Circuit Court for Baltimore City
Case No. T16295012

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1339

September Term, 2017

IN RE: ADOPTION/GUARDIANSHIP OF K.J.

Meredith,
Leahy,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: June 4, 2018

Mr. J. and Ms. T., appellants, challenge a judgment of the Circuit Court for Baltimore City, sitting as a juvenile court, terminating their parental rights to their biological daughter K.J., and granting guardianship of K.J. to the Baltimore City Department of Social Services (the "Department") with the right to consent to K.J.'s adoption. In separate briefs, Mr. J. and Ms. T. urge us to rule that the juvenile court erred in granting the order terminating their parental rights. [1]

For the following reasons, we shall affirm the judgment of the circuit court.

BACKGROUND

Ms. T. has a history of drug abuse and untreated mental health issues. Prior to K.J.'s birth in August 2015, Ms. T. had been using methadone for approximately ten and a half years. At the time of K.J.'s birth, Ms. T. tested positive for methadone.[2]

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[1] In Ms. T.'s brief, she frames the questions as follows:

> 1. Did the court err by concluding that Ms. T. was unfit to parent K.J.?
>
> 2. Did the court err by concluding that the facts demonstrated that K.J.'s best interests would be served by granting the Department's guardianship petition?

In Mr. J.'s brief, he frames the question presented as follows:

> Did the circuit court abuse its discretion by inappropriately focusing on the question of custody rather than maintenance of the parental relationship when granting the petition to terminate Mr. J.'s parental rights?

[2] According to www.merriam-webster.com, methadone is a "synthetic addictive narcotic drug" that is used "for the relief of pain and as a substitute narcotic in the treatment of heroin addiction." (last visited Apr. 16, 2018)

Ms. T. also has an extensive history with Child Protective Services. She has eight children, none of whom are in her care. Prior to K.J.'s birth in 2015, the juvenile court had found all six of K.J.'s older half-siblings CINA "following allegations of substance abuse, including drug use during pregnancy, physical abuse and sexual abuse."[3] The juvenile court awarded custody and guardianship of Ms. T.'s oldest daughter, A.B. (born in 1996), oldest son, L.D.J. (born in 1999), and second oldest daughter, K.Ja. (born in 2001), to their maternal grandmother, Ms. D. In 2009, L.D.J. was removed from his grandmother's home and placed in foster care after the juvenile court determined that he had suffered "physical and sexual abuse" while in Ms. T.'s care. The court terminated Ms. T.'s parental rights in L.D.J. in 2012.[4]

After contested hearings, the juvenile court terminated Ms. T.'s parental rights to three additional children, J.J. (born in 1999), C.J. (born in 2004), and T.T. (born in 2007). Ms. T.'s parental rights to T.T. were terminated after he suffered two unexplained life-threatening injuries, including a skull fracture and irreversible brain damage, while in Ms. T.'s custody in 2007. As a result of the brain injury, T.T. cannot walk or talk, and he requires a breathing machine, a feeding tube, and intensive in-home care. At the time of C.J.'s removal from Ms. T.'s care in 2007, he suffered from a series of medical issues,

[3] 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 either unable or unwilling to give proper care and attention to the child and the child's needs." Md. Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article ("CJP"), § 3-801(f).

[4] Ms. T. and Mr. J. also have a daughter, L.J., who was born in October 2016, and who was also removed from their care in a separate proceeding.

including ringworm, ear infections, and tonsillitis, which had gone untreated while he was in Ms. T.'s custody. C.J. was also diagnosed with a history of sexual abuse, post-traumatic stress disorder, and language disorder, for which he requires weekly therapy.

Due to concerns regarding Ms. T.'s history of substance abuse and her prior contacts with Child Protective Services, the Department met with Ms. T. and Mr. J. after K.J. was born, prior to K.J.'s discharge from the hospital. Both parents entered into a Safety Plan with the Department whereby K.J. would be discharged to Mr. J. [5] The Safety Plan provided that Ms. T. would not reside with Mr. J. and that K.J. would not be left in the unsupervised care of Ms. T. Approximately ten days after K.J. left the hospital, the Department conducted an unannounced visit at the home of the paternal grandmother (where Mr. J. resided), and found K.J. there alone with Ms. T.

The following day, the Department held a Family Involvement Meeting "FIM."[6] At that meeting, Mr. J. and Ms. T. signed a second Safety Plan, further agreeing that K.J. would remain in Mr. J.'s care with Ms. T. as a "back up," but also agreeing that K.J. would never be left with Ms. T. unsupervised. Department staff noted that both parents displayed "concerning behavior" during the meeting. Ms. T. was "explosive and argumentative"; and Mr. J. "nodded off several times." Approximately one week later,

[5] A Safety Plan is put in place when there are safety concerns in the home.

[6] According to Yvette Bennerson, a witness for the Department, Family Involvement Meetings are meetings in which the Department engages families and their support network to discuss the family's needs and to develop plans to assist the families in safely caring for their children.

the Department learned that, in violation of the Safety Plan, Ms. T. had moved in to Mr. J.'s home to help care for K.J. while Mr. J. was away from the home.

On September 9, 2015, following the violation of the second Safety Plan, the Department filed a petition for shelter care.[7] The court awarded temporary custody of K.J. to the Department for placement with a relative, and authorized placement of K.J. with Ms. W., her paternal grandmother, with whom Mr. J. resided. The court limited Ms. T.'s supervised visitation with K.J. to three hours per day.

On September 16, 2015, Yvette Bennerson conducted an FIM with Ms. T. and Mr. J. Ms. Bennerson was the Department's assigned Family Preservation Worker in the Rapid Reunification Program.[8] At the FIM, Ms. T. and Mr. J. agreed to remain drug-free, participate in drug treatment programs, parenting classes, and psychological or psychiatric assessments, and obtain stable housing. Following the September 6, 2015, FIM, Ms. Bennerson visited with Mr. J. and Ms. T. once per week at Ms. W.'s home, where Ms. Bennerson observed Mr. J. holding K.J. and interacting appropriately with K.J. Ms. Bennerson did not observe any problems with Ms. W.'s home at that time.

On September 25, 2015, Ms. Bennerson referred Ms. T. and Mr. J. to the parenting program offered by the Department. To Ms. Bennerson's knowledge, however, neither Ms. T. nor Mr. J. participated in that program. Ms. T. and Mr. J. informed Ms.

[7] Pursuant to CJP § 3-815(a), "a local department may authorize shelter care for a child who may be in need of assistance," prior to a CINA adjudication.

[8] Ms. Bennerson described the Rapid Reunification Program as a program in the Department designed to assist families in regaining care and custody of their children within a six-month period.

Bennerson that they had completed a parenting program, but they did not provide her with documentation of the program, and she did not request it.

Ms. Bennerson also provided Ms. T. and Mr. J. with referrals for Preliminary Alcohol and Other Drug Sorting assessments to determine whether they required further substance abuse counseling or services. Ms. T. and Mr. J. both completed those assessments. Initially, Mr. J. indicated that he was not in a drug treatment program, but he later indicated that he had been using illegal drugs, and that he was enrolled at Turning Point methadone clinic. On September 25, 2015, Mr. J. tested positive for "marijuana, benzo, cocaine, heroin and methadone." Ms. T. and Mr. J. indicated to Ms. Bennerson that they were both enrolled in the drug treatment program at Turning Point, and that they wanted to continue with that program. Ms. Bennerson determined, based on the records that she reviewed from Turning Point, that Ms. T. and Mr. J. required ongoing drug treatment.

Ms. Bennerson also referred Ms. T. to Key Point Therapeutic Services for mental health treatment. Ms. T. attended an initial assessment at Key Point, but she did not return to Key Point after that visit. Ms. T. and Mr. J. did not complete further psychological evaluations.

On September 29, 2015, the Department sought a general order of shelter care, which the juvenile court denied, ordering that K.J. remain in Ms. W.'s care. The court further ordered that Ms. W. and Mr. J. discontinue co-sleeping with K.J., and that they provide a bed and appropriate sleeping arrangements for K.J. With respect to Ms. T., the

court continued to limit her contact with K.J. to three hours of supervised contact per day. At the shelter care hearing on October 6, 2015, the court ordered that the terms of the September 29, 2015, order remain in effect.

Also in September 2015, the Department assigned Roger Ellis, a Permanency Plan Worker, to K.J.'s case. Mr. Ellis had also been the assigned Permanency Worker for T.T., L.J., and C.J. for the preceding four years.

On October 16, 2015, Ms. T. and Mr. J. were offered service agreements in which they agreed to remain drug-free, participate in drug treatment programs, parenting classes, and psychological or psychiatric assessments, and obtain stable housing. Ms. Bennerson advised Ms. T. and Mr. J. that the Department may provide housing assistance to them by paying their first month's rent and security deposit, and she provided Ms. T. with a list of housing resources. Ms. T. and Mr. J. did not request the Department's assistance in obtaining housing.

The Department held an FIM on October 22, 2015, to discuss concerns regarding the family's failure to comply with the terms of the shelter order, including Ms. T.'s presence at Ms. W.'s home for longer periods of time than agreed upon. Department staff noted that the family was "very argumentative" and "hostile" toward Department staff. Ms. T. explained to staff that she had stayed at Ms. W.'s home for extended periods of time because Mr. J. did not like to change K.J.'s diapers when Ms. T. would leave the home to run errands.

On October 26, 2015, the juvenile court denied the Department's request to remove K.J. from her relative placement.[9] At that time, the court referred Ms. T. and Mr. J. to the Family Recovery Program ("FRP").[10] At Mr. J.'s FRP assessment, he reported that he had used illegal drugs, primarily crack-cocaine, one to two times each week in the preceding thirty days. The FRP required that Mr. J. attend weekly meetings with his counselor and submit to random drug testing. Mr. J. also acknowledged aggressive behavior on his intake form, and a mental health assessment was recommended.

Mr. J.'s involvement with FRP was short-lived. Mr. J.'s drug tests at FRP on October 30 and November 3, 2015, were both positive for cocaine and opiates. After November 3, 2015, Mr. J. failed to submit to weekly drug testing, and he did not complete a mental health evaluation. He last met with his FRP counselor on November 20, 2015. Two days prior to that meeting, he had advised his counselor in a telephone conversation that the program was "too much" for him.

On October 27, 2015, Ms. T. attended an initial assessment at FRP, and she returned on November 2, 2015, to complete her assessment. Ms. T.'s drug tests on October 27, 2015, and November 3, 2015, were positive for cocaine. Ms. T. refused to

[9] The juvenile court's order denying the Department's request to remove K.J. from her relative placement appears to be missing from the record and was not included in the parties' appendices.

[10] The Family Recovery Program is a judicially-monitored program providing support to families involved with child welfare due to substance abuse issues. The program provides families with substance abuse treatment, mental health services, random drug testing, and parenting support. *See* https://mdcourts.gov/sites/default/files/import/opsc/dtc/pdfs/evaluationsreports/baltimorecityfrpindependentevaluationoutcomecostreport.pdf (last visited May 30, 2018), at 1.

submit to drug testing at FRP on October 30 and November 13, 2015, and failed to appear for random drug testing on November 6 and November 10, 2015. FRP referred Ms. T. to Hope Health Systems for mental health services, and further recommended that she attend group substance abuse meetings at Turning Point five times per week. Ms. T. indicated that she would not attend Turning Point group meetings, but that she would attend community Narcotics Anonymous meetings three times per week.

Ms. T.'s participation in FRP lasted less than one month. On November 13, 2015, Ms. T. advised her FRP case manager that she no longer wanted to participate in the program. At the urging of staff, she said she would agree to continue with the program, but she did not return, despite staff's efforts to re-engage her.

By order dated November 23, 2015, the court ordered that Mr. J. obtain his own housing and move from Ms. W.'s home within two weeks. The court further ordered that K.J. remain in Ms. W.'s care. On December 1, 2015, the Department visited Ms. W.'s home and learned that Mr. J. had not moved out of the home, and that Ms. T. had moved into the home. Ms. W. stated to Department staff that Mr. J. could not move from the home because he did not have a job. In addition, the Department was unable to obtain fingerprints from Mr. T.J., an adult male cousin who also resided at Ms. W.'s home, and the door to Mr. T.J.'s room remained locked and unavailable to the Department during home visits.

On December 2, 2015, the court granted the Department's request to remove K.J. from Ms. W.'s home due to the family's continued violations of court orders regarding

living arrangements at Ms. W.'s home, as well as both parents' substance abuse issues and their noncompliance with substance abuse treatment. Efforts to place K.J. with Ms. D. (her maternal grandmother) were unsuccessful due to the unsuitability of Ms. D.'s residence and her prior history with Child Protective Services. At that time, the Department placed K.J. in the foster home of Ms. K., where she currently resides.

Following K.J.'s placement in foster care, Ms. T. and Mr. J. attended visits with her at the Department. Ms. T. and Mr. J. were hostile and argumentative toward Mr. Ellis during four visits in February 2016, including a visit on February 14, 2016, when Mr. J. threatened Mr. Ellis with bodily harm. As a result of that incident, the Department arranged for security guards to be present during future visits. During the period of February through April of 2016, Ms. T. and Mr. J. missed three of eleven visits with K.J.

On May 11, 2016, K.J. was found to be CINA. The juvenile court continued K.J.'s foster placement, and ordered that Ms. T. and Mr. J. be provided two supervised and two unsupervised visits per month. Ms. T. and Mr. J. again entered into service agreements with the Department in which they agreed that they would each: complete an anger management course and provide evidence of completion to the Department; provide evidence of completion of parenting classes; attend mental health counseling, and provide attendance and treatment reports each month; attend substance abuse treatment, submit to monthly urinalysis, and provide documentation of completion; complete a psychiatric evaluation to determine whether medication was medically appropriate; obtain housing and employment; and maintain regular contact with the Department.

Mr. Ellis provided Ms. T. and Mr. J. with resources for mental health counseling and anger management counseling, but neither parent provided evidence of completion of the counseling. Ms. T. and Mr. J. indicated to Mr. Ellis that they had completed parenting classes, but they did not provide evidence of their completion.

Ms. T. and Mr. J. consistently attended their scheduled visits with K.J. between May and mid-August of 2016, although they failed to attend K.J.'s two scheduled medical appointments regarding her July 16, 2016, eye surgery to correct strabismus. During this period, two incidents during K.J.'s unsupervised visits with Ms. T. and Mr. J. raised concerns of Department staff. On June 7, 2016, when Ms. T. and Mr. J. returned K.J. after a six-hour visit, staff found two bottles of formula remaining in her diaper bag, and determined that K.J. had not been fed. On another occasion, Department staff discovered a bottle of cold medicine in K.J.'s diaper bag after a visit. Ms. T. denied that she gave cold medicine to K.J., and stated to Department staff that the medicine was for her eleven-year-old child.

At the end of July 2016, the Department learned that Ms. T. had had a positive drug test in May 2016, and that she was pregnant (with the child that would be named L.J.). Ms. T. later admitted that she used cocaine and heroin during her pregnancy with L.J., who was born in October 2016. For seven consecutive weeks, from August 23, 2016, to October 4, 2016, Ms. T. and Mr. J failed to attend any visits with K.J. At the September 29, 2016, hearing, the court, at the Department's request, changed the parents' visitation to supervised visits only, and modified the visitation schedule. When Ms. T.

and Mr. J. resumed their visits on October 11, 2016, Mr. Ellis advised them that their visits were to be supervised due to their continued drug use, missed visits, lack of contact, and lack of mental health treatment. Following that visit, Ms. T. gave birth to L.J., and both she and L.J. tested positive for cocaine and methadone.

Monica Johnson, the caseworker assigned to L.J., discussed inpatient drug treatment with Ms. T., but Ms. T. was unwilling to participate. On November 15, 2016, Ms. T. completed a chemical dependency assessment at Central Essential Behavior Health Services. Ms. T. advised Ms. Johnson that she would obtain mental health treatment, but she failed to provide any documentation showing that she had, in fact, obtained such treatment. When L.J. was discharged from the hospital in November 2016, L.J. was placed in the same foster home as K.J.

Between October 18, 2016, and May 9, 2017, Ms. T. attended 14 of 29 scheduled visits with K.J; Mr. J. attended 11 out of 29 scheduled visits. Ms. T. brought clothes, diapers and food for K.J. On April 21, 2017, Mr. Ellis conducted a home inspection of Ms. W.'s home, where Ms. T. and Mr. J. continued to reside. Mr. Ellis observed that the home had deteriorated. He observed non-working smoke detectors, exposed electrical wiring, falling plaster, peeling paint, holes in walls and a ceiling, piles of clothes and furniture stacked to the ceiling in one room, and one room that remained locked and inaccessible.

In May of 2017, Sharon Smith was assigned as K.J.'s interim case manager while Mr. Ellis took medical leave. Ms. Smith contacted Ms. T. multiple times to review K.J.'s

case with her and Mr. J., and schedule visitations with K.J., but Ms. T. did not attend the scheduled meetings. Ms. Smith met Ms. T. and Mr. J. for the first time at the court hearing on June 9, 2017, but her subsequent attempts to meet with them were unsuccessful. At the time of hearing on July 26, 2017, Ms. T. and Mr. J. had not met with Ms. Smith, and had not visited with K.J. in three months.

Ms. Smith visited with K.J. and her foster provider at her foster home in June 2017. She noted that K.J. was "very bright." Ms. Smith had no concerns about K.J.'s foster parent's ability to meet K.J.'s needs.

Crystal Blanchard, Mr. J.'s former counselor at Turning Point methadone clinic, testified that she met with Mr. J. once per month in 2016, and twice per month during the last six months that she saw him in 2017, for a minimum of thirty minutes each visit. Ms. Blanchard reported that Mr. J. was cooperative and responsive to her requests for meetings. According to Ms. Blanchard, Mr. J. had "some gains and then some setbacks to his sobriety." Mr. J. was required to provide on-site urinalysis at Turning Point once per month. Some of Mr. J.'s drug screens tested positive for drugs other than methadone, and others were negative. Ms. Blanchard could not recall whether Mr. J. had more positive or negative drug screen results. One on occasion, Mr. J.'s drug tests indicated that he had provided a cold urine sample.

Ms. Blanchard recalled that Mr. J. had attended anger management group sessions, and she had observed him implementing some of the skills that he had learned in those sessions. The anger management group was an "open" attendance group with no

required number of sessions and no certificate of completion. Ms. Blanchard encouraged Mr. J. to attend other group sessions, specifically, Hope for Abstinence, but he declined to do so.

K.J. has resided with her foster parent, Ms. K., since K.J. was almost four months old. Ms. K. described K.J. as smart, sweet, affectionate, and empathetic. K.J.'s younger sister, L.J., also resides in Ms. K.'s home, and Ms. K. testified that K.J. is very attached to L.J., and affectionate toward her. Ms. K. testified that K.J. is doing very well, and that she wishes to adopt her.

Two of Ms. T.'s older daughters also testified. Ki.J., age 15, testified that she resides with her maternal grandmother and that she has a "great" relationship with Ms. T., with whom she speaks daily. She stated that she sees Mr. J. regularly and that he is like her "real father." She indicated that K.J. loves her, and that K.J. was happy to see her at the last supervised visit that she attended, one month before the trial. Ki.J. wishes to continue to have a sisterly relationship with K.J.

Ms. T.'s oldest daughter, A.B., age 21, also lives with her maternal grandmother, and is employed as a geriatric nursing assistant. She stated that she has a "perfect mother and daughter relationship" with Ms. T., and they speak almost daily. She also has a good relationship with Mr. J., who treats her like his own daughter. A.B. was present when K.J. was born, and she tried to attend Ms. T.'s visits with K.J. whenever possible. When A.B. last saw K.J., one month before trial, K.J. laughed and knew how to say her name.

A.B. testified that she loves K.J. and would like to see her every day and do big sister-little sister things together, such as getting their hair and nails done together.

Dr. Ruth Zajdel, a psychologist for the Medical Services Division of the Circuit Court for Baltimore City, evaluated Ms. T.'s and Mr. J.'s fitness to parent K.J. and their bonds with K.J. Dr. Zajdel's assessments were based upon her observations during a 30-minute play session, interviews of Ms. T. and Mr. J., and a review of their background information. Dr. Zajdel observed Ms. T. to be kind and gentle with K.J. She also noted that Ms. T. encouraged age-appropriate play and engaged with K.J. in an age-appropriate manner. Dr. Zajdel characterized K.J. as appearing "ambivalent" toward Ms. T.; she appeared neither happy nor unhappy to be in Ms. T.'s presence, and she generally had a "flat affect" during her interaction with Ms. T. K.J. did not seek out affection from Ms. T., but she did not object when Ms. T. hugged or kissed her. K.J. did not appear to utilize Ms. T. as a "secure base," which, according to Dr. Zajdel, is the primary indicator of a secure attachment. At the end of the session, K.J. asked to see her foster mother, and she did not show any negative feelings when she was separated from Ms. T. Dr. Zajdel determined, based on her observations, that there was not a secure bond between Ms. T. and K.J.

In evaluating Ms. T.'s fitness to parent K.J., Dr. Zajdel considered that Ms. T. had used cocaine and heroin for an "extensive amount of time," and had failed to demonstrate a sustained period of sobriety, stable housing and employment. T. also failed to complete the requirements of her service agreement, specifically, drug treatment and parenting

classes, and she lacked insight into how her drug use affected her ability to parent. Dr. Zajdel also noted Ms. T.'s history of involvement with Child Protective Services. Ultimately, Dr. Zajdel concluded that Ms. T. was not fit to parentally care for K.J.

Dr. Zajdel also concluded that Mr. J. was not fit to parentally care for K.J. Based on Mr. J.'s reported history of drug abuse, his unemployment status, unstable housing, and his failure to fulfill the requirements of his service agreement, Dr. Zajdel concluded that Mr. J. was unable to provide social, emotional, and material support for K.J. Based on Mr. J.'s self-reported substance abuse, she diagnosed him with a substance abuse disorder.

Dr. Zajdel also had concerns about Mr. J.'s aggression and irritability based on his behavioral history, his conflicts with Department personnel, and her observations. Mr. J. admitted to Dr. Zajdel that he had not always had an amicable relationship with Mr. Ellis. He also reported to her that he was frustrated with the Department's lack of support provided to him because he felt that he was being punished for Ms. T.'s history with the Department. He claimed that, if he had known Ms. T.'s history with the Department, he may not have had children with her. Dr. Zajdel concluded that Mr. J. required further psychological assessment to rule out mood disorder and intermittent explosive disorder.

Dr. Zajdel noted that Mr. J. appeared to be under the influence of drugs or alcohol when he accompanied Ms. T. to her bonding evaluation. He denied ingesting any drugs and denied any health concerns at that time. Dr. Zajdel noted, however, that Mr. J.'s "awareness was clearly compromised and his speech was slurred and incomprehensible."

Dr. Zajdel reported that Mr. J. "appeared for his appointments in a disheveled and malodorous manner."

With respect to Mr. J.'s bonding assessment, Dr. Zajdel described Mr. J. as attentive and engaged with K.J. throughout the bonding session. Dr. Zajdel observed that Mr. J. was "somewhat intrusive" in K.J.'s independent playing activities, and that he provided "a lot of redirection" to her, including "physical redirection to get her to do what he wanted her to do." K.J. did not seek out Mr. J.'s attention or interaction, and she did not use him as a "secure parental base." In fact, Dr. Zajdel noted that K.J. interacted with her as much as she did with Mr. J. during the session. K.J. allowed Mr. J. to pick her up and carry her at the end of the session, but she was not upset when she was separated from Mr. J. Dr. Zajdel concluded that K.J. did not have a secure bond with Mr. J.

With respect to K.J.'s bond to her foster parent, Ms. K., Dr. Zajdel observed that Ms. K. was interactive with K.J. and that she allowed K.J. to be appropriately independent during the assessment. K.J. demonstrated that she used Ms. K. as a "secure base" as she engaged Ms. K. in play while Ms. K. attended to her safety needs and helped her to feel secure in a new situation. Dr. Zajdel concluded, based on her assessment, that there was a secure bond between K.J. and Ms. K.

Mr. J. and Ms. T. did not testify at the hearing.

On August 7, 2017, the circuit court issued its ruling from the bench, concluding:

> The Court finds by clear and convincing evidence that both Ms. T. and Mr. J. are unfit to maintain their parental rights [a]s parents of K.J. [T]he court

> finds that the Department has exercised reasonable care and effort to comply with the permanency plan. The Court is going to rescind the order [of] commitment and terminate jurisdiction in the CINA case. And the Court is going to grant limited guardianship to the foster parent and schedule a review as we will agree on.

Ms. T. and Mr. J. noted timely appeals.

STANDARD OF REVIEW

We review termination of parental rights decisions under three standards of review. *In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. 30, 45 (2017). First, we review factual findings under the clearly erroneous standard. *Id*. Second, we review legal conclusions *de novo*. *Id.* Finally, we review the juvenile court's "ultimate decision" for an abuse of discretion. *Id.* With respect to our review of the court's decision under the abuse of discretion standard, "we will only disturb a court's ruling if it does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective." *In re Adoption of Jayden G.*, 433 Md. 50, 87 (2013) (internal quotations and citation omitted).

As the Court of Appeals explained in *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 709 (2011), although there is a presumption that it is in the child's best interest to remain in the care and custody of the child's parent, that presumption can be overcome under certain circumstances:

> In TPR cases, a parent's right to custody of his or her children "must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 497, 937 A.2d 177, 189 (2007). Thus, this parental right is terminated "upon a showing either that the parent is 'unfit' or that 'exceptional circumstances' exist

> which would make continued custody with the parent detrimental to the best interest of the child." *Id*. at 495, 937 A.2d at 188.

It is the State's burden to establish parental unfitness or exceptional circumstances by clear and convincing evidence. *In re Ta'niya*, 417 Md. 90, 103-04 (2010). The juvenile court must consider the factors set forth in Md. Code (1984, 2012 Repl. Vol., 2017 Supp.), Family Law Article ("FL"), § 5-323(d), to determine whether termination of parental rights is in the best interest of the child. *Id*. *See In re Jayden G., supra*, 433 Md. at 94 ("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).").

DISCUSSION

Ms. T. contends that the juvenile court erred in determining that she was unfit to maintain a parental relationship with K.J. based on her drug use, her non-compliance with her service agreements, and her mental health history. She argues that her lack of compliance and her history of substance abuse do not render her "per se unfit" and that the court failed to explain how her lack of compliance demonstrated that she is unfit to parent. She further argues that the court erred in finding that she did not have a parent-child bond with K.J., that K.J. would be "harmed" by reunification with her, and that K.J.'s best interests would be served by terminating her parental rights in her.

Mr. J. argues that the State failed to prove by clear and convincing evidence that he was unfit to maintain a parental relationship with K.J. Mr. J. contends that the juvenile court erroneously "treated this like a custody case" by focusing on whether K.J.

would be negatively affected if immediately placed in her parents' care, rather than considering whether permanently severing her parental relationship with Mr. J. was in her best interest. As a result, he contends, the juvenile court abused its discretion in terminating his parental rights in K.J.

K.J., as appellee, through appointed counsel, responds that the facts and evidence amply supported the juvenile court's determination that Ms. T. and Mr. J. were unfit to parent her. She asks that we affirm the trial court's decision. K.J. asserts that the juvenile court considered the factors set forth in F.L. § 5-323(d) and determined, based on the evidence presented, that it was in her best interest to terminate their parental rights because, as the juvenile court stated, "[t]he Court cannot say when the parents will be prepared to handle their parental duties based on their drug addictions, based on their anger management issues, based on those two directly affecting their ability to parent and to learn proper parenting skills." Counsel for K.J. asserts: "This Court should not be persuaded that giving Mother and Father any more time to change their circumstances would result any differently. Mother and Father presented zero evidence that they had remedied their previously unfit conduct to where K.J. could safely be returned to their care." Noting that, "[i]t has long been recognized that children should not languish in foster care," counsel for K.J. states:

> The trial court recognized that K.J. deserves permanency. K.J. will never have permanency with parents who refuse to adjust their circumstances so that they would be considered fit to parent. The trial court made the correct decision when it found that both parents were unfit and that it was in K.J.'s best interest to grant the petition for TPR.

The Department similarly asserts that the court properly determined that Ms. T. was unfit, noting that "she had made no progress over many years in addressing her drug addiction, seeking treatment for her mental-health concerns, developing the capacity to safely parent her children, having meaningful and consistent visits with her children, or demonstrating the stability all children require." The Department further responds that the court properly determined that Mr. J. was unfit to parent in light of the evidence that he has continued to abuse drugs, failed to obtain employment or appropriate housing, failed to visit K.J. consistently, and failed to give priority to her health and safety. The Department contends that, after thoroughly considering the factors under FL § 5-323(d), the court did not abuse its discretion in deciding that terminating Ms. T.'s and Mr. J.'s parental rights was in K.J.'s best interest.

The Juvenile Court's Findings of Fact

The court found that Mr. J. and Ms. T. had ongoing drug abuse issues, and that, based on the "many exhibits" introduced into evidence, Mr. J. and Ms. T. "sometimes submitted to drug testing but many times did not." Further, the court found, Mr. J. and Ms. T. continued to test positive for illegal drugs. The court stated that the evidence showed that the drug tests that Ms. T. and Mr. J. submitted were "positive for some sort of substance, whether it was cocaine, heroin – I remember at least one, marijuana."

With respect to Mr. J., the court noted that Mr. J. had the opportunity to attend recommended therapy and group sessions --- specifically, the opiate addiction group, marijuana group, and Hope for Abstinence group --- but that he had elected not to attend.

Nor did he attend the recommended mental health assessment and programs. The court found that Ms. T. had abused drugs since the age of 19, and that she had continued to use heroin and cocaine through the time of the birth of K.J.'s younger sister, L.J., in October 2016. Although Ms. T. and Mr. J. both enrolled in FRP (the court-sponsored assistance program), neither participated in the program or took advantage of its services to assist them in their recovery. The court concluded that Mr. J.'s and Ms. T.'s ongoing "drug abuse or addiction … clearly demonstrates that neither parent is in the position to attend to their duties as parents."

The court found that the Department had offered the parents parenting classes, housing assistance, mental health treatment, and anger management training, but that Ms. T. and Mr. J. did not pursue any of these referral resources. The Department also provided them with public assistance tokens to attend various programs. The court emphasized that both parents had exhibited persistent anger management issues. The court observed that, although Mr. J. may have received anger management counseling at one time, it was clear that that counseling had not benefited him, as he was unable to manage his disruptive behavior during trial.

With respect to the evidence regarding Ms. T.'s and Mr. J.'s involvement with K.J., the court found that, during K.J.'s placement with Ms. W., Mr. J. had violated the terms of the Safety Plan by allowing Ms. T. to have unsupervised visits with K.J. when Ms. W. was not at home. The court also found that Mr. J.'s and Ms. T.'s visits with K.J. were inconsistent, and that they had missed a significant number — up to forty percent of

their scheduled visits with her. The court determined that there was no secure bond between K.J. and her parents. Finally, the court concluded that K.J. is well adjusted and securely bonded to her foster parent.[11]

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

When a court considers a petition for guardianship of a child, FL § 5-323(d) requires that the court must 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; (4) the child's emotional ties with the parents and the severance of the relationship between the parent and child. *See* FL § 5-323(d). The record reflects that the court considered the relevant factors set forth in FL § 5-323(d) in determining that termination of Ms. T.'s and Mr. J.'s parental rights was in K.J.'s best interest.

With respect to FL § 5-323(d)(1)(i)-(iii) --- concerning the nature, extent, and timeliness of services offered to the parents and the fulfillment of the obligations of the Department and the parents under the service agreements --- the juvenile court found that the Department had offered numerous referrals and services to Ms. T. and Mr. J., including drug treatment, mental health treatment, parenting classes, anger management

[11] We discuss further findings of fact below where relevant to our analysis.

classes, and housing assistance, and had also provided them with public transit tokens for them to use to attend various treatment programs.

The court determined that both parents had failed to fulfill their obligations under the agreements to remain drug-free and obtain drug treatment; both parents failed to consistently submit to drug testing and to demonstrate that they were drug free, and Mr. J. did not attend the recommended mental health assessment and programs. The court observed that Ms. T. and Mr. J. both "exhibited anger management issues," which continue to plague them and remain untreated or inadequately treated.

Both parents were also offered services through FRP, which, the court found, they failed to fully utilize. The court acknowledged that both parents had elected to continue their drug treatment at Turning Point, even though, after years of treatment, they showed no "significant improvement in the use of illicit drugs." Ultimately, the court concluded that Ms. T. and Mr. J. "consistently failed to fully embrace, or even embrace, many of the programs offered."

With respect to FL § 5-323(d)(2), the court found that Ms. T. and Mr. J. had "failed to adjust their circumstances, conditions and/or conduct to facilitate the return of [K.J.]." The court found that they had failed to achieve any progress in their drug treatment, and they had failed to learn how to effectively manage their anger problem. In addition, the court found that Ms. T. and Mr. J. had failed to take advantage of the housing assistance offered by the Department, and had failed to secure a stable home suitable for K.J. Further, the court found that Ms. T. and Mr. J. remained largely absent

from K.J.'s life, attending less than half of their scheduled visits with K.J., which the court considered to be "a significant number" of missed visits. *See* FL § 5-323(d)(2)(i)(1) ("the extent to which the parent has maintained regular contact with . . . the child"). The court noted that there was no relationship between Ms. T. and Mr. J. and K.J.'s foster parent. *See* FL § 5-323(d)(2)(i)(2) ("the extent to which the parent has maintained regular contact with . . . the child's caregiver").

With respect to FL § 5-323(d)(2)(ii), the court stated that the parents' contribution to the care and support of K.J. "has amounted to gifts but no support of substance or of a continuing nature." With respect to FL § 5-323(d)(2)(iii), the court noted that there was no disability that made the parents unable to care for K.J.'s immediate and ongoing physical and psychological needs.

Relative to FL § 5-323(d)(2)(iv) --- requiring consideration of whether additional services would be likely to bring about "a lasting parental adjustment" so that K.J. could return to her parents' care within an ascertainable time, not to exceed 18 months --- the court found that additional services or time would not facilitate the return of K.J. to her parents within "the foreseeable future." The court explained that, while, "at some point the parents may arrest their problems," nearly two years had elapsed, and, "as far as addictions go, the parents may literally be starting over. And they have to make a decision to get better." The court further noted that the parents had not obtained stable housing, and had not been drug free for any significant period of time, or if they had, they did not submit to drug testing to support that contention. The court concluded that it is

unclear when, if ever, "the parents will be prepared to handle their parental duties based on their drug addictions, [and] based on their anger management issues. . . ."

The court noted concerns about the abuse or neglect of K.J. and her sibling. In determining a parent's fitness, the court may consider evidence of the parent's character and past behavior in evaluating whether the parent has adequate concern for a child's well-being. *See In re Adoption/Guardianship No. A91–71A*, 334 Md. 538, 563–64 (1994). Here, the juvenile court noted that Ms. T.'s substance abuse had contributed to the removal of all seven of her other children, and the termination of her parental rights in four of those children, one of whom suffered a severe life-threatening injury while in her care. Although Mr. J. does not share Ms. T.'s entire history, their younger daughter, L.J., was born drug-exposed and has also been removed from their care.

The court considered K.J.'s adjustment to her environment and the effect that termination of Ms. T.'s and Mr. J.'s parental rights would have on her well-being. FL § 5-323(d)(4)(i). The court found that there was no secure bond between K.J. and either of her parents. The court accepted that K.J.'s half-sisters, Ki.J. and A.B., had a fondness for her, but the court was "unable to determine K.J.'s relationship with her siblings." The court acknowledged that K.J. has a strong bond with her sister L.J., with whom she shares a foster home. The court identified no other family members who "affect the best interests of K.J."

The court emphasized K.J.'s positive adjustment to her community, home, and current placement, pursuant to FL § 5-323(d)(4)(ii), where she had attended activities

with other children her age, including going to the zoo and to the park. The court noted that K.J. has a secure bond with her foster parent, and that they function "as a family unit." The court noted: "In fact, it seems that K.J. really knows no other home other than that with her foster parent."

Regarding the severance of the parent-child relationship under FL § 5-323(d)(4)(iii), the court found the evidence to be "clear that there is no secure bond between K.J. and the parents." As required by FL § 5-323(d)(4)(iv), the court considered the likely impact of terminating parental rights on K.J.'s well-being and concluded that K.J. would be adversely affected if she was returned to her parents and positively impacted if she remained where she was "thriv[ing.]"

Ultimately, the court concluded: "[U]nder all of the circumstances, . . . the Court is going to grant the petition to terminate parental rights[.]"

In arguing that the termination order was an error, Ms. T. argues: "The law does not require parents to be perfect or be model parents." And, she contends, "[d]rug use alone is not sufficient to show that an individual cannot parent." Father asserts that the court focused excessively on his present ability to have custody of K.J., and failed to consider the long-term benefit of preserving a relationship with her parents.

Counsel for the child, however, asserts that termination was the correct decision, pointing out: "It has long been recognized that children should not languish in foster care." (Citing *In re Jayden G. supra*, 443 Md. at 82 ("A critical factor in determining what is in the best interest of a child is the desire for permanency in the child life.")).

Counsel for the child urges us to affirm the ruling of the juvenile court, and states:

> The trial court recognized that K.J. deserves permanency. K.J. will never have permanency with parents who refuse to adjust their circumstances so that they would be considered fit to parent. The trial court made the correct decision when it found that both parents were unfit and that it was in K.J.'s best interest to grant the petition for TPR.

Similarly, the Department contends that the juvenile court made the right decision:

> The juvenile court properly found Ms. T. unfit where she had made no progress over many years in addressing her drug addiction, seeking treatment for her mental-health concerns, developing the capacity to safely parent her children, having meaningful and consistent visits with her children, or demonstrating the stability all children require. And, in light of the overwhelming evidence of Ms. T.'s persistent and unmitigated unfitness to safely parent K.J., the juvenile court did not abuse its discretion when it determined that terminating her parental rights was in K.J.'s best interests.
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> The juvenile court correctly determined Mr. J. is unfit to have a parental relationship with K.J. Contrary to Mr. J.'s contention (Mr. J.'s Br. 14-15), the court's determination is well-supported by the evidence. Mr. J., who continued illicit drug use after K.J.'s birth and failed to maintain regular visitation with K.J. especially in the year prior to the guardianship hearing, has not been a positive presence in K.J.'s life. Although he argues that he might be capable of becoming a positive presence (Mr. J.'s Br. 14), his past conduct demonstrates that he likely cannot or will not do so.

Both the Department and counsel for the child assert that the facts of this case are similar to those addressed in *In re Adoption/Guardianship of Amber R.*, 417 Md. 701 (2011). In that case, the Court of Appeals considered the impact of parental drug addiction in determining whether a termination of parental rights was in the best interest of the children. Amber and her sibling were placed in shelter care after their mother was evicted from her home and moved in with a non-relative in a house that lacked basic

utilities. *Id*. at 705-06. The court determined that the children could not return to their mother's care due to her "chaotic lifestyle," continued drug use, and neglect of the children. *Id*. at 705. The children were found to be CINA, and placed in foster care. *Id.* at 706.

The mother entered into service agreements in which she agreed to "attend substance abuse treatment and parenting classes, apply for employment and secure stable housing." *Id.* The mother failed to comply with the terms of the agreements and failed to attend any of the offered classes. *See id.* The trial court found that the mother was an unfit parent, primarily due to her history of substance abuse and her failure to remedy that problem, and that, after considering the statutory factors, it was in her children's best interests to terminate her parental rights. *Id.* at 708.

In *Amber R.*, the Court of Appeals observed that the Department had "adequately presented referrals" to the mother, who did not respond adequately to the referrals. *Id*. at 715. The mother also provided "conflicting" testimony as to how long she had been clean from drugs, failed to provide any proof that she had completed drug treatment, and failed to provide satisfactory evidence that she had obtained housing, employment, or completed parenting classes. *Id*. at 715-16. The Court concluded that the mother's "uncooperative attitude" demonstrated that there was little hope that she would change her behavior in the future based on the clear and convincing evidence that she was unwilling "to alter her previously unfit conduct." *Id*. at 719. The Court emphasized: "Unquestionably, parental drug use can negatively impact a child." *Id*. at 721 (footnote

omitted). "Moreover, **given the well-known difficulty of overcoming drug addiction, and the likelihood that addiction will persist if untreated, a court can infer that a parent will continue to abuse drugs unless he or she seeks treatment.**" *Id*. at 722 (emphasis added).

In the present case, there was ample evidence to support the juvenile court's conclusion that Ms. T.'s and Mr. J.'s substance abuse issues had interfered with their ability to parent, and that they had failed to make any progress in modifying their behavior or in showing any intent to do so in the near future. The evidence demonstrated that Ms. T. and Mr. J. had a history of cocaine and heroin abuse, and that they had continued to abuse drugs following K.J.'s birth. Following their positive drug screenings at FRP, they did not return for repeat screenings, and they left the program shortly after their initial assessments. They also failed to be a consistent and reliable presence in K.J.'s life, missing a "significant number" of visits with her, and demonstrating problematic parenting behavior during two unsupervised visits. Dr. Zajdel testified at trial that substance abuse affects a person's ability to parent by "inhibiting a parent's decision-making abilities, ability to be aware, to be a consistent provider for the child and to be able to make good decisions for the child to keep the child safe," and it "decreases their … financial abilities to provide for the child potentially."

Mr. J. contends that there was insufficient evidence to establish that his anger management issue affected his fitness to parent K.J.; he claims that his anger was limited to Mr. Ellis and "persons involved in removing his daughter from him." But, the juvenile

court witnessed first-hand Mr. J.'s difficulty in managing his anger and his demonstrated frustration during the trial: "Anger management – which Mr. J. – the testimony is that he completed the anger management. However, this Court is clear that it did not benefit him to the extent that he was able to even use it in this case to – during the presentation of this adjudicatory hearing." When reviewing the juvenile court's factual findings, we "treat the juvenile court's evaluation of witness testimony and evidence with the greatest respect." *In re Amber R.*, 417 Md. at 719. The juvenile court was in the best position to assess Mr. J.'s anger management as part of its overall analysis of Mr. J.'s fitness and K.J.'s best interests. Its finding that Mr. J.'s anger management impaired his current and future fitness as a parent was supported by the evidence.

Ms. T. and Mr. J. also challenge the juvenile court's finding that they lacked "stable" and "independent" housing, and that such a finding contributed to their unfitness to parent K.J. The evidence, however, demonstrated that Mr. J. had resided with his mother, Ms. W., since K.J.'s birth. Ms. T. resided either with her mother or with Ms. W. while K.J. was in foster care, and at times, resided at Ms. W.'s home in violation of the terms of the Safety Plan. Moreover, the Department determined in 2017 that Ms. W.'s home had fallen into disrepair and deemed it unsuitable for K.J.'s return. The Department was unable to inspect the locked room of one of the home's residents. The evidence showed that, despite the Department's efforts to assist Ms. T. and Mr. J. in relocating, they had failed to obtain independent housing, relying instead on family members to support them. "[B]ehavior of the natural parent tending to show instability

with regard to employment, personal relationships, living arrangements, and compliance with the law" are among the factors that "clearly relate to the parent's ability to provide a stable environment for the child, which is universally recognized as critical to a child's proper development." *In re Adoption/Guardianship No. A91-71A*, 334 Md. 538, 564 (1994).

Ms. T. and Mr. J. contend that there was no evidence showing that a continued legal relationship between K.J. and her parents would not be in her best interest. They argue that the court failed to consider their "potential" relationship with K.J., favoring instead, K.J.'s bond with her foster parent over her potential bond with Ms. T. and Mr. J. Although the court may not presume that it is in the child's best interest to remain with the foster parent based on the child's bond to the foster parent, the court may, as the juvenile court did here, consider a child's adjustment to the foster home, along with many other factors in determining the best interests of the child. *See 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); *see also* FL § 5-323(d)(4).

Ms. T. and Mr. J. assert that maintaining their parental relationship with K.J. is not detrimental to her. But the parents' failure to ameliorate any of the circumstances that led to K.J.'s removal, and their argument that those circumstances are not detrimental to her, show a lack of appreciation for K.J.'s best interest, particularly, her need for a safe and stable environment.

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

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