

Circuit Court for Baltimore City
Case No. T15211002

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1255

September Term, 2016

IN RE: ADOPTION/GUARDIANSHIP
OF M.S.

Arthur,
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Arthur, J.

Filed: February 13, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The Baltimore City Department of Social Services petitioned the Circuit Court for Baltimore City to terminate the parental rights of M.S.’s natural parents. At a hearing, the Department offered documents that contained expert opinions about M.S.’s bonds with her natural mother and her foster mother. Over the parents’ objection, the court admitted the opinions under the business records exception to the hearsay rule and did not require the Department to call the experts. Relying in part on the expert opinions, the court found by clear and convincing evidence that exceptional circumstances would make the continuation of the parental relationship detrimental to M.S.’s best interests. The parents appealed.

Although the court engaged in a thorough, painstaking, and conscientious review of all the evidence before it rendered its decision, we must vacate the judgment and remand for further proceedings because the court erred in admitting the expert opinions under an exception to the hearsay rule.

FACTUAL AND PROCEDURAL HISTORY

A. Family Background and Reunification Efforts

Appellants Devon S. (“Father”) and Marika M. (“Mother”) are the parents of one daughter, M.S., who was born in May of 2009. Father and Mother were only 17 years old at the time of M.S.’s birth and were unable to care for her. At the time of her daughter’s birth, Mother was a child in need of assistance. When her daughter was only a year old, Mother was twice admitted to a psychiatric hospital for serious mental health disorders. Father moved frequently and did not maintain steady employment. In

November 2010, when M.S. was one year and five months old, the juvenile court determined that she too was a child in need of assistance.

Over the ensuing six years, the Baltimore City Department of Social Services unsuccessfully attempted to reunite M.S. with Father and Mother. The Department provided parenting classes, housing assistance, employment assistance, and mental health treatment, and entered into multiple service agreements with them. Father and Mother, however, failed to make the adjustments necessary to achieve reunification. They lived in homes that were unsuitable for M.S., did not maintain steady employment, did not attend scheduled visitations, and did not comply with the Department's directives.

M.S. did not live in a stable environment until she was placed with her foster mother, Candace F., in September of 2012. She thrived under Ms. F.'s care. M.S. was doing well in school, participated in cheerleading, played soccer, and joined in community service activities. Ms. F. attempted to keep Father and Mother apprised of M.S.'s life, but they rarely answered her calls and never appeared at any of her activities.

In November 2015, the juvenile court changed M.S.'s permanency plan to placement with a non-relative for adoption or custody and guardianship. In addition, the Department filed a petition for guardianship with the right to consent to adoption. In connection with that petition, the Department sought to terminate Father's and Mother's parental rights.

B. Bonding Studies

In anticipation of the hearing concerning the termination of parental rights, the

court ordered bonding studies. Father did not appear for any studies, but Mother eventually appeared for one. Ms. F. underwent one bonding study, as well as two in-placement review evaluations.

In Ms. F.’s bonding study, a psychologist concluded “[M.S. was] securely bonded to [Ms. F.],” that Ms. F. “appear[ed] to be able to provide a nurturing environment for [M.S.],” and that “[t]here [were] no known concerns about [Ms. F.’s] ability to safely and successfully care for [M.S.].” In Mother’s study, by contrast, the psychologist concluded that Mother’s interactions with M.S. were “atypical” for “a mother/daughter relationship,” that M.S. “did not appear to view [Mother] as a commanding adult who could be used as a secure and stable base,” and that “it is not possible to conclude that a secure bond has developed between the two.”

C. Hearing on the Termination of Parental Rights

The juvenile court adjudicated the petition on June 1, 2016. Father, Mother, M.S., and the Department were all present and represented by counsel.

At the hearing, the Department called Mary Yox, the custodian of records for the Medical Services Division of the Circuit Court for Baltimore City. Through her testimony, the Department introduced the court-ordered bonding studies, as well the in-placement review evaluations of Ms. F. The parents objected to their introduction, contending that they contained inadmissible hearsay. The court overruled the objection, admitting the studies and evaluations under the business records exception to the hearsay rule. None of the professionals who had conducted the studies or evaluations were called

to testify about their findings or explain their methodology.

D. Judgment of the Juvenile Court

On August 1, 2016, the juvenile court orally granted the Department’s petition. In its careful and detailed opinion, the court relied, in part, on the bonding studies to find that M.S. is “bonded and attached to [Ms. F.]”

The court also found by clear and convincing evidence that exceptional circumstances would make continuation of the parental relationship detrimental to M.S.’s best interests. In reaching that decision, the court relied, in part, on a finding that a change in custody “would have a detrimental emotional effect on [M.S.]” because of her secure bond with Ms. F.

Father and Mother filed this timely appeal.

QUESTIONS PRESENTED

Father and Mother present two questions, which we have reordered and rephrased as follows:¹

1. Did the court err in admitting reports, which contained expert opinions, through the testimony of a custodian of records?

¹ The original questions were:

1. Did the court err by finding that the father was unfit or that exceptional circumstances warranted terminating his rights; did the court err by concluding that exceptional circumstances, or unfitness, warranted terminating the mother’s rights; and did the court err by concluding that M.S.’s best interests were served by terminating the rights of either parent?
2. Did the court err by admitted reports, which contained expert opinions, through a lay witness and where the expert was not called to testify?

2. Did the court err in finding that exceptional circumstances would make continuation of the parental relationship detrimental to the best interests of M.S.?

Because we answer the first question in the affirmative, we decline to address the second. We must vacate the judgment and remand for further proceedings.

DISCUSSION

Appellate courts apply different and interrelated standards for reviewing different aspects of a juvenile court’s decision to terminate parental rights. *See In re Adoption of Ta’Niya C.*, 417 Md. 90, 100 (2010) (citation omitted). For purposes of this appeal, it is sufficient to observe that we conduct a de novo review of the court’s legal conclusions. *See In re Adoption of Jayden G.*, 433 Md. 50, 96 (2013) (citing *Ta’Niya C.*, 417 Md. at 100)).

Father and Mother contend that the court erred in admitting the bonding studies under the business record exception to the hearsay rule, because no expert was presented to “support the conclusions or explain the methodology, which the court relied upon heavily in . . . terminating the parents’ rights[.]” In its brief, the Department concedes error. We agree.

“The business records exception ‘represent[s] legislative recognition that if records are reliable enough for the running of a business (or a government agency), they are trustworthy enough to be admissible at trial.’” *In re Adoption/Guardianship No. 95195062/CAD in Circuit Court for Baltimore City*, 116 Md. App. 443, 463 (1997) (quoting Joseph F. Murphy, Jr., *Maryland Evidence Handbook* § 804, at 418 (2d ed.

1993)). In this case, however, the bonding studies and in-placement review evaluations “had nothing to do with the ‘running’ of the Juvenile Court Medical Service of the Circuit Court for Baltimore City.” *Id.* at 464. Instead, the studies contained the opinions of experts, who were directed to evaluate M.S.’s bonds with Mother and Ms. F. in anticipation of a hearing involving the termination of parental rights. In similar circumstances, this Court has held that, “[a]s a matter of fundamental fairness,” a parent is “entitled to cross-examine the [expert] in order to challenge his [or her] opinion.” *See id.*

In the context of this case, we cannot say that the error was harmless, because the court substantially relied on the bonding studies to find that exceptional circumstances would make continuation of the parental relationship detrimental to M.S.’s best interests. Accordingly, we conclude that Father and Mother have satisfied their burden of showing both error and prejudice. *See generally Barksdale v. Wilkowsky*, 419 Md. 649, 660 (2011).

On remand, if the Department calls the authors of the studies and evaluations, and if the court credits their testimony after they have offered their opinions and have been subjected to cross-examination, the court might reach exactly the same conclusion as it previously reached. Without admissible evidence from the experts, however, we cannot uphold the court’s conclusion, careful and considered as it otherwise was. Accordingly, we vacate the judgment and remand for further proceedings.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY VACATED.**

**CASE REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID BY
APPELLEE BALTIMORE CITY
DEPARTMENT OF SOCIAL SERVICES.**