

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0910

September Term, 2015

IN RE: ADOPTION/GUARDIANSHIP
OF B.R.

Krauser, C.J.,
Leahy,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: January 11, 2016

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Appealing from an order of the Circuit Court for Baltimore City, sitting as a juvenile court, that terminated his parental rights with respect to his daughter, B.R., Father¹ presents one question for our review: Did the circuit court abuse its discretion in finding that exceptional circumstances warranted the termination of his parental rights? For the reasons that follow, we affirm.

I. FACTUAL BACKGROUND

On December 12, 2014, the Baltimore City Department of Social Services (“Department”) filed a petition for guardianship, seeking the termination of the parental rights of Father, as to his then three-and-a-half year old daughter, B.R. At the hearing that ensued as to that petition, the Department presented the testimony of B.R.’s foster parent and five employees of the Department, who successively handled B.R.’s case from December 2011 to May 2015, as well as related documents. That evidence showed the following:²

A. The Department’s First Encounter with B.R.

B.R. first came to the attention of the Department, shortly after her birth in December 2011, when the Department received a report that B.R. was born “codeine and

¹ To protect the privacy of the child at issue, we shall refer to the parties as “Father” and “Mother” and to the child as “B.R.”

² *In re Adoption of Jayden G.*, 433 Md. 50, 88 (2013) (“We consider the record in a light most favorable to the prevailing party.”).

morphine exposed.” At the time of her birth, B.R.’s mother, now deceased, tested positive for marijuana and admitted to a history of illicit drug use, which included cocaine, heroin, and marijuana. Father also had a history of drug abuse, which included both crack cocaine and heroin, a history of domestic abuse with respect to Mother, and had been diagnosed with Post Traumatic Stress Syndrome, Manic Depression Disorder, and Bipolar Disorder. Consequently, the Department placed B.R. in “shelter care,”³ and convened a “family involvement meeting” with both parents to “discuss the circumstances that brought B.R. into the [Department’s] care,” as well as the steps necessary to achieve reunification.

B. Reunification Efforts

As a result of that meeting, both Father and Mother signed a service agreement, in which each agreed to enroll in parenting classes, maintain contact with their caseworker, and attend weekly visitation with B.R. Both parents were then provided with the contact information of the Department caseworker assigned to their case, as well as a referral to the “Family Tree,” to enroll into parenting classes. And, to deal with their respective histories of drug abuse, both parents were required to participate in the court’s “Family Recovery Program.”

Thereafter, Mother complied with her service agreement, as she attended parenting classes at the “Family Tree,” enrolled in the “Family Recovery Program,” maintained

³ “‘Shelter care’ means a temporary placement of a child outside of the home at any time before disposition.” Md. Code, Cts. & Jud. Proc. § 3-801(y) (2013).

contact with the Department, and attended all weekly visitation with B.R. But, Father did not comply with his service agreement, as he failed to attend the parenting classes or provide any documentation of having enrolled in any drug treatment program.

Furthermore, Father failed to visit B.R. weekly, as scheduled. That visitation was to commence after B.R. left the hospital and entered foster care and was initially scheduled at the Department's Biddle Street office in Baltimore City but was later switched to the home where both Father and Mother resided. Father attended only two of the weekly visitation appointments at the Department's Baltimore office, one of which he left shortly after arriving, and he was seen only once during the in-home visits. In April of 2012, B.R. was returned to the care of "both parents" under an Order Controlling Conduct,⁴ and the Department subsequently closed the case.

C. The Department's Second Encounter with B.R.

A year later, B.R. was brought to the attention of the Department, once again, when police officers responded to B.R.'s home and discovered Mother dead from a drug overdose. Later that day, the Department received a "maltreatment report" stating that B.R. was a "child in need of assistance," and that "[the] father was there but might not be

⁴ An Order Controlling Conduct is authorized by section 3-821, of the Courts and Judicial Proceedings Article of the Maryland Code, which provides: "The court, on its own motion or on application of a party, may issue an appropriate order directing, restraining, or otherwise controlling the conduct of a person who is properly before the court, if the court finds that the conduct: (1) Is or may be detrimental or harmful to a child over whom the court has jurisdiction; (2) Will tend to defeat the execution of an order or disposition made or to be made under this subtitle; or (3) Will assist in the rehabilitation of or is necessary for the welfare of the child."

able to care for the child.” The report further noted that Father “was assessed to be under the influence of illicit [*sic*] drugs,” and was “dangling the baby in one hand, and holding a stroller [in the other].” The Department consequently removed B.R. from Father’s house and placed her with maternal aunt, Aunt V. Then, following an “emergency shelter hearing” the next day, August 1, 2013, the court ordered that the Department “provide care and custody for the child in shelter care to the relative, [Aunt V.]” A few months later, B.R. was found, by the court, to be a “child in need of assistance.”⁵

D. Reunification Efforts

August 2012 – May 2013

At that August 1st “emergency shelter hearing,” a new caseworker was assigned to the case, whereupon Father signed a second service agreement and was given the new caseworker’s contact information. Under this service agreement, Father was required to attend a parenting program, participate in weekly visitation, and receive substance abuse treatment. He was then referred by the caseworker to the “Strong Father, Strong Families” parenting program, “which assisted fathers in parenting classes, conflict resolution, anger management in order to assist fathers with reunification efforts,” as well

⁵ A “child in need of assistance,” according to the Maryland Code, “means 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.” Md. Code (2006, Repl. Vol. 2013) § 3-801(f) of the Courts and Judicial Proceedings Article.

as to substance abuse counseling with both “Health Care for the Homeless” and the judiciary’s “Family Recovery Program.”

Father failed not only to comply with the terms of that service agreement, but, in the Department’s view, he failed to adjust his circumstances or make progress in demonstrating his ability to care for B.R. He also did not provide the Department with any documentation regarding the parenting classes that he claimed that he had attended or any documents confirming his completion of or even attendance at the “Family Recovery Program” for substance abuse treatment.

As for visitation, Aunt V took B.R. to the Department’s Biddle Street office for weekly visits. But Father rarely exercised his visitation rights. He attended only eight of the thirty-six weekly visits scheduled between October 2012 and March 2013. Moreover, he never called ahead to let the caseworker know that he would not be attending the scheduled visitation. Indeed, despite the Department’s repeated efforts to stay in contact with Father, he failed to maintain regular contact with the caseworker.

In addition to his failure to comply with the service agreement, Father was observed with open “sores and scratches” on his arms by the caseworkers during several visits with B.R. And similar observations were made by an interviewer from the Baltimore Substance Abuse Systems, who assessed Father, and in so doing, noted that “[h]e appeared unkempt and had multiple sores on his face reminiscent [of] sores that commonly occurred with substance abusers who picked their face.”

May 2013 – August 2014

In May 2013, when the case was assigned to a new caseworker, Father entered a third service agreement with the Department, and was provided with contact information, as well as referrals for parenting classes and for treatment of substance abuse and mental health issues. Father, once again, was, according to the caseworker, “totally non-compliant” with the service agreement. He never provided any documentation that he was receiving mental health or drug abuse treatment, nor any documentation that he attended parenting classes. In fact, on multiple occasions, when Father was asked about documentation that would establish his attendance and participation in parenting classes, drug treatment, and “mental health assessment,” he would “scream” and “curse” and try to intimidate the caseworker.

Moreover, his participation in weekly visitation was, once again, “sporadic.” Two of the four visits per month were to take place twice at the Department’s office, while the other two visits per month were scheduled at Father’s home. According to the caseworker, Father would attend weekly visitation at the Department’s office only if “Aunt Jenny” was available to take him, otherwise he did not attend.

August 2014 – June 2015

In August 2014, the case was transferred to a final caseworker, and Father was once again provided with the caseworker’s contact information. But, thereafter, Father’s communication with the caseworker was, at best, infrequent. In fact, she was only able to

maintain communication with him by sending him letters through the mail, although Father had been provided with her phone number.

During this period, visitation was scheduled for once a week at the Department's office, and Father was notified of those visits by letters. Nevertheless, he attended only one of the scheduled visits from September 2014 through May 2015, and never provided notice or reasons for failing to visit with B.R. Nor did the Department, during this time, ever receive any documentation from him showing that he was obtaining mental health or drug abuse treatment.

E. B.R.'s Adjustment and Life in Foster Care

Aunt V, B.R.'s foster parent, began to care for B.R. on the day of Mother's death. At that time, B.R. was only seven months old. Upon obtaining B.R., she said she began attending classes for eight weeks so that she could become a licensed foster care provider and then continued to take classes in order to keep her license.

In the nearly three years that she has cared for B.R., she testified that Father never called, never asked about the child's care or well-being, and never provided any financial assistance of any kind. This was so, even though, according to the Department, he was receiving Federal Social Security disability benefits, as well as additional income from "working under the table."

During the week, Aunt V would take B.R. to daycare on the way to work. With assistance from the Department, she paid for the day care costs. Then, after work, Aunt V would pick up B.R. and bring her home to her family, and would then fix dinner. In

the evenings, Aunt V would give B.R. a bath, read her a book, and have “snuggle time,” before B.R. went to bed at 8:00 pm. On weekends, the family would go to “festivals,” visit with other family members, and attend “weekend cookouts.”

Aunt V and her husband are both employed, and each has a fifteen-year-old son, from a previous relationship. The two boys are “like big brothers” to B.R. Moreover, B.R. refers to her Aunt V and her husband as “Mommy” and “DaDa” and to Aunt V’s mother as “MeMa.” In addition, the caseworkers that inspected Aunt V’s home agreed that they had “no concerns” with the home,” that B.R. was “very happy” there, and that Aunt V was a loving and “nurturing” foster parent.

Aunt V described B.R. as being in “good” health, as she regularly goes to the dentist, and has routine doctors’ visits. Furthermore, she is not in therapy nor on any medications. According to Aunt V, B.R. did not ask about her father between visitations, and, at times, B.R. resented going to the visits with Father and would become “extra clingy” with her afterwards. Aunt V testified that she would like to adopt B.R. and did not intend to include Father, or his family, in B.R.’s life.

II. THE CIRCUIT COURT’S FINDINGS

At the conclusion of the hearing, the circuit court considered the factors set forth in the Maryland Code, (1984, 2006 Repl. Vol., 2009 Supp.) § 5–323 of the Family Law Article (“FL”), and made specific findings as to each factor that was relevant to the instant case. With respect to the extent, nature, and timeliness of the services offered by the Department, and the extent to which Father and Department fulfilled their obligations

under the service agreements, the court found that Father had “not complied” with any of the three service agreements he had signed nor “maintained regular contact” with any of the caseworkers who were successively assigned to his case. It concluded that he had “failed to avail himself of the services offered,” despite the Department’s “reasonable efforts” to provide reunification services to him, and that “no further services [could] be offered that would lead to a lastly [*sic*] parental adjustment in this case, or bring about reunification.” *See* F.L. § 5-323 (d)(1)(i-iii), (2)(i)(iv).

With respect to Father’s contribution and any disabilities or issues that would prevent him from providing long term care for B.R., the court observed that Father was receiving social security benefits and “worked under the table” for additional income, yet “did not make any financial payments” on behalf of B.R. Then, noting that Father “admitted to drug use with relapses after minimal sobriety,” the court found Father’s “dangerous substance [abuse]” and “mental health issues” were never “sufficiently addressed” by him. These issues, concluded the court, “all go to his ability to care for his child.” *See* F.L. § 5-323 (d)(2)(ii-iii).

With respect to Father’s relationship with B.R. and her time in foster care, the court found that Father had “not maintained his visits with [B.R.]” and that he had “no bond” with her. “Meanwhile,” B.R., the court observed, “continued to thrive with the aunt in an appropriate, stable and loving environment.” *See* F.L. § 5-323 (d)(4)(i-ii).

The court then went on to highlight Aunt V’s efforts to assure that B.R. was well adjusted, healthy, and had a “rather typical” daily routine, noting that B.R. was in a “stable” and “committed” foster family and that she and Aunt V are “clearly strongly

bonded to each other.” *See* F.L. § 5-323 (d)(4)(i-iv). That led the court to conclude that B.R. had “adjusted to her home and environment and would not suffer any ‘adverse feelings’” as a result of the “severance of the parental relationship.” Then, finding that “the presumption of parental rights to raise [B.R. had] been rebutted by the [Department], and there [were] exceptional circumstances that exist[ed], which would make continuation of the parental relationship detrimental to the best interests of the child,” the court granted the petition to terminate parental rights.

III. DISCUSSION

Father contends that the circuit court abused its discretion in finding that there were exceptional circumstances that justified terminating his parental rights and, on that basis, terminating those rights. In reviewing such a decision, “we utilize three different but interrelated standards.” *In re Adoption of Jayden G.*, 433 Md. 50, 96 (2013) (internal citations omitted). We review the court’s factual findings for clear error, its legal conclusions de novo, and its “ultimate conclusion” for abuse of discretion. *Jayden G.*, 433 Md. at 96 (internal citations omitted). An abuse of discretion exists where the court “acts without reference to any guiding rules or principles,” or when its decision is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable,” such that “no reasonable person would take the view adopted by the [trial] court.” *In re Yve S.*, 373 Md. 551, 583-584 (2003).

As “parents have a fundamental right to direct and control the upbringing of their children,” *In re Victoria C.*, 437 Md. 567, 589 (2014), the termination of that right “is a ‘drastic’ measure, and should only be taken with great caution.” *In re Adoption/Guardianship of Harold H.*, 171 Md. App. 564, 576 (2006) (internal citations omitted). But, a parent’s right to raise his or her children is not absolute. *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 495 (2007). The “transcendent standard” that governs the determination of whether to terminate parental rights is the best interests of the child. *In re Adoption of Ta’Niya C.*, 417 Md. 90, 112 (2010). And, though there is “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,” that presumption “may be rebutted upon a showing either that the parent is ‘unfit’ or that ‘exceptional circumstances’ exist which would make continued custody [of that] parent detrimental to the best interest of the child.” *Rashawn H.*, 402 Md. at 495.

Section 5-323(b) of the Family Law Article grants juvenile courts the authority to terminate an individual’s parental rights, stating:

Authority. --- 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 that a court is required to consider, which “serve both as the basis for a court's finding (1) whether there are exceptional circumstances that would make a

continued parental relationship detrimental to the child's best interest, and (2) whether termination of parental rights is in the child's best interest," *Ta'Niya C.*, 417 Md. at 116, are set forth in F.L. § 5-323(d). Those factors include:

(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 evidenced by a positive toxicology test; or B. upon the birth of the child, the child tested positive for a drug as evidenced by a positive toxicology test; 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.

Father, however, does not dispute that the circuit court considered these statutory factors and made findings as to each that were relevant. Instead, Father challenges the circuit court's finding of exceptional circumstances on three grounds.

First, he claims that there was "no evidence that he was inappropriate with B.R. or behaved in any way that was detrimental to [her]." This claim, however, ignores the evidence adduced at the termination of parental rights hearing, which provided ample grounds upon which to terminate the parental relationship. For three years, Father's visits with B.R. were "sporadic" at best, and, as the court found, there was no parental bond between him and his daughter. On several of the rare instances when he did attend visitation, Father appeared with visible sores, suggestive of ongoing drug abuse, and was abusive to the caseworkers in front of his daughter. B.R. not only resented going to these visits, but, according to the testimony presented, she would, afterwards, become more "clingy" with her Aunt V.

Furthermore, Father did not complete any of the steps necessary to be reunified with B.R. and continued to exhibit behavior that would be detrimental to her. He did not

comply with the three service agreements; he did not have clean and suitable housing⁶ for raising a child; he did not maintain steady employment that would allow him to care for B.R.; and he did not take any steps to address his ongoing mental health and substance abuse problems, which the circuit court properly concluded would have a detrimental effect on B.R. as they affected “his ability to care for his child.”

Second, Father claims that in the absence of evidence that his behavior was detrimental to B.R., the court erred in relying on the length of time B.R. had been in foster care, which he states “is insufficient to satisfy a determination of exceptional circumstances, absent any finding that a continued relationship with the parents would be detrimental to them.” It is true, as Father claims, that the length of time a child has been in foster care, “without explicit findings that the continued [parental relationship] would prove detrimental to the best interests of the children, is not sufficient to constitute exceptional circumstances.” *In re Adoption/Guardianship of Alonza D., Jr.*, 412 Md. 442, 463 (2010). But his reliance on this principle is of no help to him because, as previously discussed, the circuit court clearly based its finding of exceptional circumstances on more than the length of time B.R. had been with Aunt V.

Third, and finally, Father contends that the court’s “finding that the Department made reasonable efforts” to help reunify him and B.R. was erroneous because he “was never offered grief counseling” after discovering Mother dead from a drug overdose and

⁶ As Father indicates in his brief, there was testimony that his housing was “appropriate” for B.R. However, another caseworker testified that Father’s “house was kind of cluttered and unclean A lot of cigarette butts in ashtrays and that sort of stuff.”

because the Department did not discuss with him alternative means of transportation so that he could comply with visitation. But, even if that were so, it does not address or affect the overwhelming amount of evidence of “exceptional accusation” presented at the hearing below.

In deciding whether to terminate parental rights, the court is to consider, among other things, the efforts made by the Department to help reunify the parent and child. *Rashawn H.*, 402 Md. at 499-500. Consideration of those efforts includes: “the extent, nature, and timeliness of services offered . . .,” “the extent to which a local department and parent have fulfilled their obligations under a social services agreement,” 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.” *See*, F.L. § 5-323(d)(1)(ii-iii), (2)(iv). “Implicit” in these factors, the Court of Appeals has noted, is the requirement that

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.

Although a “reasonable level” of services must be offered, “there are some limits . . . to what the State is required to do.” *Id.* The Court of Appeals has pointed out that “the State is not obliged to find employment for the parent, to find and pay for permanent

and suitable housing for the family, to bring the parent out of poverty, or to cure or ameliorate any disability that prevents the parent from being able to care for the child.”

Id. And, although the State “must provide reasonable assistance in helping the parent to achieve those goals, . . . its duty to protect the health and safety of the children is not lessened and cannot be cast aside if the parent, despite that assistance, remains unable or unwilling to provide appropriate care.” *Id.* at 500-501.

In the instant case, the circuit court found—a finding we believe was amply supported by the evidence—that the Department made “reasonable efforts” to provide reunification services to Father, and that “no further services [could] be offered that would lead to a lastly [*sic*] parental adjustment in this case, or bring about reunification.” Father signed three service agreements offered by the Department, none of which, the court found, had Father complied with. Moreover, Father was given the caseworkers’ contact information, yet rarely stayed in touch with any of them; referrals to various treatment programs were made to address his ongoing problems with his drug abuse and mental health issues, but he “failed to avail himself of the services offered”; and weekly visitation was scheduled, at both the Department’s office and Father’s home, but he often failed to show up for that visitation.

Neither of Father’s two claims—that the Department failed to provide him with grief counseling and that it made no inquiry into whether Father had adequate transportation to attend visitation—suggest that the Department did not go to reasonable lengths to ensure that Father would be reunited with his daughter. Indeed, despite the Department’s multiple referrals, Father failed to seek treatment for his history of mental

health issues, which presumably may have given him the opportunity to address any effects that he may have been suffering from the loss of Mother. Moreover, no claim was made, nor was there evidence at the hearing, that Father was suffering from the effects of his wife's passing during the three years that followed her death.

As for his other claim regarding his lack of transportation to visitation locations, the record shows that the Department did go to reasonable lengths to ensure that Father could have visitation with B.R. In fact, many of the visits were scheduled at his own home, and Father was repeatedly called by caseworkers to remind him of his upcoming visit with B.R., most, if not all of those calls, proved to be of no avail.

Thus, clear and convincing evidence was presented that the continuation of the parental relationship between B.R. and Father was not in B.R.'s best interest.

Accordingly, the court did not abuse its discretion in granting the Department's petition.

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