UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0232

September Term, 2016

IN RE: ADOPTION/GUARDIANSHIP
OF D.P. AND M.J.

Berger,
Nazarian,
Beachley,

JJ.

Opinion by Berger, J.

Filed: September 13, 2016

Appellant, Janelle P. ("Mother"), challenges the judgment of the Circuit Court for Baltimore City terminating her parental rights with respect to her daughter, Malon J. ("M.J."), and her son De'Johnte P. ("D.P."), and granting guardianship to the Baltimore City Department of Social Services ("the Department"). Mother presents two issues for our review,[1] which we rephrase as follows:

1. Whether the circuit court erred by terminating Mother's parental rights.

2. Whether the circuit court erred by excluding evidence offered by Mother that was in violation of the court's scheduling order.

For the following reasons, we shall affirm the judgment of the Circuit Court for Baltimore City.

FACTS AND PROCEEDINGS

At the time of the guardianship proceeding, Mother was 28 years old and resided in Dothan, Alabama. Mother had five children at that time and was pregnant with a sixth. This appeal is limited to the circuit court's order terminating Mother's parental rights of D.P. (a boy born in August of 2008), and M.J. (a girl born in April of 2002). D.P.'s father is

[1] The issues, as presented by Mother, are:

1. Did the court err in finding parental unfitness and exceptional circumstances sufficient to support its ruling to terminate parental rights?

2. Did the court abuse its discretion by excluding relevant evidence regarding the mother's stability?

unknown; and M.J. has two putative fathers, but paternity has not been conclusively established.

As for the other children, Mother's oldest child Z.C., is a boy born in May of 2002. G.B. is a girl born in October of 2003, and M.J., III, is a boy that was born in March of 2013. G.B. currently resides with her paternal grandparents, and M.J. III currently resides with his father. Z.C., D.P., and M.J. currently reside with their maternal aunt. In July of 2004, when Mother was seventeen years old, Z.C. and G.B. were Mother's only children. At that time, the children were placed in shelter care with the Department for five months while Mother entered drug treatment, moved into her great-aunt's home, and completed parenting classes. In January of 2005, although Mother completed parenting classes, the Circuit Court for Baltimore City found each child to be a Child in Need of Assistance ("CINA") due to Mother's continued marijuana use and her inability to provide suitable living accommodations for the children. The court further gave custody of the children to Mother under an Order of Protective Supervision ("OPS") requiring the children and Mother to reside with Mother's great aunt, Mother to successfully complete drug treatment, and Mother to obtain her GED, among other things. Thereafter, in April of 2005, the court found that Mother had complied with the conditions of the order of protective supervision, and therefore, rescinded its order.

By May of 2011, D.P. had been born. Also that month, the man presumed to be D.P.'s father had been incarcerated for shooting Mother in the leg. Mother similarly became

incarcerated as a result of a material witness warrant that was issued because Mother failed to appear at D.P.'s alleged father's trial. Mother was subsequently released on bail. Following Mother's incarceration, the Circuit Court for Baltimore City found that Mother had a history of transitory and unstable living arrangements, that Z.C. was frequently truant from school,[2] and that Mother was unable to care for the children. Accordingly, the court found Z.C. and D.P. to be CINA.[3] The court then placed each child in separate homes with their respective maternal aunts.

In December of 2011, the juvenile court returned the children to Mother under another OPS, which conditioned Mother's custody on her stable housing and employment, her ability to satisfy her children's educational and medical needs, and her continued cooperation with the Department, among other things. Thereafter, Mother was again incarcerated for her failure to appear and testify in D.P.'s alleged father's trial. Mother was incarcerated until April 3, 2012, and D.P.'s alleged father was ultimately convicted of assault and committed

[2] D.P. was three years old at the time.

[3] The record is unclear as to the status of G.B. at the time. The 2011 order finding Mother's children to be CINA did not purport to apply to G.B. Indeed, after the court rescinded its OPS order in 2005, the record contains no further orders pertaining to G.B. Mother testified that when Mother was 15 she gave custody of G.B. to the child's grandmother. Although there is no support in this record supporting the assertion that the child's grandmother had custody of G.B., the State notes that there appears to be a docket entry in the Circuit Court for Baltimore County awarding custody of G.B. to the child's paternal grandparents in 2011.

to the Department of Corrections. During Mother's incarceration, Z.C. and D.P. were cared for by their maternal great-grandmother.

After Mother's subsequent incarceration, the court continued its OPS and returned D.P. to the custody of Mother. The court, however, committed Z.C. to the custody of the Department. Thereafter, on August 8, 2012, the court found that Mother had complied with the terms of the OPS and returned Z.C. and D.P. to the custody of Mother.

By 2013, M.J. and M.J., III had been born to Mother. In July of 2013, it came to the Department's attention that:

> Mother has failed to provide the [children] with safe, stable, nurturing and protective living environment. The [children] and mother reside in deplorable living conditions. The [children's] residence, is dirty, malodorous and infested with mice. Mice feces have been observed around an infant crib in the residence by family members. The food supply in the residence is inadequate. It has been reported that the mother disclosed to family members that she has no food in her residence and has fed her infant child a water cereal bottle. The [children's] mother receives TCA[4] monthly benefits, but she uses these funds for her own personal use. The [children's] mother has a pending scheduled eviction due to her failure to pay June and July's rent. The [children's] mother has prior CPS history dating back to 2004, centering on neglect and substance abuse issues. The [children's] mother is in need of a mental health assessment. The mother has reported hearing voices and family members have reported that she has been admitted to Shepard Pratt in the past. . . .

[4] TCA stands for Temporary Cash Assistance and "provides cash assistance to families with dependent children when available resources do not fully address the family's needs and while preparing program participants for independence through work." http://dhr.maryland.gov/blog/weathering-tough-times/temporary-cash-assistance/

Moreover, Mother testified that in July of 2013, she was suffering from a nervous breakdown because she had recently learned of lifestyle choices of M.J., III's father which she found to be disagreeable, and was worried for the safety of her children around him. Additionally, Mother failed a urinalysis test that month. Accordingly, the department removed the children and placed them in the care of their maternal aunt, Ms. H. A shelter care hearing was held on July 16, 2013, where Ms. H. was granted a limited guardianship to make medical decisions for the children.

At the July 16, 2013, hearing, Mother was introduced to her assigned case manager John Buckett ("Buckett"), whereupon she was provided with his phone number and voice mail. Mother called the department the week of July 22, 2013, to schedule an appointment the following week, but she failed to either attend or cancel the meeting. Thereafter, Mother failed to appear for a review of the court's shelter care order because she had recently been arrested. Mother similarly failed to appear for the September 10, 2013, adjudicatory and dispositional CINA hearing. The hearing was re-scheduled due to her absence.

On September 19, 2013, Mother contacted Buckett by means of telephone to contest a paternity test establishing the father of M.J.,III. Mother argued to Buckett that it was improper for M.J.,III to be in his father's custody because she found his lifestyle to be disagreeable. Buckett, then, persuaded Mother to schedule an appointment with him the following week, and even offered Mother transportation tokens to attend the meeting. Mother, then, scheduled an appointment, but did not attend. After the time for the scheduled

meeting, however, Buckett was able to reach Mother by telephone. Mother and Buckett rescheduled a meeting for the following week, and Mother, again, did not attend.

On October 8, 2013, Buckett called and reached Mother. Buckett informed Mother that the two of them needed to meet and develop a plan designed to assist her in obtaining custody of her children. Buckett and Mother then agreed to schedule a meeting on October 15, 2013. Mother met with Buckett on October 16, 2013, where they executed a case plan. The objective of the case plan was to achieve a permanent home for the child. Moreover, the case plan aimed to reunify Mother with the children. The case plan obliged Mother to maintain contact with the children, maintain contact with the department, attend court hearings regarding the children, support the children financially, participate in parenting skills classes, participate in a mental health assessment, participate in family therapy, and obtain appropriate housing, among other things.

On January 8, 2014, Buckett reached Mother by telephone. At that time, Mother reported that she had identified housing for herself and her children, but that she needed assistance to complete the process. Moreover, Buckett informed Mother that she needed to attend parenting skills classes, a mental health assessment, family therapy, and visitation sessions with her children if she desired to retain custody. Buckett further advised Mother that the Department was willing to provide transportation for the children to an off-site location for visitation due to Mother's feud with the children's guardian. Mother informed Buckett that she refused to visit her children--either at the guardian's home, or in the

community--so long as the children lived with Ms. H. Mother further, reported that she had completed a parenting skills course, and completed a mental health assessment. Mother, however, failed to produce independent verification that she had completed such courses.

One week later, on January 15, 2014, Mother attended a CINA review hearing where the parties were unable to reach a resolution as to the placement of the children. Accordingly, the court reset the matter for a contested hearing. Thereafter, a contested hearing was held on March 12, 2014, where the court found that since Mother executed her case plan, she had neither secured suitable housing nor had she visited her children. Moreover, the court found that the children were doing well and their needs were being met in the custody of Ms. H. Accordingly, the court continued Ms. H's custody of the children and expanded the scope of her guardianship.

Two months later, the court held another CINA review hearing and found that Mother had still failed to obtain suitable housing, visit the children, or to verify that she had participated in parenting classes and a mental health assessment. Accordingly, the court continued the children's commitment to the Department. A subsequent review hearing was scheduled for January 27, 2015, but that hearing was rescheduled because Mother was absent due to being hospitalized.

Thereafter, on February 11, 2015, the court held a contested review hearing. At that time, the court found that Mother had still not verified her participation in parenting classes or a mental health assessment. Moreover, the court found that Mother had not visited her

children since June 4, 2014. Additionally, the children were still in the care of Ms. H where they were doing well, and all of their needs were being met. Until this point, the permanency plan for the children had been to reunify them with Mother. At this review hearing, however, the court and the Department changed the permanency plan, and resolved to seek adoption or custody and guardianship with a relative. At subsequent review hearings spanning the course of the following year, the court continued the children's commitment to the Department and Ms. H's limited guardianship.

On April 21, 2015, the Department filed a petition for guardianship with the right to consent to adoption for both D.P. and M.J. After a number of postponements, the court held a contested hearing on the guardianship petition in March of 2016. The March 4, 2016, hearing began with the testimony of Ms. H. Ms. H testified that she had been providing care for the children for almost three years. Additionally, Ms. H alleged that Mother had provided no support for her children--financial or otherwise--since Ms. H took custody of the children in July of 2013. Ms. H averred that she tends to the children's educational and medical needs. Mother's oldest child, Z.C., has his own bedroom in Ms. H's home, as does Mother's daughter, M.J. Mother's son, D.P., shares a bedroom with Ms. H's biological son. Z.C. and D.P. appear to understand the nature of their relationships with Ms. H and Mother, however, M.J.--due to her young age--understands Ms. H to be her mother.

Ms. H further testified that she has a poor relationship with Mother. Ms. H is often subjected to badgering social media messages and obscene text messages from Mother

accusing Ms. H of taking Mother's children so as to obtain government benefits. Nevertheless, Mother testified that on one occasion in March of 2014, Mother came to Ms. H's home unannounced. Ms. H permitted Mother to see the children, but Mother did not interact with the children because they were asleep. Ms. H testified that toward the end of 2015, Mother engaged in a series of approximately four ten-to-fifteen minute phone calls with the children. Ms. H claimed that she desires to adopt the children, but that she was willing to permit the children to maintain a relationship with their biological mother. Ms. H testified that she originally took custody of the children because she was "trying to be a good aunt to them" and "I'm their aunt and that's what we're supposed to do."

Thereafter, Buckett testified that since he was assigned to Mother's case he had never received verification that Mother had completed a parenting skills class, a mental health assessment, or obtained housing. Buckett further testified that the Department made a referral for Mother to obtain a mental health assessment, and that the Department did not make a referral for parenting skills classes because Mother represented that she was already enrolled in a class. Buckett arranged for an in-home service to provide a mental health assessment, but the assessment was never completed because Mother never made herself available. Further, Buckett testified that the Department was willing to pay Mother's first month's rent or a security deposit for an apartment and provide her with minimum furniture if she found suitable housing.

Buckett further testified that he and Mother discussed the importance of visitation with the children, and that he offered Mother weekly visitation. Buckett reported that Mother would often schedule visitation, requiring the children to be transported to an off-site location for visitation. Mother would then fail to appear for visitation resulting in the children being disappointed. Eventually, Buckett and Ms. H made arrangements so that if Mother desired visitation, Mother would have to first arrive at the off-site location before the children would be transported in order to avoid the children's disappointment. Further, Buckett testified that since Mother's children were taken from her in 2013, Mother has provided no financial assistance for the children.

In 2015, Mother reported to Buckett that she was moving to Alabama. Mother reported to Buckett that she had entered a lease agreement, that she had fulfilled her mental health and drug treatment obligations, and that her attorney was in possession of all of the relevant documents. The Department, however, was never presented with the documents.[5] Mother's relocation also impaired her ability to visit her children. Accordingly, Buckett arranged for Mother to have telephone visitation with the children. Buckett estimated that since she moved to Alabama, she called the children approximately four times.

Thereafter, Mother testified. Mother testified that she had failed to visit her children because she had no help, and that neither Buckett nor Ms. H adequately accommodated her

[5] Mother did, however, attempt to introduce documents proffered to be her lease and a document from a SpecterCare program on the second day of trial, but the trial judge excluded the documents for the failure to comply with the court's scheduling order.

schedule. Mother reported that in 2013, she was living with her cousin. Thereafter, in 2014, Mother moved to live with her aunt and uncle in Woodlawn where she lived for approximately six months. Mother also reported that she was homeless for a period of time in 2014, until she moved to Alabama in April of 2015. Mother reported that she moved in with her uncle in Alabama because she received inadequate help and support in Baltimore. Thereafter, Mother testified that she moved into a three-bedroom home with another person.[6]

Since Mother moved to Alabama, she reported that she undertook programs to learn parenting skills, remain drug-free, and received mental health counseling. She claimed that she attended programs twice a week for the better part of a year. Indeed, Mother testified that she had satisfied all of the requirements of her case plan. Mother, however, provided no independent verification--other than her testimony--evincing her participation in the programs, or her living accommodations.

Mother averred that she was unemployed in 2013 and most of 2014. In late 2014 mother worked at a fast food restaurant for a short period of time. In Alabama, Mother

[6] The record is unclear as to Mother's relationship with this individual. On direct examination, Mother referred to this person as a fiancé, but on cross examination, identified this person as a friend. Moreover, Mother did not call this person as a witness, provide any background information about this individual, or indicate this person's willingness to have Mother's children reside with them. Mother did not provide this individual's name. Moreover, Mother declined to have this individual approved as a resource for the children--which may have resulted in Mother having custody under the Interstate Compact on the Placement of Children--because she did not wish to involve this individual in this matter. Further, when the Department sought to investigate this individual, he was denied as a resource because neither he nor Mother cooperated with the local agency in Alabama.

claimed that she worked a full-time job at a hotel, but that she had recently taken time off to go on maternity leave. At the time of the hearing, Mother reported that her uncle was sustaining her in Alabama. Mother further testified that since 2013, she provided no financial support for her children, other than a pair of tennis shoes for Z.C. Mother reported that she feels no obligation to sustain her children because they are not in her care, Ms. H. receives government benefits to care for the children, and that Ms. H should be financially responsible for the children while they are in her care.

With regard to her relationship with the children, Mother reported that because M.J. was removed at such a young age, she recognizes Ms. H as her mother, but that at the last court hearing, M.J. was crying and wanted to go home with Mother. Mother reported that D.P. is quiet, asks about Mother, and questions why he lives with his aunt. Finally, Mother testified that she has a good relationship with Z.C., and that they often converse on social media.

Mother's testimony concluded late in the day on a Friday afternoon. The parties agreed that they had rested their respective cases, and all that remained were closing arguments. Accordingly, the court recessed over the weekend and the parties returned Monday morning to present closing arguments. First thing on Monday morning, however, Mother moved to admit documents proffered to support her testimony that she had obtained housing and participated in required programing. The Department and the children objected on the grounds that the documents had not been provided in discovery pursuant to the court's

scheduling order. Mother argued that the documents were not available until discovery had closed, and the documents should be admitted due to the nature of the fundamental rights at stake in this litigation. The court excluded the documents for the failure to comply with the discovery order.

After hearing closing arguments, the circuit court proceeded to grant the Department's petition for guardianship for M.J. and D.P. The court further awarded a limited guardianship of the children to Ms. H. In rendering its judgment, the court gave a comprehensive recitation of the evidence presented at trial, and ruled as follows:

> This case is about several things. One, is mother accomplishing the goals in the service agreement she signed to address issues of parenting skills, mental health, appropriate housing and family therapy. The Department of Social Services has attempted to maintain contact with mother. They sent out their letters to the last addresses that they've had and mother has had seven to eight addresses.
>
> They've informed mother of family improvement meetings wherein mother would FTA, or fail to appear. Department has provided bus tokens and dimes for transfer on the bus. They've repeatedly indicated they could help with the first month's rent or security deposit and some furniture if mother supplied a lease. They have facilitated visits that mother would mostly fail to appear, thereby prompting an appearance by mother before the Respondents are brought to the Agency before the visits.
>
> Therefore, the Court finds a handful of face-to-face visits with the Respondents over a two-and-a-half year period of time, if that many. [D.P.] had been found CINA two times. The first time was--he was maintained in the mother's care with an OPS. The second time, along with his sister [M.J.] who was also found CINA, they've been with their aunt.

Two of mother's other children have also been found children in need of assistance on three separate occasions. Two times for one of them, one time for the other. Those CINA findings and these CINA findings are based on neglect.

The Court doesn't find any evidence of any chronic abuse or crimes of violence in this case, but the Court does find that none of these children are in the mother's care, particularly the children who are the subject matter of this litigation. Mother has not adjusted her circumstances such that it would be beneficial for the children to return to her care.

There is absolutely no documentary evidence to corroborate, other than the Department's Exhibit 35 of the factual finding on the item No. 5, that mother successfully completed a parenting class more than ten years ago and even then she was getting assistance from the Department of Social Services.

It's not lost on this Court that when asked on cross-examination about the issue of a lack of financial support for the Respondents, mother's response was--and I'm paraphrasing--why, they're not in my care. This is also a case of opportunities lost as the Court has no documentary evidence of mother's completion of the Family Tree, of any program at Bon Secours mental health services or the Women's Program at the Mayor's Office.

This is a case of lost opportunities because even the interstate compact initiated at the request of the mother ran into mother's roadblock as she no longer wanted that uncle investigated in Alabama as an available resource, the place to which she has moved. There's no independent and/or corroborative evidence of mother's alleged stability in Alabama.

Pursuant to the evidence and testimony, the Court finds a bare minimum of emotional ties between the Respondents and mother, if that much, particularly when reviewing the detailed contact report that during the few times of visitation [M.J.]

> barely knows who her mother is and [D.J.] did not engage [Mother] in conversation.
>
> Severance of the relationship removes these Respondents from a life of temporary placement to one of permanency with a caregiver that they've bonded with and that was--that is Ms. [H]. These Respondents have remained in limbo for far too long. Granting the petition will only benefit the respondents.
>
> There was no evidence of aggravated circumstances as to crimes of violence, or torture, or sexual abuse, but, again, this case is also a matter of that which is in the best interest of these Respondents. Upon review of the facts and circumstances, the testimony of the witnesses, the documentary evidence including mother's Exhibit 1, a contact report of mother's hospitalization, the Court finds that we are well past the 18-month period of time where additional services would lead to reunification.
>
> The Court further finds that the fact demonstrate and prove by clear and convincing evidence that a continued parental relationship with Respondents, [D.J.] and [M.J.], would be detrimental to the best interest of either Respondent. Counsel for the mother said, "I know what I get from my mother. I know what I get from my father. I go back to it again, and again, and again." These Respondents know from whom they receive their daily care and who secures their well-being and that would be Ms. [H].
>
> Therefore, the Court, by clear and convincing evidence, grants the Petition for Guardianship as to the Respondent, [D.J.], and Respondent, [M.J.]. The Court rescinds the commitment as to each Respondent. The Court awards limited guardianship as to each Respondent to Ms. [H] and the Court finds reasonable efforts by the Department of Social Services as to each Respondent. . . .

This timely appeal followed. Additional facts will be discussed as necessitated by the issues presented.

DISCUSSION

I. The Circuit Court Did Not Err by Terminating Mother's Parental Rights.

In the instant case, Mother contends that there was insufficient evidence to support the lower court's conclusion that Mother was unfit to have a continued parental relationship. The Department and the children, however, assert that the evidence was sufficient for the court to find that Mother was unfit to parent the children, and that the circumstances were sufficiently exceptional so as to justify the termination of her parental rights. For the foregoing reasons, we agree with the Department and the children.

"In reviewing a juvenile court's decision with regard to termination of parental rights, we utilize three different but interrelated standards." *In re Adoption of Ta'Niya C.*, 417 Md. 90, 100 (2010).

> "When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Second,] [i]f it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion."

In re Adoption/Guardianship of Victor A., 386 Md. 288, 297 (2005) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003) (alteration in *In re Victor A.*)).

A court abuses its discretion when "'the decision under consideration [is] well removed from any center mark imagined by the reviewing court and beyond the fringe of

what that court deems minimally acceptable.'" *In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 734 (2014) (quoting *In re Shirley B.*, 419 Md. 1, 19 (2011)).

With respect to the substance of the circuit court's decision, parents have a "[c]onstitutionally-based right to raise their children free from undue and unwarranted interference on the part of the State, including its courts." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 495 (2007). This right creates "a presumption of law and fact--that it is in the best interest of children to remain in the care and custody of their parents." *Id*. That presumption, however, has limits, and 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. *Id.*; Md. Code (1984, 2012 Repl. Vol., 2015 Suppl.), § 5-323(b) of the Family Law Article ("FL") (requiring the court to determine unfitness or extraordinary circumstances by clear and convincing evidence).

In the instant case, the circuit court expressly found "by clear and convincing evidence that a continued parental relationship with Respondents, [D.J.] and [M.J.], would be detrimental to the best interest of either Respondent." The court reached this conclusion after considering the ninety-six exhibits entered into evidence by the Department; the one exhibit presented by Mother; and the testimony of Ms. H, Buckett, and Mother. After properly

considering the factors set forth in FL § 5-323, there was a sufficient factual basis to support the circuit court's finding.

The record clearly reflects that the circuit court considered the factors set forth in FL § 5-323 in determining that termination of Mother's parental rights was in the children's best interests. Section 5-323 of the Family Law Article requires the circuit court to "give primary consideration to the health and safety of the child" when determining whether termination of parental rights is in a child's best interests. FL § 5-323(d). Further factors which the circuit court is required to consider include the timeliness, nature, and extent of the services offered by the Department or other support agencies, 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.*

As required by FL § 5-323(d)(1), the circuit court considered the services offered to Mother by the Department as well as the extent to which both Mother and the Department fulfilled their obligations under social services agreements.[7] The circuit court found that the

[7] FL § 5-323(d)(1) provides that a court shall consider:

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

(continued...)

Department had offered Mother significant services to help facilitate reunification, including consistent contact with Mother, transportation subsidies, housing subsidies, providing referrals to various treatment programs and facilitating visitation options, among many other things. The circuit court further found that Mother had completely failed to comply with her case plan that she had entered into with the Department by failing to complete parenting classes, and failing to visit the children. Indeed, in her brief, Mother does not appear to challenge the circuit court's conclusions with respect to the FL § 5-323(d)(1) factors.

The circuit court also considered Mother's efforts to adjust in order to make reunification in the children's best interests, as required by FL § 5-323(d)(2).[8] The court

[7] (...continued)

> (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[.]

[8] FL § 5-323(d)(2) provides that a court shall consider:

> 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;

(continued...)

again emphasized Mother's lack of compliance with the case plan. Mother contends that "[t]he court's conclusion about the mother's failure to adjust her circumstances was erroneous." In support, Mother cites her testimony about her living accommodation in Alabama, and her testimony about how she had fulfilled the conditions of her case plan. The court's factual findings used to analyze a FL § 5-323 factor are reviewed under the clearly erroneous standard.

Mother is correct that her testimony, if believed, is sufficient for the court to find that she as adequately adjusted her situation such that it would be in the children's best interest to return home. The court, however, is not obligated to accept Mother's bald and self-serving testimony as true. Indeed, since Mother lost custody in 2013, the Department had solicited

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[8] (...continued)

> 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[.]

information to verify Mother's compliance with the case plan, and Mother had consistently failed to provide any information to the department. Further, the record is rife with evidence that would cause the court to be suspicious of the veracity of Mother's testimony.

To the contrary, there is a plethora of evidence in favor of the court's conclusion that "Mother has not adjusted her circumstances such that it would be beneficial for the children to return to her care." Over the two-and-a-half-year period of time, Mother had only had face-to-face contact with her children a handful of times, despite the Department's extensive efforts to facilitate visitation. Moreover, Mother's failure to adjust extends as far back as 2004, over which many of Mother's children have been found to be CINA on multiple occasions. Additionally, Mother testified that she did not believe she was obligated to support her children while they were not in her care. In our view, this testimony directly related to the trial judge's consideration of FL § 5-323(d)(2)(ii). We, therefore, hold that the circuit court did not err by finding that "Mother has not adjusted her circumstances such that it would be beneficial for the children to return to her care."

As required by FL § 5-323(d)(3)[9], the circuit court considered the children's history

[9] FL § 5-323(d)(3) provides that a court shall consider 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 evidenced by a positive toxicology test; or

(continued...)

of neglect. The trial judge found that Mother has an extensive history of neglecting her

[9] (...continued)

> B. upon the birth of the child, the child tested positive for a drug as evidenced 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[.]

children spanning as far back as 2004, and that her children have been found CINA for reasons of neglect no fewer than five times. Indeed, in her brief Mother does not contest the court's findings regarding Mother's extensive history of neglecting her children.

The circuit court concluded by considering the children's emotional needs and well-being, as required by FL § 5-323(d)(4).[10] The court found "a bare minimum of emotional ties between the Respondents and mother, if that much, particularly when reviewing the detailed contact report that during the few times of visitation [M.J.] barely knows who her mother is and [D.J.] did not engage [Mother] in conversation." This finding was supported by substantial evidence at trial indicating that Mother had repeatedly failed to visit the children,

[10] FL § 5-323(d)(4) provides that a court shall consider:

> (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.

and that the few interactions that Mother did have with the children were difficult at best. To the contrary, the judge found that the children's needs were being met, and that the children had bonded with Ms. H. The trial judge's finding was supported by the assessment of a psychologist who concluded that the children "are securely bonded to Ms. [H]."

Mother argues that the fact Ms. H is more successful in meeting the needs of the children than Mother is an insufficient basis upon which to terminate Mother's parental rights. Indeed, as Mother notes:

> [P]resumably, a successful foster care placement has as its foundation a level of bonding by the children with the caretaker. Were bonding to be the dispositive factor, without consideration of whether a continued relationship with the biological parent would be detrimental to the best interests of the children, then reunification with a parent would be a mere chimera.

In re Adoption/Guardianship of Alonza D., Jr., 412 Md. 442, 464 (2010).

We are inclined to agree with Mother, that the fact that a guardian can more adequately provide for a child, alone, is insufficient to overcome the presumption that it is in the best interest of the children for their biological mother to have parental rights. We nevertheless disagree that in this case Mother's parental rights were terminated solely because Ms. H has superior resources to care for the children. To be sure, the fact that the children are bonded to Ms. H, and the fact the Ms. H is the one that satisfies the children's needs is a significant component in the universe of the factors at play in this case. This factor, however, is but one component amongst many others--including Mother's well-

documented history of neglect, her failure to adjust to her circumstances, and her failure to avail herself of the resources provided by the Department in order to regain custody of her children. Accordingly, we reject Mother's argument the circuit court improperly terminated her parental rights solely because it found the children to have a stronger bond with Ms. H, rather than Mother.

Furthermore, the circuit court found that the Department had provided significant services to Mother since her children were initially removed from her custody in July of 2013. FL § 5-323(d)(2)(iv) provides that one consideration for the circuit court, in determining whether to grant or deny a TPR petition, is "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." Despite having received services for such a lengthy period of time, Mother remained unable or unwilling to adjust her circumstances in such a way that reunification would be appropriate. Our review of the record demonstrates that there is no indication that any additional services would have been likely to allow the children to return to Mother within a period of eighteen months. As the circuit court properly found, Mother repeatedly failed to comply with the Department's requests. Under these circumstances, the trial judge appropriately found that leaving the children in legal limbo by maintaining them in foster care indefinitely would be inappropriate. For the foregoing

reasons, we hold that the circuit court properly applied FL § 5-323 in determining that termination of Mother's parental rights were in the children's best interests.

II. The Circuit Court Did Not Err by Excluding Evidence That Was Produced After The Discovery Deadline Had Passed.

Mother contends that the circuit court erred by excluding evidence purporting to be Mother's lease at her apartment in Alabama, and evidence of her participation in a SpectraCare program. The Department and the children assert that the court properly exercised its discretion to exclude evidence that had not been disclosed in discovery pursuant to the court's discovery order. Further, the Department and the children assert that even if Mother had complied with the court's scheduling order, the evidence would still have been inadmissible because the documents could not be authenticated, and were hearsay. We hold that the court did not abuse its discretion by excluding the evidence under the circumstances of this case.

Under Md. Rule 2-504(b)(1)(D), the court must generally provide a scheduling order which contains "a date by which all discovery must be completed." Notably, "[t]he scheduling order is not meant to function as a statute of limitations, and good faith substantial compliance with the scheduling order is ordinarily sufficient to forestay a case-ending sanction." *Maddox v. Stone*, 174 Md. App. 489, 501 (2007). The circuit court, however, has the discretion to enforce its scheduling order through the use of appropriate sanctions, including the exclusion of evidence. *Station Maint. Solutions, Inc. v. Two Farms, Inc.*, 209 Md. App. 464, 476 (2013) ("'Indeed, if our courts could not enforce their scheduling orders

through the threat and imposition of sanctions, the entire process of expedited case management would be at risk.'" (quoting *Manzano v. S. Md. Hosp., Inc.*, 347 Md. 17, 29 (1997))).

If the court intends to deviate from a scheduling order, however, it may only do so upon a finding of good faith substantial compliance. *Faith v. Keefer*, 127 Md. App. 706, 733 (1999) ("When a trial court permits a party to deviate from a scheduling order without a showing of good cause, such action by the trial court would be on its face, prejudicial and fundamentally unfair to opposing parties, and would further contravene the very aims supporting the inception of Rule 2-504 by decreasing the value of scheduling orders to the paper upon which they are printed." (internal quotation omitted)). When determining whether a party has demonstrated good faith and substantial compliance sufficient to deviate from the court's scheduling order, we defer to "broad but . . . not boundless" discretion of the trial court. *Nelson v. State*, 315 Md. 62, 70 (1989). The trial judge should consider a number of factors when determining whether one has demonstrated good faith and substantial compliance with the court's scheduling order, including:

> whether the disclosure violation was technical or substantial, the timing of the ultimate disclosure, the reason, if any, for the violation, the degree of prejudice to the parties respectively offering and opposing the evidence, whether any resulting prejudice might be cured by a postponement and, if so, the overall desirability of a continuance.

Taliaferro v. State, 295 Md. 376, 390-91 (1983).

The Court of Appeals, however, has expressed little hesitation reversing discovery sanctions when such sanctions have a negligible effect on promoting the efficiency of the trial process, but severely undermine the truth-revealing purpose of trial. *See e.g.*, *Maddox*, *supra*, 362 Md. at 508 (holding that the trial court abused its discretion when it struck the testimony from a witness who disclosed to opposing counsel after the close of discovery, but three months before the scheduled trial date); *Dorsey v. Nold*, 362 Md. 241 (2001) (holding that the trial judge abused its discretion by striking expert testimony offered to substantiate a document already in evidence when the proponent notified counsel six days prior to trial that he may call the expert).

In the present case, Mother's discovery violations were, by any objective standard, substantial. This is not an instance where one party discloses a witness on the eve of trial, or worse yet, the day of trial. Rather, both parties had represented to the court at the previous hearing that they had both rested their respective cases, and that only closing arguments remained. Moreover, Mother's violation of the scheduling order did not only inconvenience opposing counsel, but it affirmatively deprived them of any opportunity to investigate the authenticity and veracity of the documents.

We cannot, of course, minimize the nature of the fundamental rights at stake in this litigation. Indeed, in excluding the documents, the trial judge recognized the gravity of this matter. Moreover, we further recognize that both pieces of evidence were not available to Mother until after the close of discovery. Nevertheless, the Department had consistently

asked Mother for information on the subject of her housing arrangements and her participation in a drug treatment program since 2013, and Mother declined to offer such information until after the close of evidence at trial, almost three years later. Perhaps our analysis would be different if Mother had disclosed her evidence as soon as it became available to her, notwithstanding the evidence becoming available after the close of discovery. The failure to offer these documents until moments prior to the judge's verdict, however, completely impairs opposing counsel's ability to test the veracity of the evidence. It is difficult to conceive how the circuit court could have granted Mother any more leeway without completely obliterating any incentive litigants have to comply with scheduling orders. We, therefore, hold that the trial judge did not abuse his discretion under these circumstances by excluding documents offered after the close of evidence in violation of the court's scheduling order.

Assuming, *arguendo*, that the trial judge did err by excluding evidence offered by Mother in violation of the court's scheduling order, we would nevertheless affirm the judgment because Mother has not satisfied her burden to prove that the error was not harmless. We will not reverse a lower court judgment if an alleged error was harmless, and, in a civil case, the burden is on the complaining party to affirmatively show that an error caused harm. *Flores v. Bell*, 398 Md. 27, 33 (2007); *In re Ashley E.*, 158 Md. App. 144, 164 (2004) ("It is well settled in Maryland that a judgment in a civil case will not be reversed in the absence of a showing of error and prejudice to the appealing party."). Indeed, to prevail

on appeal, Mother must show not only that the trial judge erred by excluding the evidence; but that had the evidence had been admitted, the judge would not have terminated her parental rights.

In support of its position, the Department contends that even if Mother's evidence would not have been excluded for the failure to comply with the scheduling order, the evidence would still have been inadmissible because of Mother's failure to authenticate the documents, and because they were hearsay. While we suspect that the Department's position is accurate, we need not speculate as to the contents of the documents here. Rather, Mother is utterly silent on the effect of the trial judge's error--if any--on the proceedings. We, therefore, further hold that Mother has not carried her burden to show that the failure to admit two pieces of evidence caused her prejudice.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. APPELLANT TO PAY COSTS.