Circuit Court for Baltimore County
Case No. C-03-JV-20-000967

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1156

September Term, 2021

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IN RE: D.S.

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Graeff,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Eyler, James R., J.

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Filed: April 4, 2022

* 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.

This appeal arises from a decision by the Circuit Court for Baltimore County, sitting as a juvenile court, terminating the parental rights of Ms. S. to her son, D.S., and granting guardianship of D.S. to the Baltimore County Department of Health and Human Services (the "Department"). On appeal, Ms. S. urges us to rule that the juvenile court erred in granting the guardianship petition, terminating her parental rights to D.S.[1]

For the reasons set forth below, we shall affirm the judgment of the juvenile court.

## FACTUAL AND PROCEDURAL BACKGROUND

At the time of D.S.'s birth in July of 2019, he tested positive for marijuana. Ms. S. acknowledged that she had used marijuana throughout her pregnancy with D.S., and used cocaine approximately three months prior to D.S.'s birth. She also indicated that she had received no prenatal care. Ms. S. has a history of substance abuse, untreated mental health issues, and housing instability. D.S.'s biological father is unknown.[2] The Department attempted unsuccessfully to identify D.S.'s father through publication of the Department's guardianship petition. Because the unknown father failed to object to the guardianship

[1] In Ms. S.'s brief, she frames the question as follows: "Did the court commit error when it terminated the appellant's parental rights after making limited oral findings of fact which were conclusory and failed to connect fully the findings to the required statutory factors?"

[2] Ms. S. identified three potential biological fathers of D.S. Paternity testing excluded each of the three individuals as D.S.'s father.

petition following public notice, he is deemed to have consented to the termination of his parental rights.[3]

Ms. S. has an extensive history with Child Protective Services. She has seven children, none of whom are in her care. Six of her children were born substance-exposed. Ms. S.'s two oldest children, "A"[4] and "B" were adopted by a relative with her consent. Each of her three other children, "E", "F", and "G", was found to be a Child in Need of Assistance (CINA)[5] and committed to the care of the Department shortly after birth. Subsequently, Ms. S. consented to the termination of her parental rights as to E, F, and G.

Shortly after D.S.'s birth, Ms. S. informed Nina Gonzalez, a Department social worker, that she was homeless and did not have a safe discharge plan for D.S. Ms. S. acknowledged that she could not care for D.S. and consented to placing him with Ms. C., a family friend, who had previously adopted Ms. S.'s child, G.

On July 10, 2019, the Department filed a CINA petition and shelter care request for D.S. The court held a shelter care hearing on July 11, 2019. At the hearing, Ms. S. admitted that, on the previous day, she had used crack cocaine and indicated that she was unable to

[3] Pursuant to Md. Code (1984, 2019 Repl. Vol.) § 5-320(a)(1)(iii)(1)(C) of the Family Law Article ("FL"), a parent will have consented to the grant of guardianship "by fail[ing] to file a timely notice of objection after being served with a show-cause order[.]"

[4] To protect the children's privacy, these initials are chosen at random.

[5] A child in need of assistance (CINA) is one who requires court intervention because the child has been abused or neglected, or has a developmental disability or mental disorder; and his or her "parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Md. Code (1973, 2020 Repl. Vol.), Courts & Judicial Proceedings Article ("CJP") § 3-801(f).

care for D.S. The court granted the shelter care request and advised Ms. S. to maintain weekly contact with the Department and discuss with the Department further substance abuse treatment options. On July 12, 2019 and July 15, 2019, the Department attempted unsuccessfully to contact Ms. S.

Following an adjudication and disposition hearing on July 26, 2019, the court sustained the allegations in the CINA petition and D.S. was adjudicated CINA. The court found that Ms. S. was homeless and had not engaged in substance abuse treatment. Ms. S. stated that she was currently unable to care for D.S. The court found that Ms. S.'s history of substance abuse and continued housing instability prevented her from providing appropriate care for D.S. The court granted Ms. S. liberal, supervised visitation and ordered her to maintain consistent contact with the Department, complete a substance abuse treatment program, complete a mental health evaluation and comply with all recommended mental health services, and submit to random drug testing.

Between July 26, 2019 and February 9, 2020, Ms. S. did not contact the Department or attempt to visit with D.S. On February 10, 2020, Ms. S. left a voice message for Ms. Gonzalez at the Department. Ms. Gonzalez returned Ms. S.'s call and left a message for her when she was unable to reach her. Ms. S. did not return Ms. Gonzalez's call. Ms. Gonzalez learned that Ms. S. had been observed panhandling with a sign that read "pregnant and homeless". In early May 2020, the Department encountered Ms. S. again when she gave birth to her seventh child, "H" who was born exposed to cocaine. At the

time of H.'s birth, Ms. S. was homeless and had not engaged in mental health counseling or substance abuse treatment.

Following H's birth in May 2020, Ms. S. began intensive treatment for the first time; she was admitted to Chrysalis House for a 90-day substance abuse treatment program. At the time of her admission, Ms. S. tested positive for Oxycodone and alcohol and described a long history of crack cocaine and marijuana use. Ms. S. reported prior diagnoses of anxiety, bipolar disorder, mood disorder, and attention-deficit/hyperactivity disorder. Ms. S. participated in individual and group therapy, residential treatment, drug education, relapse prevention, and parenting classes. She showed early signs of progress and her drug screenings at Chrysalis House were all negative.

On May 19, 2020, Ms. S. spoke with Ms. Gonzalez by video conference and requested visits with D.S. On May 26, 2020, Ms. S. began weekly visits with D.S., which were conducted by video call due to the pandemic. Ms. S. regularly attended her scheduled visits with D.S., missing only "one or two" visits. Ms. S. reported to Ms. Gonzalez that she wanted to leave the residential treatment program prior to her completion date due to conflicts with other clients in the program. Ms. Gonzalez encouraged Ms. S. to stay in the program and continue to receive services "to help [her] reunify with [her] children." Chrysalis House discharged Ms. S. one day short of her 90-day completion date due to her conflict with other clients.

The Department lost contact with Ms. S. for several weeks following her discharge from Chrysalis House. In August of 2020, the Department learned that Ms. S. was transient

and living with friends. At the permanency plan hearing on October 26, 2020, D.S.'s permanency plan was changed, at the request of Ms. S. and the Department, to a permanency plan of adoption by a nonrelative.

Ms. S. resumed contact with Ms. Gonzalez and requested visits with H., but she did not request any visits with D.S. or ask about D.S.'s well-being. Ms. S. reported that she was living in an apartment with a boyfriend and they had received an eviction notice due to nonpayment of rent. On January 21, 2021, the Department provided Ms. S. with the contact information for the Baltimore County Housing Office and advised her to place her name on the waitlist for housing assistance. The Department had no information as to whether she pursued that referral. Following eviction from their apartment, Ms. S. and her boyfriend moved to a trailer that had no running water or electricity. Ms. S. also reported to Ms. Gonzalez that she had no food.

Ms. S. was unemployed and had no known employment history. She received $194.00 per month in food stamps. The Department discussed with her the importance of earning an income sufficient to support herself and her children. Ms. S. indicated to the Department that she was not interested in working or looking for a job and that she believed that it was her boyfriend's responsibility to provide for her. The Department was aware that Ms. S. suffered from a heart condition and advised her to apply for social security disability benefits. The Department also provided her with information on how to submit an application for disability benefits.

Following positive drug tests for marijuana and cocaine between December 2020 and January 2021, Ms. S. began attending twice-weekly mental health therapy sessions at Thrive Behavioral Health. Ms. S. described the sessions as helpful to her, though the Department did not confirm her continued participation in the therapy. Ms. S. completed a substance use evaluation in February 2021, but declined the recommended intensive outpatient substance abuse treatment program because she believed that she did not require treatment.

Ms. S. visited twice with D.S. by video in January 2021. At Ms. S.'s request, the Department scheduled two in-person visits; one for March 2021 and another for April 2021, however, both visits were canceled when Ms. S. failed to confirm her attendance in advance. Between April and September 2021, Ms. S. did not request visits with D.S.

D.S. has done very well in his placement with Ms. C. D.S. is a "curious, explorative, happy, affectionate and confident infant." He is achieving his developmental milestones and thriving in the care of Ms. C. D.S. also lives with G, his biological brother, whom Ms. C. adopted, and they get along very well. D.S. refers to Ms. C. as "mommy" and is bonded to Ms. C. and G. G is "very affectionate and caring toward [D.S.] and always tries to help him with whatever activity he is doing." D.S. has also had regular visits with his other biological siblings and appeared happy with them.

On September 14, 2021, the juvenile court held the guardianship hearing by video conference. Ms. S. attended the hearing and was represented by counsel. She did not

testify or offer evidence. Counsel for D.S. supported the Department's guardianship petition.

Ms. Gonzalez, D.S.'s assigned caseworker, testified as to her observations and experience with D.S. and Ms. S. The court accepted Ms. Gonzalez as an expert in general social work, child abuse, child neglect, children in foster care, permanency planning, adoption and safety assessment. Ms. Gonzalez testified that Ms. S. had no employment history and had not provided any financial support to D.S. At the time of the guardianship hearing, Ms. S. was not engaged in any type of substance abuse treatment. Ms. Gonzalez observed D.S. to have a "very close" relationship with Ms. C. She noted that Ms. C. is the only parent D.S. has ever known and he calls Ms. C. "mom." Ms. Gonzalez testified, to a reasonable degree of social work certainty, that there were no additional services the Department could have provided that would have allowed D.S. to be returned to Ms. S.'s care within a short period of time.

Gina Malphrus testified that she has been D.S.'s social worker since his permanency plan was changed to a plan of adoption in February 2021. The court accepted Ms. Malphrus as an expert in general social work, child abuse and neglect, children in foster care, permanency planning, adoption, and risk and safety assessment. Ms. Malphrus described D.S. as an "adorable," smart and curious toddler. She testified that D.S. loves playing with his brother, G, and the two brothers share a bedroom and playroom.

Ms. Malphrus testified that D.S. has a "secure attachment" to Ms. C. and feels safe with her. She described D.S.'s relationship with Ms. C. as "wonderful," explaining that he

"looks to her as his mom." Ms. C. is the person he trusts the most and he goes to her for help and comfort, knowing that his needs will be met. According to Ms. Malphrus, Ms. C. "has made an incredible conscious effort to maintain community connections with D.S. and his family" and ensures that "[h]e gets to see his biological brothers and sisters often."

Ms. Malphrus stated that D.S. has no attachment to Ms. S. She noted that Ms. S. had moved frequently, experienced unstable housing, and did not have the financial means to support D.S. She explained that "Ms. [S.] ha[d] been unable to address her circumstances, condition and/or conduct over the past two years to make it in D.S.'s best interest for him to be reunified with her." Ms. Malphrus testified that D.S. needed a permanent and stable home. She explained that a permanent home gives children a sense of belonging, security in their bonds with family, friends and community, and is "critical to their healthy development." She testified that a lack of permanency can be traumatic for children.

At the conclusion of the hearing, the court issued an oral ruling, concluding that termination of Ms. S.'s parental rights was in D.S.'s best interest because it would allow him to "have a permanent and stable home." On September 15, 2021, the court issued a written order granting the Department's petition for guardianship of D.S. with the right to consent to adoption and terminating Ms. S.'s parental rights to D.S. Ms. S. noted a timely appeal.

## STANDARD OF REVIEW

We review termination of parental rights ("TPR") decisions under three interrelated standards of review:

> 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.

*In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 100 (2010) (quotation marks, citation and brackets omitted); *accord In re Adoption/Guardianship of C.E.*, 464 Md. 26, 47 (2019).

## DISCUSSION

Ms. S. contends that the juvenile court erred in granting the Department's petition for guardianship of D.S. because the juvenile court's findings were inadequate and the court "failed to connect its findings of fact to the required statutory factors to determine [her] unfitness or exceptional circumstances[.]" Ms. S. asserts that the court "thoroughly ignored" the presumption that it is in a child's best interest to remain in a relationship with his parent. She argues that the court's error in ignoring the parental presumption was particularly harmful to her in light of the evidence that her other children were not in her care.

The Department argues that the juvenile court properly found Ms. S. unfit to remain in a parental relationship with D.S. and properly determined that termination of Ms. S.'s

parental rights was in D.S.'s best interest. The Department contends that the juvenile court considered the parental presumption as well as the relevant statutory factors, and sufficiently articulated its findings supporting the termination of Ms. S.'s parental rights.

We recognize that there exists a presumption in the law that it is in the child's best interest to remain in the care and custody of the child's parent, a presumption that can be overcome '"only by a showing that the parent is either unfit or that exceptional circumstances exist that would make the continued relationship detrimental to the child's best interest."' *In re C.E.*, 464 Md. at 50 (quoting *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 498 (2007)). Because of the importance of the rights at stake in a TPR proceeding, we afford parents a heightened level of protection when reviewing TPR decisions. *Id.* "Proceedings to terminate parental rights necessitate maintaining a delicate balance between a parent's constitutional right to raise their children, the State's interest in protecting children, and the child's best interests." *In re: Adoption/Guardianship of H.W.*, 460 Md. 201, 205 (2018).

It is the State's burden to establish parental unfitness or exceptional circumstances by clear and convincing evidence. *In re Ta'Niya C.*, 417 Md. at 103-04 n.10. In determining whether the termination of parental rights is in the child's best interest, the juvenile court must consider the factors set forth in Md. Code (1984, 2019 Repl. Vol.) Family Law Article ("FL") § 5-323(d). *Id.* *See In re Adoption/Guardianship of Jayden G.*, 433 Md. 50, 94 (2013) ("A finding of parental unfitness overcomes the parental presumption, but it does not establish that termination of parental rights is in the child's

best interest. To decide whether it is, the court must still consider the statutory factors under FL § 5-323(d)."). In determining whether to terminate parental rights, "the best interest of the child remains the ultimate governing standard." *In re Rashawn H.*, 402 Md. at 496.

**The Juvenile Court's Findings of Fact**

The court addressed the parental presumption at the outset of its findings, stating:

> There's no decision that any Court makes that is more concerning or more closely examined than the decisions regarding children.
>
> Courts must always make decisions on what is in the best interest of the minor children, and in particular, when, you know, we are dealing with rights of the level of parental rights. It is the most scrutinized and the most concerning.

After recognizing the importance of the parental presumption, the court made the following factual findings.

The court found that Ms. S. was suffering from mental health as well as substance abuse issues, and that she had failed to take advantage of the numerous treatment services available in Baltimore County. The court applauded Ms. S.'s efforts to receive treatment in 2020 at the Chrysalis House following the birth of H, but observed that Ms. S. had not taken advantage of any inpatient treatment services when D.S. was born. The court "[did] not believe that there are other services that could have been offered" noting that inpatient "substance and mental health services with the opportunity for a baby to be with the parent" is the highest level of treatment. The court found that Ms. S. failed to engage in significant mental health and substance abuse treatment services.

The court found that Ms. S. had a long history of unstable housing, marked by her reliance on other people to provide housing for her. The court found that Ms. S. had no work history and no income history, other than minimal public assistance. Based on the evidence presented, the court found that Ms. S. lacked the resources to support D.S.

**The Juvenile Court's Analysis of the Factors Under FL § 5-323(d)**

When reviewing a petition for guardianship of a child, FL § 5-323(d) requires that the court 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[.]" Those factors that the court must consider include: (1) the services offered to the parent; (2) the results of the parent's and the Department's efforts to adjust the circumstances, conditions, or conduct of the parent; (3) the parent's history of abuse or neglect of the child or another minor in the home; and (4) the child's emotional ties to his siblings and others who may affect his best interests significantly. *See* FL § 5-323(d).

The juvenile court explained that it had reviewed the evidence and considered "the factors of Family Law 5[-]323[,]" describing its application of those factors to its factual findings. With respect to FL § 5-323(d)(1)(i)-(iii), regarding the nature, extent, and timeliness of services offered to the parent and the fulfillment of the obligations of the Department and parent, the juvenile court found that the Department had fulfilled its obligation to Ms. S., as it had offered her numerous and extensive services and referrals. The court noted that the Department had also facilitated visits between Ms. S. and D.S. to "get some kind of interaction going with her and [D.S.] so that there could be bonds" and

"a reunion of sorts." Though Ms. S. had made some efforts, the court deemed those efforts inadequate. The court observed that Ms. S. did not take advantage of inpatient services when D.S. was born or "any number of services of which [she] could have more fully" utilized. As a result, the court determined that Ms. S. had failed to fulfill her obligations to participate in recommended substance abuse treatment.

With respect to FL § 5-323(d)(2), the court found that Ms. S. had failed to "adjust[] her circumstances or her outlook to accommodate [D.S.]'s best interest." Specifically, the court observed that she had failed to maintain regular contact with the Department. The court stated that although Ms. S. had struggled with housing instability, her housing situation did not excuse her failure to maintain regular contact with the Department. *See* FL § 5-323(d)(2)(i)(2) ("the extent to which the parent has maintained regular contact with . . . the local department …"). With respect to the consideration of the parent's contribution to the child's support under FL § 5-323(d)(2)(ii), the court noted that Ms. S. "has never had any kind of income" and had no ability to provide support for D.S.

The factors set forth in FL § 5-323(d)(2)(iii-iv) require consideration of "the existence of a parental disability that makes the parent consistently unable to care for the child[]," and "whether additional services would be likely to bring about a lasting parental adjustment" so that D.S. could return to Ms. S.'s care within an ascertainable time. The court observed that Ms. S. was "certainly suffering from mental health as well as substance abuse issues." The court determined, however, that additional services or time would not enable Ms. S. to care for D.S., as she had failed to engage in any type of long-term recovery

to address her substance abuse and mental health issues. The court explained that, had Ms. S. obtained suitable housing and a stable income, "there might be a little more to work with[,]" but her lack of stability in all phases of her life precluded her from "establishing some type of home and ability to care for [D.S.]" in the foreseeable future.

With respect to FL § 5-323(d)(3), evidence of abuse or neglect of the child or another minor, the court considered Ms. S.'s "track record" of failing to care for her other children. In her brief, Ms. S. contends that the court did not reference the factors in Subsection 3, other than to indicate that her track record with her other children made it an "inevitability" that her rights would be terminated. In evaluating the risk of harm to the child, the juvenile court has "a right – and indeed a duty – to look at the track record, the past, of [a parent] in order to predict what her future treatment of the child may be. That track record includes evidence that the parent has neglected the child's sibling." *In re J.J.*, 231 Md. App. 304, 346 (2016) (quotation marks and citation omitted). *See also In re William B.*, 73 Md. App. 68, 77 (1987) ("The parents' ability to care for the needs of one child is probative of their ability to care for other children in the family."). Here, the juvenile court properly considered, as it must, Ms. S.'s history of neglect of her other children in evaluating her ability to support and care for D.S. That factor was one of the many factors considered by the court, and there was no evidence that the court attributed undue weight to that factor in conducting its analysis.

The court also considered D.S.'s emotional ties, and found that "he has bonded with Ms. [C.]" and she "is the only parental figure that he knows." *See* FL § 5-323(d)(4)(i) ("the

child's emotional ties with … the child's siblings, and others who may affect the child's best interests significantly"). The court was "convinced by the testimony that Ms. [C.] will encourage family relations between [D.S.] and his siblings[,]" which the court noted, was "a wonderful thing[.]" *See* FL § 5-323(d)(4)(ii) (providing that the court must consider the child's adjustment to his placement); *see also In re Jayden G.*, 433 Md. at 102 (explaining that a court must assess the "reality of a child's life[,]" including the child's attachment and emotional ties to the foster family, in deciding whether termination of parental rights is in the child's best interest) (quotation marks and citation omitted).

Ms. S. contends that the court made "conclusory findings" and failed to articulate how those findings were sufficient to rebut the parental presumption. She relies upon *In re Rashawn H.*, 402 Md. 477, in support of her argument that the juvenile court's failure to relate its statutory findings to the parental presumption constituted reversible error. In *Rashawn H.*, the Court of Appeals held that the circuit court did not relate its evidentiary findings to two of the required statutory factors set forth in FL § 5-323(d) before concluding that termination of the mother's parental rights was warranted. *Id.* at 503-04. Specifically, the circuit court had found that the children had "special needs" but failed to identify those needs or explain what services would be available, if guardianship were granted, that were not otherwise available to the children. *Id.* at 504. The court also recognized that the parent had made efforts to maintain contact with the agency, but it failed to articulate why those efforts were insufficient. *Id.* The Court of Appeals remanded the case to the circuit court to make specific findings, and to explain how those findings demonstrated exceptional

circumstances sufficient to justify the termination of the parental relationship. *Id*. at 504-05.

*Rashawn H*. is distinguishable from the present case. Here, the court considered all of the relevant statutory factors and relied on more than sufficient evidence to conclude that termination of Ms. S.'s parental rights was in D.S.'s best interest. The evidence was straightforward and uncontroverted. Ms. S.'s lack of stable housing and income, and her inability to provide the basic necessities of life, supported the court's finding that she was unable to establish "some type of home and ability to care for [D.S.]" As the court pointed out, "there has seemingly almost never been a time when Ms. [S.] was stable or in long-term recovery[,]" and the court expressed its concern that it had "absolutely no idea whatsoever how [D.S.] would be supported" in Ms. S.'s care. D.S. had been in foster care his entire life and there was no indication that Ms. S. could support him in the near future. It was evident that the type of permanency he required could exist only upon a termination of Ms. S.'s parental rights and that "a continuation of the parental relationship [would be] detrimental to the best interest of the child[.]" *Id*. at 501. *See also Jayden G.*, 433 Md. at 103 (determining that the continuation of the parental relationship was no longer in the

child's best interest "in the face of the [m]other's persistent inability to take charge of her life").

We conclude that the court did not err in finding that Ms. S. was unfit to maintain a parental relationship with D.S. We see no error or abuse of discretion in the court's decision that termination of Ms. S.'s parental rights was in D.S.'s best interest.

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