Circuit Court for Baltimore City
Case No. T18249007

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1917

September Term, 2019

IN RE B.M.

Arthur,
Gould,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Gould, J.

Filed: September 21, 2020

Appellant D.M. ("Mr. M.") appeals from the decision of the Circuit Court for Baltimore City, sitting as a juvenile court, which granted the petition of the Baltimore City Department of Social Services (the "Department") for guardianship with the right to consent to the adoption of B.M., Mr. M.'s five-year-old daughter, terminating his parental rights. Mr. M. contends that the court erred in finding that: (1) the Department made reasonable efforts to provide him with services before B.M.'s placement; (2) the Department made reasonable efforts to provide him with services to facilitate reunification; and (3) the Department fulfilled its obligations under the service agreements and that Mr. M. hindered the Department's ability to fulfill its obligations. Finding no error, we affirm.

FACTS AND PROCEDURAL BACKGROUND[1]

B.M. was born on March 7, 2015 to A.D. ("Ms. D.")[2] and Mr. M. Both B.M. and Ms. D. tested positive for opiates and methadone. B.M. was admitted to the hospital's neonatal intensive care unit for withdrawal symptoms and was subsequently transferred to Mt. Washington Pediatric Hospital. After B.M. was released from the hospital, Ms. D. initially placed her with a maternal aunt while Ms. D. participated in an outpatient drug treatment program.

[1] Cases such as this are fact intensive, so we provide an extensive discussion of the testimony and reports that were before the juvenile court when it exercised its discretion in granting the Department's petition.

[2] Ms. D. is not a party to this action. After being served with a Show Cause and Petition, she failed to object and therefore consented to guardianship by operation of law. Maryland Code Ann. Fam. Law ("FL") § § 5-320(a)(1)(iii)(C) (1984, 2019 Repl. Vol.).

On April 8, 2016, when B.M. was thirteen months old, the Department received a telephone call, documented in a Maltreatment Report, which alleged that Ms. D. and Mr. M. were neglecting B.M. According to the report:

> . . . the mother, [Ms. D.], and the father, [Mr. M.], leave[] their 1 year old child, [B.M.], DOB 3/7/15, home alone everyday while they go to get medicated at the Methadone Program. The caller states that this takes about 2-4 hours. This is usually in the mornings. The caller and her boyfriend were residing in the basement but moved out a month ago. A week ago the caller went to the house and the front door was open and the child was left in the home alone crying. The caller states that the parents also leave the house unlocked as well. The caller states that the mother has a warrant out for her arrest. The caller states that mother has another daughter . . . [who] was removed from her care. . . .

As a result of this call, Kim Hardy from the Department's Child Protective Services began an investigation. Ms. Hardy went to the family home multiple times but often, no one answered the door. She also sent letters to B.M.'s parents requesting that they contact her. Ms. Hardy learned that there was an outstanding arrest warrant for Ms. D. for violating her probation and contacted Ms. D.'s probation officer. All told, Ms. Hardy made approximately nineteen attempts "to contact [Mr. M. or Ms. D.] to try and put services in place to prevent removal of [B.M.] from their care."

On April 11, 2016, Mr. M. was interviewed at his home. Mr. M. was "offensive" about the allegations in the Maltreatment Report and claimed that the caller was a former tenant whom Mr. M. had evicted.

On April 26, 2016, Mr. M. and Ms. Hardy spoke on the telephone. Mr. M. again denied that B.M. had been left alone. He also denied that he had a drug abuse problem, even though he admitted to being in a methadone program and purchasing Percocet off the

street. Ms. Hardy asked Mr. M. to meet in person to discuss the allegations and to determine the need for in-home services. Mr. M. said he was unable to meet in person because of his work schedule. Ms. Hardy stated that she needed to meet in person at the house to see how B.M. was being treated and to enable her to make a referral for Mr. M. to a drug treatment program.

On May 13, 2016, the Department received a phone call from police who had responded to a domestic violence call at B.M.'s home and observed the home to be "in [a] deplorable [condition], with trash and debris throughout" and also observed that Ms. D. was high. The Department sent a caseworker to B.M.'s home. The caseworker observed that Ms. D. was "under the influence and [appeared] extremely frail with red marks . . . on her face." Because of the emergency nature of the circumstances, the caseworker removed B.M. from the premises.

The Department placed B.M. into shelter care, and on May 16, 2016, filed a shelter care petition.[3] An emergency shelter care hearing was held that same day. The petition alleged that B.M. was a child in need of assistance ("CINA")[4] and recounted the events

[3] "'Shelter care' means a temporary placement of a child outside of the home at any time before disposition." Md. Code Ann., Cts. & Jud. Proc. ("CJP") § 3-801(bb) (1974, 2013 Repl. Vol.).

[4] CJP § 3-801(f) defines a CINA as:

> . . . a child who requires court intervention because:
>
> (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and
> (2) The child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs.

that caused B.M. to be taken from her parents' home, including: (1) B.M. tested positive for opiates and methadone when she was born; (2) B.M. had been left at home alone while her parents went to a methadone program; (3) the disarray at B.M.'s home and her mother's condition as described in the police report; and (4) that "it was reasonable not to make efforts to prevent removal" "[b]ecause of the emergency nature of the circumstances." Neither parent attended the hearing. The juvenile court entered an order granting the Department's petition and placed B.M. in foster care with non-relatives, F.J. and A.J. (the "J.'s").

On May 18, 2016, based on its investigation, in accordance with FL § 5-701(m), (s) and COMAR 07.02.07.13A(1), the Department filed its report stating that "Neglect of [B.M.] is 'INDICATED.'"[5]

Angela Sorey, the new case manager for B.M.'s case, filed a Detailed Contact Report dated May 18, 2016,[6] which stated that B.M. appeared to be receiving good care

[5] FL § 5-701(m) defines "[i]ndicated" as "a finding that there is credible evidence, which has not been satisfactorily refuted, that abuse, neglect, or sexual abuse did occur." FL § 5-701(s) defines "[n]eglect" as "the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate: (1) that the child's health or welfare is harmed or placed at substantial risk of harm; or (2) mental injury to the child or a substantial risk of mental injury." COMAR 07.02.07.02(14) defines "child neglect" as "one or more of the following by a parent or caregiver: (a) A failure to provide proper care and attention to a child, including leaving a child unattended, under circumstances that indicate that the child's health or welfare was harmed or placed at substantial risk of harm; or (b) Mental injury of a child caused by the failure to provide proper care and attention to a child."

[6] Detailed Contact Reports are prepared by caseworkers in the ordinary course of their duties and responsibilities.

from the J.'s. On May 21, 2016, she sent a letter to Mr. M. and Ms. D. and asked to schedule an appointment to discuss B.M.'s permanency plan and review a service agreement in advance of B.M.'s scheduled June 1st CINA hearing. The service agreement provided for weekly visitation with B.M. and the parents' enrollment and completion of both a drug rehabilitation program and a parenting class.

Mr. M. called Ms. Sorey on May 31st to discuss the service agreement, but the parties were unable to reach an agreement before the hearing and it was continued. In the meantime, the court continued B.M.'s shelter order and limited guardianship with the Department.

In June, the Department's Detailed Contact Report provided that:

- B.M.'s parents had not had the opportunity to work toward reunification;
- B.M. appeared to be in a safe environment;
- When B.M. was first brought to the foster home, she cried a lot, was not able to walk, would not sleep lying down, and was not eating well. B.M. improved after being in the foster home—she started eating and drinking appropriately and began sleeping a little better;
- On June 1, 2016, Ms. Sorey met with B.M.'s parents and told them to contact her to schedule weekly visits and complete the service agreement. Mr. M. stated that he missed B.M. and could not wait to visit her. As of June 4, 2016, however, neither parent had called about scheduling visits; and
- B.M.'s maternal grandmother called Ms. Sorey and expressed an interest in B.M.

On June 22nd, Mr. M. and Ms. D. met with B.M. for the first time since her removal from their care. B.M.'s paternal grandfather was also present. Ms. Sorey asked B.M.'s grandfather if he could take care of B.M., but he declined due to the poor health of his wife.

After the meeting, Mr. M. did not have contact with B.M. or the Department for nine months.

In July, the Department prepared a Detailed Contact Report that showed no change in B.M.'s case other than noting that B.M.'s parents visited with her on June 22, 2016, but at no time thereafter. The report also stated that on June 22, 2016, B.M.'s parents agreed to enroll and complete a drug treatment program.

On August 17, 2016, B.M.'s CINA adjudicatory hearing was held. Neither Mr. M. nor Ms. D. appeared at the hearing. Attorneys for the parents asked for the matter to be reset, but the court did not find "good cause" for a continuance. The juvenile court held the hearing, determined that B.M. was a CINA as a result of neglect, and committed her to the custody of the Department. B.M. remained under the J.'s care and custody.

On August 25, 2016, the juvenile court issued a written order continuing B.M.'s commitment to the Department and granting limited guardianship to the Department for "medical, dental, educational, psychiatric/psychological and out-of-state travel purposes." At that time, B.M.'s permanency plan was for reunification with a parent or guardian.

The next Detailed Contact Report was filed in November 2016 reporting that:

- B.M.'s parents were not working toward reunification;
- B.M. was doing very well in her foster home;
- B.M.'s parents had not visited with her since June and were not present at a hearing held on November 15, 2016; and
- B.M.'s maternal grandmother called Ms. Sorey expressing interest in "being a resource" for B.M., but never attended a hearing.

The January 2017 Detailed Contact Report similarly provided that:

- B.M.'s parents were not working toward reunification;

- When B.M. first came to the foster home, she cried a lot, wanted to sleep sitting up, did not eat a lot, and could not walk. With the J.'s., however, B.M. appeared to be in a safe environment and was doing well both emotionally and physically;
- Mr. M. called Ms. Sorey on May 31, 2016, and called one time after May 31, 2016 to schedule a visit with B.M. That visit occurred on June 22, 2016 and there were no visits since then; and
- B.M.'s grandmother called and asked to visit B.M., but never showed up. She was also told the dates of the hearings and did not show up. Ms. Sorey stated that the grandmother states that "she wants to get B.M., but she never follows through."

The Department's Detailed Contact Report prepared in advance of the March 8, 2017 CINA hearing did not note any change in B.M.'s case from the previous report.

At the March 8, 2017 CINA hearing, Mr. M. and B.M.'s grandmother appeared. Mr. M. stated that he wanted a service agreement and visitation with B.M. Ms. Sorey stated that she would prepare a service agreement for Mr. M. Ms. Sorey had not prepared a service agreement in advance of the hearing because she did not anticipate that Mr. M. would appear.

Mr. M., Ms. D., and B.M. had another visit on March 24th, meeting at a McDonald's. Ms. Sorey offered to provide Mr. M. with bus tokens for visits, but he declined because he said he was unfamiliar with the bus system. The Department had prepared a service agreement for June 13, 2017 through November 13, 2017. The agreement provided for weekly visitation and required B.M.'s parents to enroll in and complete a parenting class. It also required Mr. M. to disclose his current address. Unfortunately, Ms. Sorey forgot to bring the agreement to the visit. Mr. M. said he would

call for another visit, but he never did. Mr. M. subsequently moved without notifying Ms. Sorey of the change in address.[7]

The Department's April Detailed Contact Report recounted that:

- B.M.'s parents were not working toward reunification;
- B.M. was doing very well in her foster home;
- B.M. had a visit with her parents on March 24, 2017 at a McDonald's;
- Since B.M. went into foster care on May 14, 2016, her parents had seen her only three times;
- The Department has offered B.M.'s parents bus tokens, but they do not take them because they say that they are unfamiliar with the MTA System in Baltimore; and
- B.M.'s maternal grandmother stated that she was interested in taking B.M. but did not contact Ms. Sorey, and when she came to the March 8, 2017 hearing, she appeared to be under the influence of something.

The Department's Detailed Contact Report for B.M.'s May 17, 2017 CINA hearing reported that:

- B.M.'s parents were not working toward reunification;
- B.M. was doing very well in her foster home and was a very loving child;
- B.M.'s parents had not visited since March 2017;
- Ms. Sorey had not heard from B.M.'s maternal grandmother since the March hearing; and
- The J.'s were interested in B.M. living with them permanently.

On June 7, 2017, Ms. Sorey mailed a service agreement to the family home and warned B.M.'s parents that the current plan for reunification could change if they did not work toward that goal. The service agreement required Mr. M. to enroll and complete both a parenting class and a drug treatment program. Ms. Sorey also provided information for

[7] Pursuant to Maryland law, B.M.'s parents were required to notify the court and the Department of any change in their address. CJP § 3-822(b).

enrolling in The Family Tree parenting classes. The June 7th mailing was returned to Ms. Sorey as undeliverable, which alerted Ms. Sorey to the fact that B.M.'s parents had moved without telling her. She did not obtain a new address for Mr. M. until late 2018.

On July 6th, the Department sent B.M.'s parents a letter which contained information about a referral to Mosaic Community Services for a drug treatment program for Mr. M., and noted that an appointment was scheduled for Mr. M. for July 17th. Mr. M. never attended the July 17th appointment.

In August, the Department's Detailed Contact Report provided that:

- B.M.'s parents were not working toward reunification and Ms. Sorey did not know their whereabouts;
- B.M. was doing very well in her foster home; and
- B.M.'s parents had not visited since March 2017.

In September 2017, after B.M. had been in foster care for 15 months and had only seen Mr. M. three times, the Department requested that B.M.'s permanency plan be changed from reunification to either adoption or custody and guardianship by a non-relative. A CINA hearing was held on September 6, 2017, and the juvenile court made the following findings:

- B.M. remained a CINA;
- The Department was not required to provide reunification services because B.M. was in an out-of-home placement for 15 of the prior 22 months; and
- The Department had made reasonable efforts for reunification, including referral for drug screening, referral for drug treatment, offering a service agreement, and offering visitation to the parents and maternal grandmother.

The court then ordered that:

- B.M.'s placement with the Department continue;
- Visitation be reduced from weekly to monthly;
- The permanency plan be changed to guardianship with a non-relative, to be achieved by September 6, 2018; and
- Physical custody not be granted to either Mr. M. or Ms. D. because of the likelihood for further child abuse or neglect.

Mr. M. and Ms. D. did not appear at the hearing or appeal the court's modification of the permanency plan.

The juvenile court held a hearing on April 11, 2018 and entered an order finding that Mr. M. and Ms. D. had abandoned B.M.

In April 2018, at the Department's request, a "Family Find"[8] was conducted. According to the report, B.M.'s maternal great-grandmother expressed an interest in reconnecting with B.M. and in being considered as a potential placement resource. B.M.'s great-grandmother stated that Ms. D. was in jail. Ms. Sorey determined that B.M.'s great-grandmother was not an appropriate resource because she failed to contact either Family Find or Ms. Sorey after she initially expressed an interest in B.M.

The Department's Detailed Contact Reports for June and July indicated that:

- B.M. was continuing to receive good care from the J.'s; and
- The J.'s were interested in either adoption or custody and guardianship.

[8] "The Family Find process includes a combination of approaches, such as sending out letters, interviewing and meeting with the child/youth, family members, caregivers, professionals[,] and other interest[ed] individuals."

At B.M.'s CINA hearing held on September 13, 2018, the juvenile court found that: (1) reasonable efforts had been made by the Department; (2) B.M. was still a CINA; (3) B.M.'s parents had not been working toward reunification and their whereabouts were unknown; and (4) B.M.'s maternal grandmother was no longer in contact with B.M. or the Department. The court ordered B.M.'s continued commitment to the Department. The court again changed B.M.'s permanency plan, this time to adoption by a non-relative, to be achieved by September 5, 2019. Neither Mr. M. nor Ms. D. appealed the court's decision.

The Department's Detailed Contact Report submitted in November 2018 provided that:

- B.M.'s parents were not working toward reunification and Ms. Sorey did not know their whereabouts;
- B.M. was doing very well in her foster home;
- B.M.'s parents had not visited her since March 2017;
- The J.'s were interested in adopting B.M.; and
- B.M.'s paternal grandfather called to say that he is interested in taking care of B.M., but he had not visited her since June 2016.

On November 17, 2018, the Department filed a petition for guardianship with the right to consent to adoption of B.M., to terminate Mr. M. and Ms. D.'s parental rights ("TPR"). Ms. D. did not object. Mr. M. filed an objection on December 11, 2018.

Mr. M. called Ms. Sorey on November 20, 2018 and inquired about visitation with B.M. and about the possibility of his father assuming the care of B.M. Ms. Sorey told him that the permanency plan had changed to adoption by a non-relative and that he could have monthly one-hour visits. Mr. M. refused to provide her with a phone number and said he

would contact her about the visitation. Ms. Sorey later learned that, at that time, Mr. M. was in an in-patient drug treatment program at Gaudenzia.

On December 12, 2018, Ms. Sorey arranged for B.M. to visit with Mr. M. and Mr. M.'s father at Gaudenzia. During that visit, Ms. Sorey presented Mr. M. with a service agreement for February 20, 2019 through March 7, 2019. The service agreement stated that the permanency plan was adoption by a non-relative and provided that Mr. M. should (1) enroll and complete a parenting class, a domestic violence program, and a drug treatment program; (2) provide proof of employment; (3) visit with B.M. monthly; (4) provide the Department with contact information; and (5) not use illicit drugs when visiting B.M.

Mr. M. refused to sign the agreement because the permanency plan was for adoption. He also stated that he had completed a four-hour online parenting class and that he had printed a completion certificate but did not provide a copy to Ms. Sorey. Mr. M. also refused to provide Ms. Sorey with access to his records at Gaudenzia. Subsequently, Mr. M. left the Gaudenzia facility before completing the program.

Mr. M. visited his daughter in January, February, and March, but failed to show up for the April visit. B.M. did not know who he was and referred to Mr. M. and his father as her "friends."

The TPR took place over multiple days between March 7, 2019 and September 20, 2019. On the fourth day of the proceedings, Mr. M. was hospitalized for a drug overdose.[9]

[9] In the emergency room, Mr. M. stated that he used heroin the night before which may have been laced with another substance.

Nonetheless, throughout the proceedings, Mr. M. denied that he had a drug problem prior to B.M.'s removal from his care and further denied that he had overdosed on heroin during the proceedings. Mr. M.'s father denied knowledge of the specific drugs with which his son struggled, although he admitted that his son had a history of drug abuse and was enrolled in a methadone program at the time.

The court observed:

> Today at age four (4), [B.M.] is happy, loves school, and has her own room. She loves to sing and play with her animals. Her favorite foods are "Mack and Cheese," fish, and coleslaw. She attends church and Sunday School with her foster family, and she sings on the church choir. She is up to date on her medical appointments. Seemingly, [B.M.] has found stability in the uncertainty of foster care.
>
> However, [B.M.'s] adjustment to her foster home was not without some challenges. Her foster family had to place [B.M.] in several daycare facilities before they found the one that best suited her. After the intervention of Infants and Toddlers, [B.M.] is now walking and talking. Through the care and attention of [B.M.'s] foster mother, [B.M.] is now potty-trained, and she sleeps flat on her bed at night.
>
> [B.M.] has assimilated in her foster family. She reads with her foster-father, does activities with [her foster mother's] 14-year-old granddaughter, such as watching movies and playing games. Moreover, [B.M.] has settled in at Greater Grace Christian Center, which is her daycare center.

The juvenile court further explained that, pursuant to FL § 5-323(d), its job was to determine by "clear and convincing evidence" whether to grant the guardianship petition by considering what was in the best interest of the child. FL § 5-323(d) provides:

> Except as provided in subsection (c) of this section, in ruling on a petition for guardianship of a child, a juvenile court shall 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, including:
> (1) (i) all services offered to the parent before the child's placement,

whether offered by a local department, another agency, or a professional;

(ii) the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent, and

(iii) the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any;

(2) the results of the parent's effort 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, including:

(i) the extent to which the parent has maintained regular contact with:

1. the child;

2. the local department to which the child is committed; and

3. if feasible, the child's caregiver;

(ii) the parent's contribution to a reasonable part of the child's care and support, if the parent is financially able to do so;

(iii) the existence of a parental disability that makes the parent consistently unable to care for the child's immediate and ongoing physical or psychological needs for long periods of time; and

(iv) whether additional services would be likely to bring about a lasting parental adjustment so that the child could be returned to the parent within an ascertainable time not to exceed 18 months from the date of placement unless the juvenile court makes a specific finding that it is in the child's best interests to extend the time for a specified period;

(3) whether:

(i) the parent has abused or neglected the child or a minor and the seriousness of the abuse or neglect;

(ii) 1. A. on admission to a hospital for the child's delivery, the mother tested positive for a drug as evidence by a positive toxicology test; or

B. upon the birth of the child, the child tested positive for a drug as evidence by a positive toxicology test; and

2. the mother refused the level of drug treatment recommended by a qualified addictions specialist, as defined in § 5-1201 of this title, or by a physician or psychologist, as defined in the Health Occupations Article;

(iii) the parent subjected the child to:

1. chronic abuse;

2. chronic and life-threatening neglect;

3. sexual abuse; or

4. torture;

(iv) the parent has been convicted, in any state or any court of the United States, of:

1. a crime of violence against:

A. a minor offspring of the parent;

B. the child; or

C. another parent of the child; or

2. aiding or abetting, conspiring, or soliciting to commit a crime described in item 1 of this item; and

(v) the parent has involuntarily lost parental rights to a sibling of the child; and

(4) (i) the child's emotional ties with and feelings toward the child's parents, the child's siblings, and others who may affect the child's best interests significantly;

(ii) the child's adjustment to:

1. community;

2. home;

3. placement; and

4. school;

(iii) the child's feelings about severance of the parent-child relationship; and

(iv) the likely impact of terminating parental rights on the child's well-being.

As to Mr. M., the juvenile court noted the following:

- Although Mr. M.'s father testified that Mr. M. worked for him and also at Kmart, Mr. M. provided insufficient evidence to support these contentions;
- Mr. M. failed to attend the hearing on April 12, 2019 because he had been admitted to the hospital;
- Although Mr. M. began several drug treatment programs, he did not present any evidence to show that he completed any;
- Mr. M. contended that he completed a four-hour online parenting class but could not provide adequate supporting documentation;[10]
- Mr. M. and his father both testified that Mr. M. lived with his father but failed to provide any supporting evidence;
- Mr. M. did not begin visiting B.M. until after the permanency plan was changed;

[10] The court noted that "the online parenting class that he purportedly completed raises more questions than answers."

- Mr. M. visited B.M. on a monthly basis, but missed his April 2019 visit; and
- motion to intervene to obtain custody of B.M., where he stated that B.M.'s parents "unfortunately struggled with substance abuse issues in the past," and also stated that his son had "completed a rehabilitation program and is now drug-free[,]" although he later acknowledged that Mr. M. had relapsed.

The juvenile court concluded that the Department had made reasonable efforts to provide services for Mr. M. to assist with reunification, only to be met with Mr. M.'s unavailability and lack of cooperation. The court also concluded that Mr. M. had rejected all services other than visitation. Further, the court noted that Mr. M. had not demonstrated that he could take care of and support B.M. and had made no effort to contribute to B.M.'s support.

The court also stated:

> The offering of additional services and time would do little to enhance the potential of reunification in the best interest of [B.M.] at this point. One reason is that [B.M.] has been out of the home since 2016. Another reason is that [Mr. M.] has done little to persuade this Court that he will ever cooperate with [the Department] and complete drug treatment or other requirements in a verifiable manner.

The court further observed:

> Parent – Based upon the evidence, [B.M.] knows that she should call [Mr. M.] her father. However, it is unclear whether she has emotional ties with him, as they see each other once a month, and she has been out of the home since she was fourteen (14) months old.
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> ** ** **
>
> Caregivers – [B.M.] is emotionally tied to [the J.'s]. She has lived with them since being removed from her parents. She is a part of their family, and her foster mother does whatever she can to nurture, support, and care for [B.M.]. The foster parents searched for and found the best daycare for [B.M.]. Through the assistance of [the Department], they ensured that [B.M.]

received the necessary services to address the challenges of being neglected.[11]

Finally, the court concluded:

> According to the State, [Mr. M.] had twelve (12) visits with his daughter in 36 months, and most of those visits occurred after [the Department] filed its [guardianship] petition. Child's counsel argued that [Mr. M.] missed eight (8) court dates during the CINA proceedings and only attended three (3) dates. Child's counsel also argued that between May 2016[,] when [the Department] emergently removed [B.M.,] and December 2018[,] [Mr. M.] had 84 possible visit opportunities with [B.M.]. Counsel argues that he only visited with her five (5) times during this period. [Mr. M.] missed most of the scheduled visits with [B.M.] until the filing of the [guardianship petition] and the changing of the visitation schedule from weekly to monthly.
>
> Additionally, [Mr. M.] has been unavailable to sign, or he has been available and refused to accept [the Department's] service agreements. Although he enrolled in two drug treatment programs, he quit both. He quit the first program because he disliked his roommate and wanted to go home. He quit the second drug treatment program purportedly to apply for a job. He has not provided any documentation that he obtained that job.
>
> Other than going to his methadone program, [Mr. M.] has demonstrated no intentions of completing a drug program. To deny [the Department's] petition would be to suggest that this Court is willing to wait until [Mr. M.] decides to enroll in a meaningful drug treatment program. Then, we would have to wait until [Mr. M.] completed the drug treatment program, as well as the other requirements in hopes that he would be fit to take over his duties of parenting [B.M.].
>
> Even if this Court could reasonably wait that indeterminate amount of time, such a decision would critically offend [B.M.'s] best interests. As noted during this hearing:
>
> [B.M.] has been in care for over forty (40) months, and is now four years old.

[11] Ms. J. wanted to adopt B.M. and make her a permanent part of their family because she "love[s] her to death. [She'd] do anything for her . . ."

> [Mr. M.] has an unresolved drug abuse condition that predates [B.M.'s] birth. [Mr. M.] is currently not in a drug treatment program and has expressed no desire to re-enroll in another program. He has already quit [two drug] treatment programs, and he has resisted all of [the Department's] efforts to prepare him for parenting [B.M.], except for the monthly visits. He does not believe he has a drug problem, he has taken a nonchalant attitude towards participating in a parenting program, and he thought it sufficient to find an unknown program on the internet, expecting that program to satisfy the service agreement. Finally he relies upon his father . . . to provide support for both him and [B.M.].
>
> [Mr. M.] can only provide [B.M.] the uncertainty of a life of a father in the throes of denial of his significant drug abuse condition.

The juvenile court applied the clear and convincing evidence standard and found that Mr. M. was "unfit to continue in a parent-child relationship with" B.M. The court also found "exceptional circumstances exist demonstrating that the termination of [Mr. M.'s] parental rights" is in the best interest of B.M. The court therefore found that termination of Mr. M. and Ms. D.'s parental rights was in B.M.'s best interest, and ordered that the Department be "appointed guardian of [B.M.], with the right to consent to adoption and with the right to consent to long-term care short of adoption."

Mr. M. timely appealed.

DISCUSSION

I.

STANDARD OF REVIEW

We review a juvenile court's termination of parental rights "simultaneously apply[ing] three different levels of review." In re Shirley B., 419 Md. 1, 18 (2011) (citations omitted). We review the juvenile court's factual findings under a clearly erroneous standard, but we give no deference to the court's conclusions of law. In re

Adoption/Guardianship of Amber R., 417 Md. 701, 708 (2011). We do not disturb the court's ultimate conclusion unless "there has been a clear abuse of discretion." In re Adoption of Ta'Niya C., 417 Md. 90, 100 (2010) (quoting In re Adoption/Guardianship of Victor A., 386 Md. 288, 297 (2005)).

II.

FACTORS TO EVALUATE

Parents have a "fundamental and constitutional right to raise their children." In re Karl H., 394 Md. 402, 414 (2006); see also In re Adoption/Guardianship of Rashawn H., 402 Md. 477, 495 (2007). That right creates a presumption "that it is in the best interest of children to remain in the care and custody of their parents." Rashawn H., 402 Md. at 495. The juvenile court must therefore balance "a parent's right to custody of his or her children . . . 'against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect.'" Amber R., 417 Md. at 709 (quoting Rashawn H., 402 Md. at 497).

Notwithstanding the presumption in favor of the parent, "the right of a parent to make decisions regarding the care, custody, and control of their children may be taken away where (1) the parent is deemed unfit, or extraordinary circumstances exist that would make a continued relationship between parent and child detrimental to the child, and (2) the child's best interests would be served by ending the parental relationship." In re Adoption/Guardianship of Jasmine D., 217 Md. App. 718, 734 (2014).

FL § 5-323(b) provides:

> 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.

The factors referenced in the above subsection are listed in subsection (d) of § 5-323. The factors most relevant here are (i) the services offered by the Department to the parents, (ii) the parents' efforts to make it in the child's best interest to be returned to the parents, (iii) whether the parent abused or neglected the child, and (iv) the child's emotional ties with his parents.

Here, the juvenile court considered each of these relevant factors and found that it was in B.M.'s best interests to terminate her parental relationship with Mr. M.

A.

Mr. M.'s Contentions

Mr. M. contends that the juvenile court's decision was in error, arguing that the Department failed to provide sufficient services to him, and therefore, the court could not properly find that he was an unfit parent. Mr. M. contends that the Department had not offered him drug treatment services or made referrals to him prior to B.M.'s removal. Mr. M. additionally argues that after B.M.'s removal, the Department failed to offer "Mr. M. drug treatment, parenting and visitation with B.M. when he made himself available and

that [the court erred in finding] Mr. M. rejected these services," and that the Department failed to provide him with a service agreement. According to Mr. M.:

> But for Ms. Sorey's negligence in preparing a service agreement for the father in preparation of the March 24, 2017 visit, and her delay in drafting the requested service agreement, Mr. M. would have had the opportunity to sign a service agreement and start the process of working with DSS to reunify with his daughter.

The record supports the court's contrary conclusion.

B.

The Department's Reasonable Efforts

The record reflects that prior to B.M.'s removal from her parental home, Ms. Hardy made approximately nineteen attempts to contact Mr. M. and Ms. D. "to try and put services in place to prevent removal of [B.M.] from their care." She was unsuccessful in her efforts solely because Mr. M. failed to cooperate: he refused to admit that he had a drug problem and refused to meet Ms. Hardy in person, even though an in-person meeting was necessary for her review and to provide a referral for him. Ultimately, B.M. was removed from her home after the Department determined that an emergency situation existed that warranted removal.

During the over two years after B.M. was removed from her parents' home, the Department made numerous efforts to help Mr. M. achieve the goal of reunification. Beginning the month that B.M. was removed, the Department reached out to Mr. M. and requested an appointment to discuss B.M.'s permanency plan and review a service agreement that provided for visitation and the parents' enrollment and completion of a drug rehabilitation program and a parenting class. Although Mr. M. was initially responsive, he

failed to call the Department to schedule a visit with B.M., failed to attend B.M.'s scheduled hearings, and then failed to have any contact with the Department or B.M. for nine months.

When Mr. M. eventually reached out to the Department, the Department again prepared a service agreement, facilitated a meeting with B.M., and offered to provide Mr. M. with bus tokens for visits, which he declined. Mr. M. stated that he would call for another visit but moved without notifying the Department and failed to contact the Department for over one year. The Department attempted to provide him with a service agreement and referrals for parenting classes and a drug treatment program, and warn him that the plan for reunification could change if he did not work toward that goal, but could not contact him.

Mr. M. did not contact the Department again until after B.M.'s permanency plan had been changed from reunification to adoption by a non-relative. Mr. M. still refused to provide the Department with a phone number. When Mr. M. met with B.M. one month later, he was provided with a service agreement, but he refused to sign the agreement because the permanency plan was for adoption.

Maryland law requires that that the Department make "reasonable efforts . . . to preserve and reunify families." FL § 5-525(e)(1).[12] As stated by the Court of Appeals:

[12] FL § 5-525(e)(1) provides:

> Unless a court orders that reasonable efforts are not required under § 3-812 of the Courts Article or § 5-323 of this title, reasonable efforts shall be made to preserve and reunify families:

> a reasonable level of those services, designed to address both the root causes and the effect of the problem, must be offered—educational services, vocational training, assistance in finding suitable housing and employment, teaching basic parental and daily living skills, therapy to deal with illnesses, disorders, addictions, and other disabilities suffered by the parent or the child, counseling designed to restore or strengthen bonding between parent and child, as relevant.

Rashawn H., 402 Md. at 500. In addition,

> [t]he court is required to consider the timeliness, nature, and extent of the services offered by [the Department] or other support agencies, the social service agreements between [the Department] and the parents, the extent to which both parties have fulfilled their obligations under those agreements, and whether additional services would be likely to bring about a sufficient and lasting parental adjustment that would allow the child to be returned to the parent.

Id. The Department's obligation to the parents, however, is not limitless. "In determining the reasonable efforts to be made and in making the reasonable efforts described under paragraph (1) of this subsection, the child's safety and health shall be the primary concern." FL § 5-525(e)(2).

Here, the record reflects that both before and after B.M. was removed from her parents' home, the Department made reasonable efforts to provide services for Mr. M., but all of their efforts were stymied by Mr. M.'s lack of cooperation. As the juvenile court stated:

> The Department has offered [Mr. M.] some services. However, due to [Mr. M.'s] unavailability at times, and lack of cooperation at other times, DSS could not provide a full complement of services to [Mr. M.]. . . . Therefore,

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> (i) prior to the placement of a child in an out-of-home placement, to prevent or eliminate the need for removing the child from the child's home; and
> (ii) to make it possible for a child to safely return to the child's home.

> this Court finds that DSS has made reasonable efforts to offer services to [Mr. M.] to prepare him for reunification with his daughter.

Ultimately, Mr. M. has himself to blame for his failure to take advantage of the services and opportunities offered by the Department to reunite with B.M. See In re Adoption/Guardianship of K'Amora K., 218 Md. App. 287, 307 (2014) ("[A] parent's *actions and failures to act* both can bear on . . . the question of whether continuing the parent-child relationship serves the child's best interests.").

Mr. M. supports his argument by directing our attention to our decision in In re Adoption/Guardianship Nos. CAA 92-10854, 92-10853, 103 Md. App. 1 (1994) ("Adoption CAA 92-10854"). There, the Department's caseworker stated that she had only one contact with the father and that all other communications were exclusively with the child's mother. Id. at 13. The Court observed that "it appears that the Department, although originally armed with knowledge of the address where William was living, did little, if anything, to communicate with him." Id. at 14. Further, the Department did not offer services to the father. Id. at 16. Here, not only did the Department communicate with Mr. M. multiple times to offer services to him, but the Department made many more attempts to communicate and provide referrals, service agreements, and services. Those attempts were unsuccessful solely because Mr. M. was not available or not cooperative.

C.

Consideration of Additional Factors

Mr. M.'s singular focus on the level of services provided to him would have us ignore the other requisite factors the court considered. As stated above, in a TPR hearing,

pursuant to FL § 5-323(d), the court must also consider (1) the parents' efforts to create an environment where it is in the child's best interest to be returned to the parents; (2) whether the parent abused or neglected the child; and (3) the child's emotional ties with his parents. The trial court properly considered each of these facts in determining that B.M.'s best interests would be served by granting the Department's petition.

The court's application and assessment of each of these factors was firmly grounded in the evidence. There is ample evidence supporting the court's decision to grant the Department's guardianship petition. The record reflects that between May 2016 and December 2018, Mr. M. made only five visits to B.M., and failed to communicate with the Department between June 2016 and March 2017 and again between March 2017 and November 2018. Further, Mr. M. failed to notify the Department when he moved and failed to attend B.M.'s scheduled hearings.

The record also demonstrates B.M.'s parents' neglect: (1) she was born addicted to opiates; (2) she initially came to the Department's attention because her parents were accused of neglect; (3) the juvenile court determined that B.M. was a CINA as a result of Ms. D. and Mr. M.'s neglect; (4) the Department filed a report stating that "Neglect of [B.M.]. is 'INDICATED'"; and (5) the court found that Mr. M. and Ms. D. abandoned B.M.

As to B.M.'s emotional ties with her parents, B.M. referred to Mr. M. and his father as her friends and needed to be reminded of the relationship. On the other hand, B.M. developed strong emotional ties to, and was thriving with, the J.'s. The feelings were mutual: Ms. J stated that she loved B.M. to death and would do anything for her.

Mr. M. argues repeatedly about the Department's obligations to him "when they had the opportunity." The issue is not whether the Department was standing by to swoop in to take care of Mr. M.'s needs on the rare occasions he made himself available. The court was obligated to evaluate all the relevant facts surrounding Mr. M.'s actions, including that he lost contact with the Department for months on end and that he failed to cooperate. See Shirley B., 419 Md. at 23 (quoting Kathleen S. Bean, Reasonable Efforts: What State Courts Think, 36 U. TOL. L. REV. 321, 326 (2005))(reasonable efforts reflects an understanding that a local department of social services need not devote "excessive efforts to repair hopelessly dysfunctional families"); Ta'Niya C., 417 Md. at 104 n.11 (in addition to the factors outlined in FL § 5-323(d), "courts may consider 'such parental characteristics as age, stability, and the capacity and interest of a parent to provide for the emotional, social, moral, material, and educational needs of the child'") (citation omitted).

D.

Relative Placement

Mr. M. additionally argues that the Department "made minimal efforts to locate relatives to care for B.M.," and that while the Department "did explore the maternal grandmother, they did not adequately explore the paternal grandfather or the great-grandmother." The record facts demonstrate otherwise.

First, as Mr. M. acknowledges, the Department explored the possibility of placing B.M. with her maternal grandmother. The Department reached out to the grandmother and offered her visits with B.M. Although she indicated that she was interested in taking care of B.M. and interested in visiting her, B.M.'s grandmother did not follow through with the

Department: she failed to show up at visits, failed to call the Department when she was supposed to, and failed attend hearings.

The record also reflects that the Department reached out to B.M.'s paternal grandfather on multiple occasions to see if B.M. could be placed with him, but he said he was unable to care for her because he was caring for a sick wife. Although he had further contact with the Department, B.M.'s grandfather never indicated any interest in taking care of B.M. until November 2018, after having had no contact with B.M. for over two years and after B.M.'s permanency plan had already been changed to adoption.

Similarly, although Family Find identified B.M.'s maternal great-grandmother as having an interest in reconnecting with B.M. and being considered as a potential placement resource, the Department determined that she was not an appropriate resource because she failed to contact either Family Find or the Department after she expressed her interest in B.M.

CONCLUSION

When the juvenile court made its decision, it appropriately considered all of the necessary factors. It then applied the clear and convincing evidence standard and found that Mr. M. was "unfit to continue in a parent-child relationship with" B.M., and that "exceptional circumstances exist demonstrating that the termination of [Mr. M.'s] parental rights" is in the best interest of B.M.

As Mr. M. acknowledges, the juvenile court's primary obligation in a TPR proceeding is "to determine the overall best interest of the child" Here, the juvenile court properly focused its primary concern on the interests of B.M., and determined that each of

these factors weighed in favor of granting of the Department's guardianship petition. Our review of the record confirms that the court's decision was not erroneous.

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