

Circuit Court for Baltimore City
Case No. T16348004

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2127

September Term, 2017

IN RE: ADOPTION/GUARDIANSHIP OF I.P.

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

JJ.

Opinion by Arthur, J.

Filed: July 25, 2018

*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, sitting as the juvenile court, to terminate the parental rights of I.P.’s biological parents. The court found, by clear and convincing evidence, that the parents were unfit and that exceptional circumstances made the continuation of the parental relationship detrimental to I.P.’s best interests. I.P.’s father appealed. We affirm.

FACTUAL BACKGROUND

After four days of trial, the juvenile court detailed its decision in a memorandum opinion dated December 12, 2017. In that opinion, the juvenile court made the following factual findings:

Initial Findings

I.P. was born on October 13, 2015. Her mother is C.K. (“Mother”); her father is D.P. (“Father”).

Mother had given birth to three other children before I.P. was born. The court terminated Mother’s parental rights as to each of those three children while she was pregnant with I.P.

At birth, I.P. did not test positive for any illegal or intoxicating substances. During the pregnancy, however, Mother had tested positive for marijuana and had admitted to drinking alcohol.

On October 15, 2015, when I.P. was two days old, the Department placed her with her foster parents, Mr. and Ms. V. The agency did so for several reasons. To begin with, Mother was an admitted, chronic substance abuser. She had a history of untreated mental health problems and of unstable housing arrangements, and a court had terminated her

parental rights in her three other children. Furthermore, Father had a history of substance abuse, unstable or transient housing arrangements, and problems with domestic abuse. Father's other child had been removed from his care. Finally, after a paternity test had confirmed that he was I.P.'s father, Father informed the Department that "he was unable to provide parental care."

On October 16, 2015, when I.P. was three days old, a magistrate recommended that the Department have limited guardianship over her because of Mother's condition. The court approved that recommendation.¹

On April 7, 2016, the court entered an order under § 3-812(b)(3) of the Courts and Judicial Proceedings Article, by which it relieved the Department of the obligation to use reasonable efforts to reunify I.P. with Mother. The basis for that order was that Mother had lost her parental rights in I.P.'s siblings.

On June 27, 2016, the court found that Father was in poor compliance with the juvenile court's Family Recovery Program, a reunification program designed to address parents' needs, especially drug treatment, mental health, housing, and parenting skills. On July 22, 2016, the court found that Mother was in poor compliance with the Family Recovery Program as well. In numerous later orders, the court found that Mother and Father were in poor compliance with the requirements of the Family Recovery Program

¹ The record reflects that on December 17, 2015, the court found I.P. to be a Child in Need of Assistance. As of the date of the trial, I.P.'s permanency plan was adoption by a nonrelative.

and with their obligations to obtain drug treatment. The court also found that Father was unavailable for services.

For most of 2017, Father was incarcerated on handgun charges.²

Findings Under § 5-323

Md. Code (1984, 2012 Repl. Vol.), § 5-323(d) of the Family Law Article, enumerates some of the factors that a court must consider in determining whether to terminate a person’s parental rights. The juvenile court made the following findings as to each relevant factor:

A. Services Offered to the Parent (§ 5-323(d)(1))

The court found that the Department offered many services to Father. It made an initial assessment of his mother’s residence, where he was living when his paternity was confirmed. On the basis of that assessment, the Department found that the residence was in deplorable condition: there were holes in the walls, there was fecal matter throughout the residence, and there were no utility services. As a consequence, the Department informed Father that he would have to obtain his own residence. Father said that he “could not be a placement resource” at that time. He never requested that the Department reinspect his mother’s residence.

The court found that the Department offered Father the services of its Rapid Reunification Program to assist him in obtaining a place to live. Under this program, the

² The court did not describe the precise charges against Father, but the record appears to reflect that on October 12, 2017, he was sentenced to a term of five years’ imprisonment, with all but 18 months suspended, for possessing a regulated firearm after being convicted of a disqualifying offense.

court found, the Department would pay either Father's first month's rent or his security deposit. At first, Father failed to secure a new residence and to provide the required documentation showing that he could afford to maintain a residence. After the Department referred Father to the Housing Authority, he found a place to live, but failed to document his supplemental security income from the Social Security Administration³ and failed to provide a copy of a lease.

Through the Family Recovery Program, the Department gave Father the opportunity to take part in drug treatment, parenting classes, housing assistance services, and mental health treatment. Father, however, did not provide documentation that he had completed drug or mental health treatment.

Father obtained housing in November 2016 through the Family Recovery Program, but he did not make his residence available for inspection until January of 2017. When a social worker inspected the residence, she found four unknown persons, including two children and two adults. The social worker also found that the residence reeked of marijuana.

The Department offered Mother and Father joint, supervised visits with I.P. on a weekly basis. The Department, however, changed the joint visits to individual visits, because Mother and Father would pay little attention to I.P. and would engage in inappropriate conversations with each other in front of the child.

³ The record reflects that Father has suffered a partial loss of hearing. As a result, he receives disability benefits from the federal government.

After the Department arranged for separate visits between I.P. and Father, he did not regularly attend them. The Department gave Father tokens and passes to ensure that he could get to the visits by public transportation, and it changed the frequency of the visits from once a week to once a month. Father, however, still did not regularly attend the visits.

The Department's ability to provide additional services to Father was inhibited by his incarceration throughout much of 2017.⁴

In view of those facts, the court found that the Department made reasonable efforts to provide reunification services to Father.

B. Effort to Adjust Circumstances, Condition, or Conduct (§ 5-323(d)(2))

The court found that neither Father nor Mother had adjusted their conduct, circumstances, or conditions to accommodate I.P. in their lives. Both had consistently failed to comply with the requirements of the Family Recovery Program. Neither had completed or provided documentation of their completion of a drug treatment program. Neither gave signed releases to the Department to allow the agency to obtain access to their medical records or other records.

Both parents failed to maintain regular or consistent contact with the Department or their child. They provided no support to I.P., except for occasional snacks or gifts of clothes.

⁴ Although the court did not mention it in the opinion, Father appears to have been incarcerated for some time in 2016 as well.

C. Likelihood that Additional Services Would Bring About Lasting Parental Adjustment (§ 5-323(d)(2)(iv))

The court found that additional services would not bring about “a lasting parental adjustment so that the child [might] be returned to the parent within an ascertainable time.” *See* § 5-323(d)(2)(iv) of the Family Law Article.⁵

Mother had failed at inpatient drug treatment, refused to sign services agreements, failed to comply with the requirements of the Family Recovery Program, failed to obtain stable housing arrangements (except when she was an inpatient), and failed to maintain contact with I.P. Father was unreliable in attending scheduled visits with I.P., and his visits were so sporadic that he was required to call in advance to confirm that he would attend. He failed to comply even with that requirement. A social worker would find herself babysitting I.P. while waiting to see whether the parents would attend the scheduled visit.

Even when Father was not incarcerated, he did not make himself available for additional services from the Department; and he did not sign services agreements. He was incarcerated at the time of the court’s decision, but expected to be released in approximately three months. Nonetheless, he had not provided a lease to show that he would have somewhere to live upon his release. Nor had he provided proof of his

⁵ Under the statute, the “ascertainable time” is “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.” *Id.* The court recognized that I.P. had already been in foster care for more than two years by the date of the decision.

supplemental security income from the Social Security Administration. Nor had he allowed the Department to inspect his residence and to assess its fitness.

D. Child's Emotional Ties With and Feelings Toward Parents, Siblings, and Others (§ 5-323(d)(4))

The court found that Mother had had no stable home since I.P.'s birth. Mother had had structured support to assist her only when she was in in-patient drug treatment programs. Because Mother did well only when she was in highly supervised programs, her progress was brief.

Father was living with his girlfriend and her daughter, was seeking custody of his daughter, had anger-management problems, and used marijuana and alcohol, but was not seeking help for any of his problems.

According to a court psychologist, Mother and Father had failed to spend sufficient time with I.P. to establish a parent-child relationship.

On the other hand, I.P. had bonded with her foster parents, Mr. and Ms. V. The psychologist believed that the foster parents could meet I.P.'s social, educational, emotional, financial, and physical needs.

The Vs. had come to know I.P. when she was two days old. She has no special medical needs. At two years of age, she could already spell her name, spell her foster brother's name, count, and do puzzles. In daycare, she is more advanced than other children of her age group. For that reason, she has been placed with older children.

According to Ms. V., I.P. views her foster brother as her brother. They play together, and she immediately calls for him when she comes home from daycare. She

has strong bonds with a foster grandparent and other relatives. The Vs. have proven that they will attend to I.P.’s needs, and they were willing to adopt her.

Finally, the court found that because of the lack of a bond between I.P. and her birth-parents and the strong bond between I.P. and the Vs., it is unlikely that I.P. will have negative feelings about a severance from Mother and Father.

Conclusions of Law

On the basis of those findings, the court concluded, among other things, that Mother and Father were unfit to remain in a parental relationship with I.P. and that exceptional circumstances made the continuation of the parental relationship detrimental to I.P.’s best interests. Accordingly, the court terminated Mother’s and Father’s parental rights.

Father took this timely appeal. Mother did not appeal.

QUESTIONS PRESENTED

Father’s brief contains two, related questions, which we quote verbatim:

1. Did the trial court err in making findings regarding father’s failure to accept services of the Department?
2. Did the Department failed [sic] to provide the appropriate assistance to father to allow him to complete the tasks required of him?

STANDARD OF REVIEW

“Our review of the juvenile court’s decision to terminate Father’s parental rights involves three interrelated standards: (1) a clearly erroneous standard, applicable to the juvenile court’s factual findings; (2) a *de novo* standard, applicable to the juvenile court’s legal conclusions; and (3) an abuse of discretion standard, applicable to the juvenile

court’s ultimate decision.” *In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. 30, 45 (2017) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). “In other words, ‘when the appellate court views the ultimate conclusion of the [juvenile 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.” *Id.* (alterations in original) (quoting *Davis v. Davis*, 289 Md. 119, 126 (1977)). A court abuses its discretion when the decision is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *North v. North*, 102 Md. App. 1, 14 (1994)); accord *In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. at 45.

DISCUSSION

When a State agency petitions to terminate parental rights without a parent’s consent, the court’s paramount consideration is the best interests of the child. *In re Adoption of Jayden G.*, 433 Md. 50, 82 (2013) (citing *In re Adoption of Ta’Niya C.*, 417 Md. 90, 94 (2010)). Recognizing that parents have a constitutionally protected interest in raising their children without undue State interference, Maryland law presumes that it is in the best interest of children to remain in the care and custody of their parents. *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 495 (2007) (citations omitted).

The rights of parents, however, are “not absolute.” *Id.* at 497. Rather, the parents’ rights “must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect.” *Id.* Thus, in appropriate cases the “presumption that the interest of the child is best served by

maintaining the parental relationship . . . may be rebutted . . . by a showing that the parent is either unfit or that exceptional circumstances exist that would make the continued relationship detrimental to the child’s best interest.” *Id.* at 498. To determine whether a parent is unfit or whether exceptional circumstances make the continued relationship detrimental to the child’s best interests, a court considers the factors listed in § 5-323(d) of the Family Law Article.

Among other things, this statute requires the court 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.” *In re Adoption/Guardianship of Rashawn H.*, 402 Md. at 500. Implicit in this statute is a requirement that the State offer “a reasonable level of those services, designed to address both the root causes and the effect of the problem” that resulted in the child’s placement out of the home. *Id.* 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.* The State “must provide reasonable assistance in helping the parent to achieve those goals, but 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 500-01.

In this appeal, Father argues that the court erred in finding that he failed to accept the Department's services and in finding that the Department offered appropriate assistance to him. We review the juvenile court's determination that the local department provided reasonable services under the clearly erroneous standard. *See In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. at 55. In our view, those findings were not erroneous in any material respect, let alone clearly erroneous.

As an appellate court, we have a narrow role in reviewing a challenge to a juvenile court's factual findings:

[O]ur function, in reviewing the juvenile court's findings, is not to determine whether, on the evidence, we might have reached a different conclusion. Rather, it is to decide only whether there was sufficient evidence—by a clear and convincing standard—to support the court's determination that it would be in the best interest of the child to terminate the parental rights of the parent. In making that decision, we must assume the truth of all the evidence, and of all of the favorable inferences fairly deducible therefrom, tending to support the factual conclusion of the trial court. And, in a case involving termination of parental rights, the greatest respect must be accorded the opportunity the trial court had to see and hear the witnesses and to observe their appearance and demeanor. Where the best interest of the child is of primary importance, the trial court's determination is accorded great deference, unless it is arbitrary or clearly wrong.

In re Adoption/Guardianship of C.A. & D.A., 234 Md. App. at 46 (citations, quotation marks, and brackets removed).

Viewed under that standard, the evidence in the record strongly supports the court's findings that Father did not avail himself of the Department's services. Father missed numerous scheduled visits with I.P. even though the Department gave him tokens and bus passes to facilitate his attendance. When the Department offered to assist him in

obtaining housing, he failed to provide the required documentation showing that he could afford to maintain a residence. When the Department gave him the opportunity to take part in drug and mental health treatment, he failed to complete the course of treatment. He did not make himself available for additional services, he did not sign services agreements, and he did not give the Department access to his medical records. Finally, he consistently failed to comply with the requirements of the Family Recovery Program.

The evidence in the record also supports the court's finding that the Department made reasonable efforts to provide reunification services to Father. The Department offered Father financial assistance in obtaining a place to live and put him in touch with the Housing Authority. The Department referred Father to the Family Recovery Program, but he failed to comply with its requirements. The Department attempted to facilitate Father's visits with I.P. by giving him tokens and bus passes, but only sporadically would he attend. Because Father was incarcerated for a considerable period while these proceedings were underway, the Department was hindered in its ability to provide additional services.

Father does not directly address most of the substantial evidence that supports that court's findings and the conclusions that are derived from the findings. Instead, he takes issue with a number of discrete findings.

Father begins by disputing the court's finding that the Department offered him the services of the Rapid Reunification Program in finding housing. He correctly observes that the Department's social worker could not recall whether she had discussed the Rapid Reunification Program with him. The failure of recollection is, however, immaterial,

because the social worker testified that she referred both parents to the Housing Authority so that they could obtain stable housing. She also testified that if they did not qualify for assistance from the Housing Authority, the Department could offer assistance with the first month's rent or with a security deposit. The social worker never received any documentation indicating that either Father or Mother had applied for housing through the Housing Authority.

Father goes on to argue that the Department's offer of housing assistance was of little use to him, because he was unemployed and his Social Security benefits were "not likely" to be enough to pay for a place to live. He fails to recognize that the Department put no time limit on its offer of assistance. Hence, the offer remained in place even after Father found a job in the spring of 2016.

Father challenges the court's finding that he failed to provide the Department with documentation of his Social Security income or with the lease on the apartment that he obtained in about October 2016 and that he failed to make the apartment available for inspection for several months. He asserts that he obtained the apartment with the assistance of the Family Recovery Program, which he says was "obviously aware" of his income, and that the Family Recovery Program "worked with the Department." He argues that he "may not have realized the need to advise" the Department about his income, the lease, or the apartment. He also argues that he "may have assumed" that the home met the Department's standards, because the Family Recovery Program assisted him in obtaining it. The court was not required to credit Father's speculative assertions.

Father concludes with the argument that when he was not incarcerated, he made some effort toward becoming a fit parent. He found a place to live; he claims to have gone for mental health counseling until he was incarcerated again;⁶ he says that he attended “some” drug treatment sessions even though he admits that he “did not complete” the program; “[f]or at least part of the time, he was employed”; and even though he did not sign releases to inform the Department of his status, he claims that the Department would have known of his status from other sources. He blames his shortcomings not on himself, but on a Department employee who, he says, assigned him too many tasks and made his schedule too confusing. The court did not abuse its discretion in concluding that it was in I.P.’s best interests to terminate Father’s parental rights notwithstanding his intermittent, half-hearted efforts to improve himself. *See In re Adoption of K’Amora K.*, 218 Md. App. 287, 307 (2014) (stating that a parent’s actions and failures to act can bear on the question of whether continuing the parent-child relationship serves the child’s best interests).

As she approaches her third birthday in October, I.P. has a compelling need for permanence and stability. *See In re Adoption of Jayden G.*, 433 Md. 50, 83-84 (2013). She has been in foster care since she was less than 48 hours old. She cannot be required to wait indefinitely to see whether her father will avoid reincarceration, find a stable job

⁶ The Department contends that Father adduced no evidence of having received mental health therapy. In fact, the record reflects that, when he was not incarcerated, Father met with a person who provides psychiatric rehabilitation services and with a therapist. According to the person who provides the psychiatric rehabilitation services, however, the basic or primary focus of his efforts was to find a job for Father and to work with him on basic living skills, such as preparing healthy food for his family.

and a stable, long-term housing arrangement, address his substance-abuse and mental health disorders, and acquire the many other basic skills that are required for him to become a fit parent. For those reasons, we conclude that the juvenile court exercised its discretion in a sound and capable manner when it terminated Father's parental rights in I.P.

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