of December 2018; and from January 31, 2019, until April 2, 2019. The Department attempted to speak with Father

several times while he out of jail, to establish paternity and enter into a service agreement.[3]

After several unsuccessful attempts to reach Father during the first period when he was out of jail, the Department sent Father a letter that advised him to talk with a Department social worker about O. He did not respond. Father never approached the Department during this time to ask for its services or to offer to work with the Department toward reunification. Father called the Department during the second period in which he was out of jail, but the Department had difficulty communicating with him because the phone numbers he provided did not work.

The Department eventually scheduled meetings with Father to discuss the case. The Department scheduled two meetings in February and March 2019, which Father failed to attend. A Department supervisor attempted to speak with Father when she saw him at a courthouse on February 7, 2019, but Father's agitation made the conversation difficult and unproductive. When he encountered another social worker later that day, Father threatened to blow up the Department's building.

The supervisor spoke with Father again on March 12, 2019, to set up another meeting. She asked Father if he would complete a psychological evaluation or an anger-management course, and Father answered that he had already completed both through the

[3] A service agreement is an agreement between a parent and a local Department of Social Services that, among other things, identifies the issues a parent must work on while his or her child is in foster care. Maryland Dep't of Human Resources, Soc. Servs. Admin., *A Handbook for Youth: Out of Home Placement – Foster Care* 3 (2005), http://www.dhr.state.md.us/blog/wp-content/uploads/2012/10/a-handbook-for-youth-out-of-home-placement.pdf.

Department of Parole and Probation. The supervisor also asked Father to provide a release permitting the Department to obtain information about the evaluation and course, but Father never delivered the signed release.

Father continued to engage in hostile behavior toward Department employees. Father made threatening statements toward a social worker, which led the social worker to obtain a permanent peace order against Father. Another social worker obtained a peace order against Father because she feared for her safety after she attempted to schedule a meeting with him. At a violation of probation hearing, the Department supervisor learned that Father had been engaging in similar behavior toward employees of the Department of Parole and Probation at the time.

The supervisor testified that Father experiences serious anger-management and mental health issues and that he cannot care for a child. She expressed concern that Father cannot live in a community setting and that O. would be at risk if Father had visitation with the child. Father violated his probation by failing to participate in court-ordered mental health treatment and has experienced difficulty obtaining and keeping a job. While at a courthouse for mediation with O.'s foster parents, Father acted so uncontrollably that the bailiffs would not remove him from his holding cell, and the parties were unable to complete the mediation by telephone because Father's own attorney was unable to control him. The supervisor testified that Father's aggression caused her to fear for her own safety, which she has rarely experienced in her twenty years as a social worker.

At a hearing on the guardianship petition in June 2019, Father testified that he had been incarcerated since April 2019 for violating a peace order and had been convicted of many crimes over his lifetime, including several assault charges. Although Father believed that he would be able to raise O. within six months of his release, he admitted that he had never attempted to support the child financially, and the court had to issue a bench warrant to compel his attendance at a child support hearing for O. Father did not understand why he had to cooperate with the Department regarding O. Although Father acknowledged his problems with anger management, he had not participated in any mental health treatment. Father, who is Muslim, indicated that he wanted O. to be adopted by a Muslim family; the Department had not previously been aware of his preference because he had failed to cooperate with the social workers.

O. had moved into his current foster home in December 2018, after temporarily residing with another foster family. O. lives with his biological brother, who was also removed from Mother's care. The Department supervisor testified that O. has bonded with his sibling and foster parents, and he has learned to say his sibling's name and to say "da-da" to refer to his foster parents. The foster parents are financially and emotionally able to provide long-term care to O. and have relatives available to assist with caring for the children. The siblings attend the same daycare center, where they interact positively with their teachers and classmates. The foster parents are aware of O.'s background, including Father's religion, and plan to educate O. about his parents and to encourage him to choose his religion for himself.

At the end of the second day of a two-day hearing, the juvenile court announced its intention to terminate Father's parental rights and to grant the Department guardianship with the right to consent to adoption. In its written order, the court found "by clear and convincing evidence that exceptional circumstances exist[,] making a continued parental relationship between" O. and Father "detrimental to the child's best interest," and that "it is in the child's best interest that the [Father's] parental rights be terminated." The court specifically found that Father's anger-management difficulties prevented the Department from working with him to build a relationship with O. In addition, the court cited Father's "obstreperous and belligerent behavior," including his threatening conduct toward several social workers and disregard for courtroom rules.[4] As a result, the court determined that there was no possibility of lasting parental adjustment that would enable Father to care for O. The court found that O.'s foster parents were competent parents and had provided appropriate care for the child because of their stable employment and affection toward O. and his brother.

QUESTION PRESENTED

Father presents one question, which we rephrase for clarity: Did the juvenile court abuse its discretion in terminating Father's parental rights and granting the Department guardianship of O. with the right to consent to adoption?

For the reasons set forth below, we shall affirm the juvenile court's ruling.

[4] As the trial judge was delivering the oral decision, Father began to utter profanities at her. He was escorted from the courtroom.

STANDARD OF REVIEW

When reviewing a juvenile court's termination of parental rights, this Court "simultaneously appl[ies] three different levels of review." *In re Shirley B.*, 419 Md. 1, 18 (2011) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). Factual findings are upheld unless they are clearly erroneous. *In re Yve S.*, 373 Md. at 585. The trial court's legal conclusions are reviewed *de novo* to determine if they are legally correct. *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 708 (2011). The ultimate conclusion of the juvenile court will not be disturbed unless "there has been a clear abuse of discretion." *In re Adoption of Ta'Niya C.*, 417 Md. 90, 100 (2010). A court abuses its discretion if its decision does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective. *See, e.g.*, *In re Jayden G.*, 433 Md. 50, 87 (2013).

DISCUSSION

I. The Termination of Father's Parental Rights

A court may order the termination of parental rights ("TPR") over a child "upon a showing either that the parent is 'unfit' or that 'exceptional circumstances' exist which would make the continued relationship detrimental to the child's best interest." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 495 (2007); *accord In re Adoption/Guardianship of H.W.*, 460 Md. 201, 217 (2019). "[T]o guide and limit the court in determining the child's best interest" (*In re Adoption/Guardianship of Rashawn H.*, 402 Md. at 499), § 5-323 of the Family Law Article ("FL"), Md. Code (1984, 2019 Repl. Vol.), lists "a series of specific factors that a juvenile court must consider in any

TPR proceeding." *In re Adoption/Guardianship of Amber R.*, 417 Md. at 709. In short, these factors concern: (1) the services offered to the parent; (2) the results of the parent's efforts to adjust his or her circumstances or conduct; (3) the parent's history of domestic abuse or neglect; and (4) the child's emotional ties to his or her family and adjustment to his or her new home. *See* FL § 5-323(d)(1)-(4). The court does not "weigh any one statutory factor above all others" and must "review all relevant factors and consider them together." *In re Adoption/Guardianship No. 94339058/CAD in Circuit Court for Baltimore City*, 120 Md. App. 88, 105 (1998).[5] If, after consideration of the statutory factors, the "juvenile court finds by clear and convincing evidence that a parent is unfit" or that continued custody is not in the child's best interests, the court may terminate the parent's rights and grant guardianship of the child without the parent's consent. FL § 5-323(b).

"The statutory factors are both considerations in determining whether TPR is in a child's best interests, and **'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**.'" *In re Adoption/Guardianship of H.W.*, 460 Md. at 218 (quoting *In re Adoption/Guardianship*

[5] The court may consider additional relevant factors, including: "'such parental characteristics as age, stability, and the capacity and interest of a parent to provide for the emotional, social, moral, material, and educational needs of the child." *In re Adoption of Ta'Niya C.*, 417 Md. at 104 n.11 (quoting *Pastore v. Sharp*, 81 Md. App. 314, 320 (1989)); *accord In re Adoption/Guardianship of H.W.*, 460 Md. at 220.

of Rashawn H., 402 Md. at 499) (emphasis added in *In re Adoption/Guardianship of H.W.*).

> 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.

In re Adoption/Guardianship of Rashawn H., 402 Md. at 501 (emphasis removed); *accord In re Adoption/Guardianship of H.W.*, 460 Md. at 219.

Father argues that the juvenile court failed to assess the reasonableness of the Department's efforts to facilitate reunification and that there was an insufficient amount of time to assess Father's progress toward reunification.[6] His specific concern seems to involve the timeliness of the services that the Department offered. The record demonstrates, however, that the court properly considered the required criteria and did not abuse its discretion.

The juvenile court first considered the services offered by the Department to the Father under FL § 5-323(d)(1). Section 5-323(d)(1) states that the juvenile court must consider:

> (1)(i) all services offered to the parent before the child's placement, whether offered by a local department, another agency, or a professional;

[6] Father argues that the Department did not comply with the requirements of a CINA permanency plan, because it changed the plan two months after O. was placed in foster care. As the Department argues, however, Father did not appeal from the order that changed the permanency plan. Hence, the propriety of that order is not before us.

> (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[.]

Although the local department must offer "a reasonable level" of reunification services, the State's "duty to protect the health and safety of the child[] is not lessened and cannot be cast aside if the parent, despite that assistance, remains unable or unwilling to provide appropriate care." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. at 500-01.

Father claims that the Department did not make reasonable efforts to work with him. The court explained, however, that "there were no services offered to [Father] before placement in this case because . . . [he] was not identified as the father until late fall of 2018." Father's parentage was confirmed by a paternity test in February 2019, seven months after O.'s placement in foster care (and two months after Father failed to appear for a previously scheduled test). The court correctly found that it would have been inappropriate to provide services to Father before the Department confirmed the identity of O.'s biological father, considering that there were other potential fathers.

The Department made many attempts to offer services to Father once his paternity was established, but his threatening and hostile behavior made it impossible to provide any help. Two social workers obtained peace orders against Father, and he threatened to "blow up" the Department's building. After several unsuccessful attempts to reach Father, the Department sent a letter asking him to speak with a social worker about his child, but he did not respond. The phone numbers that Father provided did not work, and

he failed to attend the meetings that the Department was eventually able to schedule with him. The Department was never able to determine Father's service needs, for he failed to provide a release to allow the Department to view information on the anger-management course and psychological evaluation he claimed he completed. Father never entered into a service agreement with the Department or attended O.'s CINA review hearings in February and March 2019, after the paternity test. Father's conduct demonstrated a lack of concern for the prospect of reunification with his child.

The juvenile court next examined Father's efforts to adjust his circumstances, condition, or conduct under FL § 5-323(d)(2). This factor compels the court to consider: "(i) the extent to which the parent has maintained regular contact with" the child, the Department, or the foster parents; "(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) whether the parent has a disability "that makes the parent consistently unable to care for the child's immediate and ongoing physical or psychological needs"; 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" eighteen months. FL § 5-323(d)(2)(i)-(iv).

The court found that Father had no regular contact with the Department because of his "own attitude and threats" toward the Department. The court also found that Father had no interactions with the child either before or after O. entered foster care, even though he knew that he might be the biological father while Mother was pregnant.

The court found that Father was "not in a position" to give financial support to O. and that he does not appear able or willing to provide care and support for the child in the

future. Father testified that he was unaware that he had to provide child support for O. and that it never occurred to him that he could have supported the child. He was unable to provide any evidence of stable housing, and his criminal record and history of incarceration creates concern that he will end up in prison again and therefore be unable to care for O. *See In re Adoption/Guardianship No. J970013*, 128 Md. App. 242, 252 (1999) ("incarceration may indeed . . . be a critical factor in permitting the termination of parental rights, because the incarcerated parent cannot provide for the long-term care of the child[]").

Father has a potential disability that would prevent him from caring for O.: the court pointed out that Father has never provided the details of his psychological evaluation and anger-management course, which prevented the Department from "determin[ing] whether any type of contact [with O.] would be appropriate." Based on Father's conduct and circumstances, the court reasonably found that any lasting parental adjustment was not "even a remote possibility" because Father was "not amenable" to the services provided by the Department.

The court found that the third factor in FL § 5-323(d), which considers whether the parent has abused or neglected the child or another family member and whether the mother or the child tested positive for drugs at the child's birth, did not weigh against Father. *See* FL § 5-323(d)(3). The court explained that this factor was "not relevant" because Father "was not identified until the fall of 2018 as [O.'s] biological father."

Lastly, the court analyzed O.'s emotional ties to Father and his bond to his foster family under § 5-323(d)(4). This factor requires the court to consider the child's

emotional ties to the biological family, his or her adjustment to the foster care placement, and the impact of the termination of parental rights on the child's feelings and well-being. Under this factor, the court may consider "the age of the child when care was assumed by the third party . . . [and] the nature and strength of the ties between the child and the [foster family]." *In re Adoption of Ta'Niya C.*, 417 Md. at 106 (quoting *Ross v. Hoffman*, 280 Md. 172, 191 (1977)).

In considering § 5-323(d)(4), the court stressed that O. had been in foster care since a few days after his birth and had lived with his current foster family for the previous seven months. The court found that O. was "highly bonded" to his brother and foster family and had adjusted well in the family's community. On the other hand, the court found that O. and Father had "no emotional bond" and that "[t]here [was] nothing to sever except legally." Because O.'s foster home was the "only home that he has known for the most part," the court determined that severance of the parent-child relationship would have no detrimental impact on the child. *See In re Adoption/Guardianship of H.W.*, 460 Md. at 233 (affirming the termination of a father's parental rights where the child "was unaware that [his father] existed," and the father chose not to visit the child while in foster care despite having had opportunities to do so).

Nothing in the record or the juvenile court's findings demonstrate that the court abused its discretion in terminating Father's parental rights. Father's failure to cooperate with the Department, his history of aggressive and criminal conduct, and his nonexistent relationship with O. provide clear and convincing evidence that justifies the court's finding that there are exceptional circumstances that would make the continued

relationship detrimental to the child's best interest and that it is in O.'s best interest to terminate Father's parental rights and grant guardianship to the Department. The court carefully reviewed these facts, identified the required factors under FL § 5-323(d), applied the facts to each criteria, and made an appropriate decision based on its analysis.

II. The Guardianship Placement of O.

Father challenges the juvenile court's guardianship decision on two grounds. First, he claims that the court erred by not placing O. with a biological relative. Second, he claims that the court failed to consider "religious matching" in O.'s guardianship placement. For the reasons discussed below, we affirm the juvenile court's decision.[7]

Maryland law prioritizes the placement of children with relatives before placing them for adoption or long-term foster care if the Department determines that reunification is not in the best interests of the child. FL § 5-525(f)(2); *In re Adoption/Guardianship Nos. CAA 92-10852, 92-10853 in Circuit Court for Prince George's Cty.*, 103 Md. App. 1, 23, 33 (1994) (holding that "once [the Department] determined that reunification of the children with [the father] was not possible, it was required to consider placing them with his relatives as the 'next best option'"). But despite the preferences in the statutory

[7] The Department argues that Father has no standing to challenge the placement of O. because the juvenile court had terminated his parental rights. Once an TPR order becomes final, "the parent has no standing to challenge future matters regarding the child." *In re Adoption/Guardianship of L.B.*, 229 Md. App. 566, 599 (2016). A parent who challenges the TPR order on appeal, however, "retains standing to raise on appeal an issue relating to 'any portion of the process terminating [his or] her rights,' including the child's placement with the Department." *Id.* Because Father has challenged the termination of his parental rights here, he retains standing to challenge O.'s placement as well. However, since we affirm the court's termination, Father will no longer have "standing to challenge decisions relating to" O. *Id.*

scheme, the child's best interest "trumps all other considerations" when determining placement. *In re Ta'Niya C.*, 417 Md. at 111.

Father argues that the Department failed to consider placing O. with Father's mother, whom he offered as a guardian during a guardianship hearing. Father, however, did not identify his mother or any other relative as a potential guardian until a hearing on April 24, 2019. We have no evidence regarding his mother's suitability as a guardian, her relationship with the child, or whether she is willing and able to become a guardian; we have only a proffer made by Father's counsel. Father's mother made no efforts to arrange guardianship with the Department, and the consideration of her guardianship by the time of the hearing would have caused unreasonable delay in O.'s placement. *See In re Adoption of Jayden G.*, 433 Md. 50, 91-92 (2013) (affirming placement with non-relative after grandmother failed to express an interest in guardianship until nine months after the child was placed in foster care). Furthermore, O. has already formed a strong bond with his foster parents and brother and adjusted well to his community. The juvenile court, therefore, did not abuse its discretion by placing O. with a non-relative.

Father also argues that the court failed to consider "religious matching" in its decision by placing O. with his foster parents, who are a same-sex couple. Father contends that, because the Muslim religion forbids homosexuality, a same-sex couple might not raise the child in a faith that does not condone their sexuality.

FL § 5-520 states that, "[i]n placing a minor child for adoption," the Department "shall give preference to persons of the same religious belief as that of the child or the child's parents unless the parents specifically indicate a different choice." Father,

however, failed to express any religious preference for the child's placement until June 21, 2019, the first day of the two-day guardianship hearing. We cannot fault the Department for failing to honor a religious preference of which it was unaware when it had time to act.

Finally, Father cites *Kirchner v. Caughey*, 326 Md. 567, 577 (2002), a case involving a private custody dispute, for the proposition that the courts must demonstrate "strict impartiality between religions and should not disqualify any applicant for custody or restrain any person having custody or visitation rights from taking the children to a particular church," unless the "conflicting religious beliefs affect the general welfare of the child." It not entirely clear how that language furthers Father's contention that the court abused its discretion in approving the Department's decision to place O. with adoptive parents who are not Muslim. In any event, *Kirchner* also states that "[w]hen the welfare of a child is threatened, . . . the sincerely held religious beliefs of one parent . . . must give way to the safety and welfare of the child." *Id.* at 575. Furthermore, while the Department should consider a parent's religion, a "local department may not withhold consent for the sole reason that . . . [the] religion . . . of a prospective adoptive parent differs from that of the child or parent." FL § 5-338(b)(2)(i).

Here, the court found that O.'s foster parents provided the care necessary to protect the safety and welfare of the child. Father's religious preference is a secondary concern for the court in awarding guardianship, and the record demonstrates no other reason why O. should not be placed with his current foster parents. O., a one-year-old child, has never practiced Islam, and his foster parents state that they will encourage O. to

learn about his background and explore religious faiths when he reaches an appropriate age. Because the child's welfare was the court's paramount concern, the juvenile court did not abuse its discretion in granting guardianship to the Department without limiting the placement of O.

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