Circuit Court for Worcester County
Case Nos.: C-23-JV-19-08 & 10

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1163 & 1205

September Term, 2019

CONSOLIDATED CASES

IN RE: J.W. AND M.W.

Graeff,
Leahy,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Adkins, Sally D., J.

Filed: March 26, 2020

"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). Here we review the complicated question, under Maryland Code (1984, 2019 Repl. Vol.), § 5-323 of the Family Law Article ("FL"), of whether the termination of a parental relationship was in the children's best interests. We consider whether the circuit court erred when it found that the parent was unfit, and that exceptional circumstances exist that would make a continued parental relationship detrimental to the children's best interests. *See In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 498 (2007).

FACTS AND LEGAL PROCEEDINGS

This appeal focuses on the parental relationship between T.G. ("Mother"), and her daughters: M.W., born November 2012; and J.W., born September 2013 (the "Girls"). Mr. J.W. ("Father"), the Girls' father, has not been involved since the Department of Social Services for Worcester County ("DSS" or "Department") became involved in February 2017. He did not appear at the termination of parental rights ("TPR") hearing, and by operation of FL § 5-351 was deemed to have consented.

Mother has six children, five of whom are minors.[1] Besides J.W. and M.W., she has two other daughters: A.B., born June 2003; and M.B., born August 2005. She also has

[1] Her oldest son was 23-years-old at the time of the TPR hearing.

one minor son, W.B., born October 2004.[2] Between 2005 and 2006, A.B., W.B. and M.B. were sheltered, the subjects of CINA petitions,[3] and the subjects of an order of protective supervision. The family has previously been involved with DSS agencies in Baltimore City, Allegany County, Wicomico County, and Garrett County in Maryland; and Mineral County in West Virginia.

In November 2016, when the Worcester County DSS first learned of the family, the Girls lived with their parents and three older, minor siblings. The family had just relocated to Pocomoke, MD, and Mother had contacted the Department's In-Home Services seeking assistance. The Department purchased beds and clothing for the children, despite the family moving into a house that was in the process of being condemned.[4]

The Department received six reports about the family between the implementation of In-Home Services in November 2016, and the removal of the children in February 2017. In January, Father was charged with assault. A few days later, he was charged with driving under the influence while transporting a minor, and related charges. Mother later claimed the DUI charge was her fault, because she "was supposed to be driving." In response to these incidents, DSS held two family involvement meetings ("FIMs") with the family in

[2] Father is not the parent of A.B., W.B., or M.B.

[3] A "child in need of assistance" or "CINA" is a child requiring court intervention because the child has been abused or neglected, or has a developmental disability or mental disorder, and whose parents or custodian cannot or will not give proper care and attention to the child. Md. Code (1974, Repl. Vol. 2013), § 3-801(f), (g) of the Courts & Judicial Proceedings Article.

[4] Father was able to repair the house and bring it up to the building inspector's minimum standards.

January, in order to discuss ways to keep the children safe. During one of these meetings, the Department learned that A.B. had attempted suicide in November 2016 by hanging herself with a bathrobe belt.

On February 7, 2017, the Department opened an investigation of possible neglect, and assigned social worker Kimberly Linton to the case. She interviewed each member of the family individually. All five children told her that Father "punched, pushed, and hit" them. They also described how Father picked up M.W. and J.W. (ages four & three at the time) when he was mad and "slam[med] them on the floor and couch," and hit them so hard they "[fell] on the floor and [cried] so hard they [couldn't] breathe." When interviewing J.W., Linton asked her about a bruise on her temple, to which J.W. said, "daddy did hit. Him mad." M.W. told Linton, "Daddy hit me, but he didn't. He hit me. But he didn't," which Linton took as M.W. being coached to say that Father had not assaulted her.

The three oldest children all stated that they did not feel safe around Father.[5] The children also told Linton that Mother was present for most of the violent incidents, but did not intervene. Some of the older children believed that this was because Mother was also afraid of Father. Mother told Linton that she had attempted to leave Father several times, but always ended up back with him. She refused to discuss the children being afraid of

[5] M.W. and J.W. were not asked about safety, as they were considered too young to understand the concept.

him, but did admit, "yes, they get their asses whooped by us, but it's both of us, not just him."[6]

Father was under the influence of alcohol when Linton spoke with him. He admitted to having a drinking problem, and stated that he drinks "all day, every day." When asked about the bruise on J.W.'s head, he did not deny it, but prompted Mother to say that J.W. is autistic.

Based on these interviews, DSS crafted a safety plan that Mother and Father agreed to, where Father would not have any unsupervised contact with the children, Mother could not be the only person supervising Father's contact with the children, and M.W. and J.W. would not sleep on the second floor of the home until the railing on the stairs had been fixed. One day later, DSS learned that all three of the safety plan's provisions had already been violated. The Department concluded, therefore, that "the children were at imminent risk of harm as [Father] still had access to the children and [Mother] was not willing to abide by the safety plan in order to keep the children safe."

The children were immediately removed into DSS custody. Upon learning that she would not be returning home, M.B. said that "her prayers had been answered," and that she was going to "cry tears of joy because [she] had never been part of a loving family before." Once in custody, the children were assessed as unclean and unkempt. The Department took all five of them to the hospital for evaluations. J.W. and M.W. were behind on their

[6] Thirty months later, at the guardianship review hearing, Mother claimed she was unaware of Father's abuse of the children.

immunizations; M.W. needed two fillings and a crown in her teeth; and J.W. had elevated lead levels and a vitamin D deficiency. Although Mother had previously reported that J.W. suffered two seizures and a concussion from falling through the home's staircase railing to the floor below, DSS could not find any verification that Mother took J.W. to receive any medical attention for these seizures. The Department purchased the children clothes, shoes, hygiene products, and undergarments.

Within a week of the children's removal, Pocomoke police responded to the family home because Mother reported that Father was going to hang himself. One day later, on February 16, Mother told the children that she was living with a Dave H., and less than a week after that, she filed for a protective order against Father. She has not had any contact with Father since that time, and still lived with Dave at the time of the TPR hearing. In 2018, Mother and Dave participated in a marriage ceremony, although it was later annulled due to bigamy charges.

The children were separated and placed in foster care. Mother's parental rights to M.B. were terminated in June 2019; there was no appeal.[7] W.B. is in the custody of S.B., his father. A.B. is in DSS custody, with a permanency plan of custody and guardianship to a relative. That plan was being appealed at the time this opinion was issued. J.W. and M.W. were placed in the same foster home, with foster resource Ms. Q. They are still with Ms. Q. today, and they refer to her as "Mommy." After almost two years with Ms. Q., the Department changed its permanency plan recommendation for the Girls from reunification

[7] The parental rights of M.B.'s father, B.A., were also terminated by consent.

to custody and guardianship to a non-relative with a concurrent plan of adoption. The juvenile court held a TPR hearing on August 1, 2019, during which Mother objected to the termination of her parental rights.

The TPR Hearing

At the hearing, the court heard about the Girls' conditions and progress, as well as Mother's. Shortly after receiving them, Ms. Q. enrolled the Girls in therapy. M.W.'s therapist, Nicole Krasner, diagnosed her with generalized anxiety disorder, and then with post-traumatic stress disorder.[8] Krasner testified that M.W. suffers from "complex trauma," which occurs in the context of an attachment relationship. According to Krasner, this trauma occurs when a child is frightened or scared of those who are supposed to be taking care of them. M.W.'s early childhood experiences will remain with her "over the course of her life."

Krasner testified about M.W.'s reaction to "play" therapy, and stated that M.W. displayed "fear-based trauma responses" when she was pretending that Mother and Father were present. She would hide her baby dolls from "the bad people," and ask Krasner for a knife to deal with "the bad people." Krasner observed that M.W. would exhibit body dysregulation during this therapeutic play, including breathing and sweating heavily. Krasner opined that Mother was a "traumatic trigger" for M.W., and that M.W. needs a

[8] The other three children removed from the house, W.B., A.B., and M.B. also exhibited behaviors and symptoms indicative of trauma resulting from "an inattentive or unavailable parent, someone who was unable to respond appropriately and lovingly . . . ."

safe and secure environment and a secure attachment to thrive. She further testified that Ms. Q. provides this stable environment.

The court also heard from Lisa Rekos, J.W.'s therapist, who diagnosed J.W. with anxiety disorder. [T. 76–77]. This disorder manifested in J.W. through nightmares, bedwetting, and angry emotional outbursts. J.W.'s play therapy, according to Rekos, also included themes of threats, danger, and the need for protection and safety. Rekos opined that these themes were indicative of childhood trauma. Rekos told the court that J.W.'s early childhood experiences had traumatized her. She opined that children who have experienced trauma need consistency, which Ms. Q provides, and that J.W. must "continue to receive empathy and warmth from her caregivers."

Angela Manos is the Director of the Lower Shore Court-Appointed-Special-Advocate ("CASA") program, and supervises the appointed CASAs for all five children. At one point she was also J.W.'s CASA. Manos testified that she has observed positive changes in J.W. since she entered foster care, including becoming more affectionate, and no longer singing dark lyrics such as "I will kill you."

There was testimony that a large component of Mother's inability to keep her children safe was her mental health problems. Mother has a long history of mental health issues, including a psychiatric hospitalization in 1995 for suicidal threats. She was diagnosed with depression in 2016. Throughout the Department's investigation and the litigation in juvenile court, both DSS and the court repeatedly advised Mother that she was

required to consistently engage in mental health counseling. Mother has not done so. Despite the court arranging and paying for therapy, Mother discontinued her treatment.

Mother has, however, visited the Girls regularly, completed parenting classes, and been cooperative with her parent coach, Terry Edwards. She attends scheduled visitations with M.W. and J.W. on a consistent basis, but she has had difficulty improving her relationship with the Girls on those visits. Mother would provide the Girls with inappropriate details of her life, despite the Department's reminders to her not to share such details. She displayed difficulties focusing on the Girls' lives and emotional needs rather than her own.

CASA Director Manos testified that Mother's emotional needs now seem to revolve around Dave, as she solicits his participation in all decisions regarding her children. Manos is concerned that Mother may be in another controlling relationship with Dave,[9] specifically because Mother is more focused on her relationship with him than her children. Manos testified about an incident where Dave had a disagreement with a security guard, who would not allow Dave to bring his dog into a visit with the Girls. Dave could not de-escalate his anger in order to participate in the visit, and according to Manos, Mother was more interested in defending him than interacting with the Girls. Paula Andreas, another of the children's caseworkers, made a similar observation, that Mother's focus in her visits

[9] There is evidence that before her controlling relationship with Father, Mother was in one with another man.

is to tell the children what is going on in her social and romantic life rather than ask about what is occurring in the children's lives.

Ms. Q. was also concerned about Dave. She described how, before two summer 2019 visits between Mother and the Girls that Ms. Q was to supervise, she requested to Mother that Dave not attend. Mother ignored the request and brought Dave to one of the visits.

The Juvenile Court's Findings

While remaining mindful of Mother's fundamental right to parent, the court made its findings of fact pursuant to the clear and convincing evidence standard. The court analyzed the statutory factors set forth in FL § 5-323(d) and, based upon those factors, concluded:

> 1. Mother is unfit to parent [M.W.] and [J.W.]. She has a history of neglect of these children, and has failed to make the efforts required by the Department and the Court in rehabilitating herself, psychologically and emotionally, so as to ensure that the girls may have a safe home to which they can return.
>
> 2. There are exceptional circumstances which would warrant a continuation of the parental relationship detrimental to [M.W.] and [J.W.] . . . The children have been out of [Mother's] care for over half of their lives. They are with a loving and stable caregiver. They face an uncertain future if returned to Mother's care, and would likely have a dramatic emotional setback if removed from Ms. Q.

The court's written decision, issued August 7, 2019, terminated Mother and Father's parental rights to M.W. and J.W. Mother presents this timely appeal, which asks us to

determine whether the juvenile court erred in terminating her parental rights. For the reasons set forth below, we shall answer that question in the negative, and affirm the juvenile court's decision.

STANDARD OF REVIEW

When reviewing a juvenile court's decision to terminate parental rights, we use three distinct, but interrelated standards. *In re Adoption of Ta'Niya C.*, 417 Md. 90, 100 (2010).

> The juvenile court's factual findings are left undisturbed unless they are clearly erroneous. We review legal questions without deference, and if the lower court erred, further proceedings are ordinarily required unless the error is harmless. The lower court's ultimate conclusion, if it is founded upon sound legal principles and based upon factual findings that are not clearly erroneous, will be disturbed only if there has been a clear abuse of discretion.

H.W., 460 Md. at 214 (cleaned up).

DISCUSSION

Mother contends that the juvenile court erred when it concluded that terminating her parental rights was in J.W. and M.W.'s best interests. Conceding that it may have been appropriate to temporarily remove the children, she argues that given the progress she has made, the Department did not sufficiently rebut the presumption that it is in J.W. and M.W.'s best interests for her to retain her parental rights. DSS counters that termination of parental rights was appropriate here because Mother has failed to address the issues that led to her initial failure to protect and appropriately parent the Girls. The Girls likewise

argue[10] that the court's decision was appropriate, as there was substantial evidence to support the finding that a continuation of the parental relationship would be detrimental to them.

The Court of Appeals has long recognized that parents have a fundamental right to raise their children and make decisions about their custody and care. *See In re Adoption of Jayden G.*, 433 Md. 50, 66 (2013). "[T]here is a prima facie presumption that the child's welfare will be best subserved in the care and custody of its parents rather than in the custody of others, and the burden is then cast upon the parties opposing them to show the contrary." *Ross v. Hoffman*, 280 Md. 172, 178 (1977). This principle is not absolute, however, as the "'transcendent' standard in TPR proceedings has always been the child's best interests." *H.W.*, 460 Md. at 216. The State can rebut the presumption "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." *Rashawn H.*, 402 Md. at 498. In FL § 5-323, the General Assembly established a statutory guide to analyze whether it is in the child's best interest to terminate parental rights. The statute "balances the child's best interests and the appropriate protection for parental rights." *H.W.*, 460 Md. at 216. Subsection (d) provides juvenile courts a list of factors to consider in its TPR analysis, and subsection (b) establishes the burden of proof and findings required:

[10] The Girls were represented by a court-appointed attorney, who submitted argument on their behalf. *See* FL § 1-202(a)(1)(ii) ("In an action in which custody . . . is contested, the court may appoint a lawyer who shall serve as a best interest attorney to represent the minor child . . . .").

> If, after consideration of factors as required in this section, a juvenile court finds by clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interests of the child such that terminating the rights of the parent is in a child's best interests, the juvenile court may grant guardianship of the child without consent otherwise required under this subtitle and over the child's objection.

We remain cognizant that "[u]nfitness or exceptional circumstances do not, by themselves, mandate a decision to terminate parental rights. . . . Rather, they demonstrate that the presumption favoring the parent has been overcome. The decision to terminate parental rights must **always** revolve around the best interests of the child." *H.W.*, 460 Md. at 218–19 (emphasis in original).

The Juvenile Court's Findings

The juvenile court first considered "all services offered to the parent before the child's placement," FL § 5-323(d)(1)(i), and "the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent," FL § 5-323(d)(1)(ii). The Girls were removed in February 2017, and it was not until January 2019 that their permanency plan was changed from reunification to adoption by a non-relative. CINA records revealed that this change stemmed from Mother failing "to sustain protracted periods of engagement in mental health counseling," despite repeated instructions by the court. During the January 2019 permanency plan review, the court ordered Mother to have "regular, weekly, mental health counseling with a trauma-informed therapist." Yet up until June 2019, Mother was non-compliant. After an in-take session with Chesapeake Health

in 2019, she attended "very few" appointments. One of her therapists, Dr. Zweig, corroborated this, testifying that Mother did not show up for many of her scheduled sessions, and that eventually he would not schedule more than two sessions in advance due to her lack of attendance. Another therapist, Alaina Van Gelder, began working with Mother in June 2019, and testified that Mother has only attended four visits since then.

Turning to subsection (d)(2), which assesses "the result of the parent's efforts 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," the juvenile court considered Mother's relationship with Dave. Based on testimony presented about Dave, and Mother's earlier relationships, the court concluded that "this inability to extricate herself from controlling, abusive men has never been addressed by Mother. Until it is, there is every indication from Mother's history, and from the societal data available to us, that her pattern of acquiescing to a more powerful personality, even at the expense of her safety and that of her children, will continue." The court then discussed testimony from M.W. and J.W.'s therapists, specifically how the Girls first presented as fragile, and they will always have "a heightened need for security and safety, given their unstable backgrounds." The court found "by clear and convincing evidence . . . based on this evidence and the fact that Mother has continued unmet mental health needs . . . that Mother has made insufficient efforts to adjust her circumstances or situation such as to make it safe for either of these children to return to her."

The court applied FL § 9-101 in deciding whether it can grant a parent access to the child after a finding of abuse. It found that it could not do so "absent a lengthy period of demonstrated good health and mental health intervention," which Mother has not demonstrated. *See* FL § 9-101(b).

The juvenile court next made findings pursuant to the three other factors in § 5-323(d)(2), as well as the six factors in (d)(3), and five in (d)(4). Of those, the findings under § 5-323(d)(2)(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 . . ." is pertinent here. The court noted that Mother has six children, and five have been removed and not returned to her care. M.W. and J.W. have been in an out-of-home placement for over half their lives at this point. The court found that Mother "has made progress. She is invested in seeing her children, and clearly wants to parent them." Unfortunately, as the court concluded, Mother has not been able to understand how fragile her mental health is, and the mental health intervention needed to improve it. "Even were Mother to commit to this treatment and begin the hard work of attaining good health, the process would take years, and that is too long of a period of time for these two children to remain in limbo with the State."

Analysis

As discussed earlier, to terminate parental rights, a court must expressly determine whether its findings show "an unfitness on the part of the parent to remain in a parental relationship with the child or . . . 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 Amber R.*, 417 Md. 701, 714 (2011) (cleaned up). The juvenile court's opinion and order here make clear that it considered the relevant statutory factors—while keeping the presumption of the continued parental relationship in mind—in coming to its conclusion that by clear and convincing evidence Mother is unfit and exceptional circumstances exist.

The order and opinion explain that the court considered the actions Mother has taken since the children were removed towards becoming a better parent. Indeed, she has removed herself from a violent and abusive relationship, found stable housing, been approved for monthly Social Security disability payments, attended some therapy sessions, and completed a parenting class. She also has been consistent in visiting the Girls. These strides are in the right direction, but sadly they are not enough.

Under the guardianship statute, "primary consideration" is given to the children's health and safety. FL § 5-323(d). The juvenile court considered these factors, and made clear that the Girls' health and safety is not best served with Mother. Mother has a "history of neglect," and the court found she has failed to make the required efforts to "rehabilitate herself." There is ample evidence in the record for the court's conclusion that M.W. and J.W. have suffered trauma that will affect their development, and that they "will require ongoing, trauma-focused therapy for a very long time." There is also ample evidence to support the juvenile court's conclusion that "Mother is in no way able to provide for their

needs at this point, and, given her history, it may be that she never achieves the strong good health needed to parent emotionally fragile children."

The court, in making its exceptional circumstances finding, reviewed the *Ross* factors (length of time the child has been away from the biological parent, age of the child when care was assumed by a third party, the period of time elapsed before the parent sought to reclaim the child, the nature and strength of the ties between the child and the third-party custodian, and the intensity and genuineness of the parent's desire to have the child). *See H.W.*, 460 Md. at 224. It acknowledged Mother's "unwavering desire to have her children with her." Nevertheless, the court found that, pursuant to the *Ross* factors and § 5-323(d), Mother continuing her parenting role "would be contrary to the best interests of M.W. and J.W."

This case differs markedly from our recent decision involving a mother's mental health, in which we reversed the juvenile court's decision to terminate her parental rights, *In re Adoption/Guardianship of J.T.*, 242 Md. App. 43 (2019). In that case, the mother suffered from severe anxiety and depression, but, unlike Mother here, that mother actively availed herself of every opportunity to secure treatment for her condition and achieved notable improvement in her mental health. As we said:

> Most TPR cases present tragic and complex situations and judges have limited choices in resolving them. This case is no exception. Two features of this case are uncommon. First, the mother suffers from a mental illness—not itself unusual. But Mother's demonstrated insight into her mental illness, her willingness to follow a regimen of medication and therapy, and the success of that regimen, albeit interrupted, is quite rare in a TPR case. In this regard, Mother sharply contrasts with, for

> example, the mother in *C.E.*, who said: "I don't have a mental illness, I have PTSD from legal abuse syndrome."

Id. at 63-64.

In sum, we shall hold that the juvenile court did not abuse its discretion in finding that:

> It is simply unsafe to return [M.W.] and [J.W.] to their mother. The Court does not reach these conclusions lightly, and it carefully weighed Mother's strong desire to parent her children, backed by her consistent attendance at visitation. However, absent stable mental health, she is simply not fit to parent two very young, traumatized children. They should not have to remain in foster-care with a vague hope that someday, perhaps, Mother will be stable and healthy enough to parent them.

The record supports a finding that the Department did indeed rebut the presumption that the Girls' best interests lie with Mother. We do not reach this conclusion lightly, but for these reasons we affirm the judgments of the Circuit Court for Worcester County terminating the parental rights of Mother and Father, and granting the Department's petition for guardianship in regard to M.W. and J.W.

JUDGMENTS OF THE CIRCUIT COURT FOR WORCESTER COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.