Circuit Court for Baltimore City
Case No.: T22081005
Case No.: T22081004

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2192

September Term, 2022

IN RE: A.M. & D.M.

Leahy,
Ripken,
Woodward, Patrick L.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: September 5, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, D.V.M. ("Father"), appeals from an order of the Circuit Court for Baltimore City, sitting as a juvenile court, granting the petitions of the Baltimore City Department of Social Services ("BCDSS" or "the Department") to terminate Father's parental rights in relation to his natural children, A.M. and D.M. (collectively, "Respondents" or "the Children"), who had previously been adjudicated as children in need of assistance ("CINA").[1]

Father noted this timely appeal, presenting two questions for our review:

1. Did the court erroneously conclude that [BCDSS] made adequate efforts to reunify [Father] with A.M. and D.M. when [BCDSS] failed to facilitate family therapy or any visitation between [F]ather and the [C]hildren, warranting reversal of the TPR orders?

2. Did [BCDSS] fail to prove by clear and convincing evidence, and did the court make erroneous factual and legal findings supporting, that exceptional circumstances warranted terminating [F]ather's parental rights to A.M. and D.M.?

For the following reasons, we shall affirm the judgments of the circuit court.

FACTS & PROCEDURAL HISTORY

After a hearing in January of 2023, the circuit court issued an Order dated January 27, 2023, granting BCDSS's petitions to terminate Father's parental rights as to A.M. and D.M. In a Memorandum Decision accompanying the Order, the court set forth the procedural history, factual findings, and application of Family Law Article ("FL") § 5-323

[1] A CINA is "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 Ann., Cts. & Jud. Proc. ("CJP") § 3-801(f).

regarding the instant case. Because the court discussed these topics in a thorough and comprehensive fashion, we set forth the Memorandum Decision in its entirety:

> MEMORANDUM DECISION
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> On January 3, 18, and 23, 2023, the Court held a contested hearing on the Petitions, both filed on March 22, 2022, for Guardianship with the Right to Consent to Adoption or Long Term Care Short of Adoption regarding Respondents [D.M.] and [A.M.], who are siblings from the same mother and father. The [M]other, [A.S.], is deceased; the [F]ather is [D.V.M.]. The Petitions were filed pursuant to Md. Code Ann., Family Law (FL) § 5-313, the hearing was conducted as nonconsensual pursuant to FL § 5-318, and the issue of termination of [Father's] parental rights as to each Respondent was considered by the Court pursuant to FL § 5-323, including the factors set forth in FL § 5-323(d).
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> PROCEDURAL HISTORY
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> On December 9, 2019, the Baltimore City Department of Social Services (BCDSS) removed the Respondents from [Father's] home following allegations of abuse made by both Respondents. The Respondents were placed in the custody of BCDSS, and Petitions with Request for Shelter Care were filed the next day. The Court sheltered the Respondents to BCDSS on December 18, 2019, and, on March 10, 2020, the Respondents were determined to be Children in Need of Assistance based on stipulated findings that, among other things: (1) the Respondents had alleged that [Father] had physically abused them, including that he had repeatedly kicked, punched, and pushed [D.M.]; and (2) both Respondents were fearful of [Father]. The Respondents were committed to BCDSS and placed, separately, in foster care. The BCDSS also initiated a request under the Interstate Compact on the Placement of Children regarding potential placement of both Respondents with their fictive grandmother, [M.M.], whose resides in Pennsylvania near Philadelphia. The permanency plan was reunification with [Father].
>
> The Respondents remained in separate foster placements until March 2021 when they were placed by BCDSS with, and transported by the BCDSS to, [M.M.'s] home in Pennsylvania; the Respondents have resided with [M.M.] at all times since. On August 1, 2021, following a hearing on the permanency plan, the plan was changed from reunification with [Father] to reunification concurrent with placement with a non-relative for custody and guardianship. This change was based, in part, on findings that, despite the BCDSS[']s reasonable efforts towards reunification, the Respondents had refused all

visits with [Father] since December 2019 and that BCDSS[']s attempts to facilitate family therapy had not been successful because of the Respondents['] refusals to participate. In changing the plan, the Court noted that the Respondents were not to be forced into visitation or parenting time with [Father].

On April 25, 2022, following a contested hearing, the Court once again changed the permanency plan, this time to placement with a non-relative for adoption. In doing so, the Court applied and made findings as to the best interests of the Respondents on each of the factor[s] set forth in FL § 5-525(f), and further found that: [Father] had not made significant progress towards alleviating or mitigating the causes necessitating commitment; there was no reasonable date by which the Respondents could be returned to [Father's] home; the Respondents had successfully adjusted to, and had been provided stability in, their current placement with [M.M.]; and [M.M.] was a long-term placement resource who was providing a safe and nurturing environment for the Respondents.

FACTUAL FINDINGS

Evidence adduced during the hearing established that [Father] and [Mother] were married and lived together in North Carolina until [D.M.] was about three years old when the two separated and [Mother] moved to Pennsylvania. [A.M.] was born in Pennsylvania after the two had separated. A divorce[] was finalized in or about 2012.

Following the separation and divorce the Respondents resided continuously until June 2019 in Pennsylvania in the custody of [Mother], where they saw or visited with [M.M.] almost daily. During this time-period [Father] lived in multiple locations including in North Carolina and Maryland and had regular weekend visits with the Respondents. Though he could not recall exactly which summer it was, [Father] testified that he had both children with him for one entire summer between 2016 and 2018. [Father] testified that prior to 2019 he had a good relationship with his children, communicated with them often, and participated in significant events; the Respondents similarly testified that they both had a good relationship with [Father] prior to June 2019.

In May 2019, [Mother] was diagnosed with stage 4 pancreatic cancer. At the time, [Father] was living in Baltimore, Maryland. On June 10, 2019, [Father] traveled from Baltimore to Pennsylvania to attend a graduation ceremony for [A.M.]; [Mother] was hospitalized at the time. Following the ceremony [Father] took the Respondents to [M.M.'s] home to retrieve

belongings and then took the kids with him back to Baltimore. [Father's] testimony and [M.M.'s] testimony differ regarding whether [Mother] was in agreement that the children were to return to Baltimore with [Father]. [M.M.] testified that [Mother] did not tell her that the children were to leave with [Father] following the graduation ceremony and that she, [M.M.], was otherwise unaware that [Father] was going to take the children. For his part, [Father] testified that he and [Mother] had agreed in advance of June 10, 2019 that the children would return with him. The events of the six months that followed have led us to this point.

Sadly, on July 18, 2019, [Mother] passed. There is no dispute that after leaving Pennsylvania with [Father] on June 10, 2019, that the Respondents never again saw their mother alive. [A.M.] testified that at some point in time between June 10 and July 18, [Father] asked the Respondents if they wanted to return to see their mother and that the Respondents responded that they did, and further testified that [Father] told the children on at least one other occasion that he would take them back. [A.M.] then testified that, at some later date prior to July 18, [Father] told the Respondents that he was not going to take them back and that they would never see their mother again. [A.M.] characterized [Father's] statements in this regard as deceitful. [D.M.] also testified that [Father] told the Respondents that he would take them to see their mother, but never did, actions that [D.M.] characterized as his father taking advantage of his mother[']s sickness. During his testimony [Father] confirmed that he did not take the children to see their mother prior to her death and offered, as an explanation, that [Mother] had told him not to bring the children because they were too young. [Father] further testified that he learned of [Mother's] death on Facebook, informed the children of her passing, and took the children to Pennsylvania for the funeral.

As mentioned, on December 9, 2019, BCDSS removed the Respondents from [Father's] home based on allegations of abuse. [D.M.] testified that on multiple, countless, occasions in 2019 when the Respondents were living with [Father] both before and after his mother[']s death [Father] physically abused him. The incidents he described included:

An incident when [Father] placed [D.M.'s] head in a sink with hot water, which resulted in [D.M.] going to the hospital where he was treated for a burn to his nose;

An occasion when [Father] shaved [D.M.'s] head bald and sent him to school without head covering for purposes of embarrassment;

One incident when [Father] beat [D.M.] on the back with a belt dipped in water which left marks all over [his] back;

Occasions when [Father] would throw [D.M.] around and beat [him] up senseless;

One time when [Father] put his knee on [D.M.'s] back to the point where [D.M.] could not breathe;

An incident when [Father] choked [D.M.] such that he almost passed out; and

An occasion when [Father] threw a clipboard at [D.M.'s] face when he was stuttering while reading a book ([D.M.] has a stammer), leaving his eye bloody and red such that he could not go to school.

[A.M.], during her testimony, describe[d] an incident that occurred sometime after her mother had passed when [Father] confronted the children because they had stayed up late on their phones. [A.M.] stated that on this occasion [Father] punched [D.M.] in the face and pushed [A.M.] up against a door and threw her on the floor; [D.M.] corroborated that this incident occurred. While this was the only occasion according to [A.M.] that [Father] was physically abusive towards her, [A.M.] corroborated [D.M.'s] testimony by stating that she observed [Father] being physically abusive toward [D.M.] on multiple occasions.

Despite efforts, recommendations, and referrals made by BCDSS beginning in early-2020, and continuing for nearly three years, to reopen lines on communication and familial interactions between the Respondents and [Father], the parties have had almost no contact since December 9, 2019. The record, both from the testimony and through exhibits from the BCDSS case file, establishes clearly that there has been almost no progress towards reunification due principally to the Respondents['] wishes not to have any sort of communication or relationship with [Father]. Contact reports made by the Respondents['] case workers over the years demonstrate that the children have each repeatedly and consistently expressed a desire not to see or otherwise have contact with their father. [D.M.] has[,]save for possibly one occasion in 2021[,] flatly refused engaging in any sort of family therapy with [Father]. As for [A.M.], after two years of refusing such therapy, she agreed to a singular session that occurred in February 2022, which did not go well. [A.M.] became emotional and upset during the session, cursed at her father, stated that she did not want to see or talk with him again, and stormed out.

During their respective testimonies, Respondents were clear and unequivocal that they want no relationship with [Father]. [A.M.] stated that I have no reason to talk to him and that I can[']t stand him, and [D.M.] testified, among other things, that he does not recall the last time he saw his father because he does not remember things that don[']t matter to [him]. During testimony both children directly related their present desire not to have a relationship with their father to both the alleged physical abuse and the fact that [Father] did not take the children to see their mother prior to her death. It is the Court[']s observation from both Respondents['] testimony that, at present, any contact with their father is a source of tremendous stress and anxiety and is detrimental to their well-being.

The Court has concerns about the reliability of [Father's] testimony. First, the Court does not find credible [Father's] assertion that he did not take his children to see their mother prior to her death was because [Mother] had told him not to do so. It is difficult to square this with [A.M.'s] testimony that [Father] specifically asked the Respondents if they wanted to see their mother, nor does it seem plausible given the children[']s ages of 13 and 11 at the time that [Mother] would think that they were too [you]ng. The lack of credibility in this assertion[,] a claim that [Mother] made this statement to [Father,] also calls into question [Father's] statement that he and [Mother] had agreed prior to June 10, 2019, that the children would return to Baltimore with him. The existence of this agreement is not in any way corroborated by [M.M.] who, by all accounts, had a very close relationship with [Mother] and was caring [for] the Respondents at the time. In addition, [Father's] testimony seemed evasive at times, most notably when he was asked about whether he had arranged for grief counseling for the Respondents immediately following [Mother's] death and when asked about criminal charges for which he once appeared in court in Pennsylvania where [Mother] was a necessary witness.

DISCUSSION AND APPLICATION OF FL § 5-323

Section 5-323(b) of the Family Law Article grants the Court authority to terminate an individual[']s parental rights upon a finding, by clear and convincing evidence, that the parent is unfit to remain in [the] parental relationship or that exceptional circumstances exists that would make continuation of the parental relationship detrimental to the best interest of the child. There are three critical elements of the analysis. In re Adoption/Guardianship of Rashawn H., 402 Md. 477, 498 (2007). First, there is a substantive presumption that a child[']s best interest is served by maintaining a parental relationship, a presumption that can only be rebutted

upon a finding of unfitness or exceptional circumstances as stated in the statute. Id. at 498. Second, unfitness or exceptional circumstances must be established by clear and convincing evidence. Id. at 499. And, third, the factors listed in FL § 5-323(d) serve as the criteria for determining whether exceptional circumstances are sufficient to rebut the presumption favoring continuation of a parental relationship. Id. See also In re Adoption/Guardianship of H.W., 460 Md. 201, 217-18 (2018) (reaffirming Rashawn H.[']s three critical elements analysis). While a finding of unfitness or exceptional circumstances demonstrate that the presumption favoring the parent is overcome, such a finding does not, by itself, mandate a termination of the parental rights; rather, that decision must always revolve around the best interest of the child. In re H.W., 460 Md. at 218 (citing In re Adoption of Jayden G., 433 Md. 50, 94 (2013)).

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

The first factor focuses on the services provided: (1) before placement; (2) to facilitate reunification; and (3) to fulfill obligations under a service agreement. See FL § 5-323(d)(1)(i)-(iii). Here, prior to the Respondents['] commitment and placement on March 10, 2020, the BCDSS held a Family Involvement Meeting ["FIM"] on February 5, 2020 during which, among other things, therapeutic needs of the children were discussed, [Father] agreed to attend parenting and anger management classes, future visits between [Father] and the children were discussed, and it was determined that a service agreement would be presented to [Father] shortly thereafter. Given the circumstances at the time, these efforts by BCDSS were reasonable and appropriate. While BCDSS did present a service agreement to [Father] shortly after the FIM meeting, the testimony and documentary evidence is clear that [Father] never signed the agreement despite efforts by BCDSS to get him to do so.

What is most relevant here is an evaluation of services toward reunification offered and attempted since February 2020, and the resulting lack of meaningful progress. While [Father], [D.M.], and [A.M.] have all engaged to varying degrees in individual therapy, the record establishes that BCDSS case workers conducted near-monthly visits with each Respondent during which, almost invariabl[y], both expressed that they were not interested in participating in family visits as offered by BCDSS nor were they interested in participating in family therapy. The Court finds, based upon the documentary evidence, the testimony of the case workers (Greg Lounsbury in particular), and the testimony of both [D.M.] and [A.M.], that the Respondents['] mutual desire to not visit or engage[] in family therapy with their father is genuine and sincere, is informed and reasoned, has remained effectively unchanged for more than three years, and relates directly to the

alleged abuse and the circumstances surrounding their mother[']s death. The Court further finds that in considering all the circumstances, including, especially, the Respondents['] current ages of 16 and 14 and advancement towards adulthood, that there is no reasonable expectation that the Respondents['] unwillingness to participate in visits or family therapy will change anytime within the foreseeable future.

2. FL § 5-323(d)(2) Parent[']s Efforts to Make Return to Parent[']s Home in the Best Interest of the Child

The second factor focuses on the efforts made by the parent to improve circumstances such that it would be in the best interest of the children to return to the parent, including: (i) whether the parent has maintained contact with the child, the local department, and the caregiver; (ii) contributions to the child[']s care and support; (iii) whether there[']s any parental disability that makes the parent consistently unable to care for the child; and (iv) whether additional services are likely to bring about an adjustment with an ascertainable period of time in favor of return of the child to the parent. See FL § 5-323(d)(2)(i)-(iv). Element (iii) does not apply here as there is no evidence or indication that [Father] suffers from any sort of disability that might affect his ability to care for the Respondents.

Regarding (i), [Father] has had almost no contact with the Respondents since December 2019 due largely, as discussed, to the Respondents['] lack of interest. Indeed, [Father] testified that at one point [A.M.] blocked him on Facebook. As for contact with BCDSS, [Father's] efforts in this regard have been less than overwhelming. He testified that he has sent between 10-15 emails to case workers over the years; phone contacts and text messages have been even less frequent. Last, [Father] has had no contact with [M.M.], the Respondents['] caregiver, at any time since they came into her care in March 2021. [Father's] lack of consistent effort in these regards weigh[s] against a conclusion that further effort toward reunification are in the Respondents['] best interest.

Regarding (ii), [Father] has made no financial contributions towards his children since December 2019, save sending a single care package in 2021. He has participated in no medical or dental appointments, nor has he sought to do so, and has engaged in no meaningful way in the Respondents['] education. Again, [Father's] lack of consistent effort in these regards weigh[s] against a conclusion that further efforts toward reunification are in the Respondents['] best interest.

With respect to (iv), as referenced, there is no reason to believe that further efforts to bring the Respondents together with [Father] will change the

Respondents[’] unwillingness to do so. While the Court believes that family visits and family therapy are the sort of services that, if engaged in and successful, would be most likely to achieve a breakthrough if one is to occur, that cannot and will not happen under the Respondents[’] current and consistent states of mind towards their father. Indeed, the Court[’]s observation is that continued effort to force contact between the Respondents and [Father] might be detrimental to the children[’]s mental state and overall well-being. As such, the Court finds that further services are unlikely to bring about any meaningful adjustment within an ascertainable period of time, notwithstanding three years of efforts.

3. FL § 5-323(d)(3) Abuse and Neglect

The third factor focuses on actual or potential conduct of the parent that is in the nature of abuse or neglect or otherwise detrimental to the physical well-being of the child. See FL § 5-323(d)(3). Of the circumstances referenced in § 5-323(d)(3), only those under (i) whether the parent has abused or neglected the child and the seriousness thereof is relevant and presented by the evidence here.

The Court finds credible the Respondents[’] allegations that between June 2019 and December 2019 [Father] repeatedly engaged in serious physical abuse of [D.M.] and that on at least one occasion physically abused [A.M.]. First, the descriptions of the abuse given during testimony were detailed and largely consistent with details given by the children to BCDSS when first reported in December 2019. See Father[’]s Ex. 12. Second, by all accounts, prior to June 2019 and their mother[’]s illness, the Respondents and [Father] had positive, though physically distant, relationships. The fact that the relationships fractured so abruptly and severely in late-2019 and that the Respondents[’] negative feelings towards their father have only hardened over time, corroborates that their experiences while under their father[’]s care in 2019 was as they alleged then and as they allege now.

During his testimony, [Father] denied the allegation of abuse and stated that he had never used corporal punishment on the children. In an apparent effort to discredit the Respondents, [Father] posited during his testimony that their allegations of abuse only surfaced after the Respondents had made a weekend visit to see [M.M.] in early-December 2019, suggesting that [M.M.] somehow caused the children to fabricate the allegations in order to break off their relationships with their father. The Court finds no merit to this suggestion. The Court observed, given the longstanding negative attitudes of the children towards [Father], that if there were any hope at amicable reunification between the Respondents and [Father] that the likely first step would be for [Father] to acknowledge that the abuse occurred and seek reconciliation with the Respondents. That has not occurred, nor is there an indication that it will. The Court finds that the occurrence of the abuse and

the Respondents[’] states of mind related thereto weigh heavily against further efforts toward reunification; the best interests of the Respondents would not be served by continuing to subject them the mental anguish of forcing reunification.

4. FL § 5-323(d)(4) Child[’]s Emotional Ties, Adjustment, and Feelings on Severance of Parent-Child Relationship, and Impact of Termination on Child[’]s Well-Being

Analysis of each of the focus areas under FL § 5-323(d)(4) weigh[s] in favor of a conclusion that a return to [Father] is not within the best interests of the Respondents. First, as discussed, the Respondents have significant and severely negative emotional ties to and feelings towards [Father], while their feeling and ties towards each other and toward [M.M.] seem genuinely positive. The Respondents have adjusted well during their placement with [M.M.] in terms of community, home, and school, all of which appears to be stable and healthy. The Respondents both want the parent-child relationships between themselves and [Father] severed and, for reasons discussed above, the Court concludes that severing the relationship will have a net positive impact on the Respondents[’] well-being.

CONCLUSION

The Court finds in considering, among other things, that: (1) in June and July of 2019 [Father] denied the Respondents a final opportunity to see their mother before her death; (2) in 2019 [Father] physically abused [A.M.] and repeatedly abused [D.M.]; (3) the Respondents have consistently and unequivocally maintained over the course of three years that they do not want to have a relationship with [Father]; (4) the Respondents[’] respective age, levels of maturity and intellectual abilities, and degree of sincerity establish that their views towards [Father] are well-formed, reflect considered judg[]ment and thought, and are unlikely to materially change[] in the foreseeable future; (5) the Respondents are stable, healthy, progressing, and well-cared for in their current placement; and (6) a continuation of the parent-child relationships between [Father] and the Respondents may be detrimental to the Respondents[’] mental and emotional well-being that exceptional circumstances under FL § 5-323(b) exist as to each Respondent. The Court[’]s findings on the FL § 5-323(d) factors, when taken together, lead the Court to conclude that, as to each Respondent, the exceptional circumstances are sufficient to rebut the presumption that maintenance of the parent-child relationships between [Father] and the Respondents is in the Respondents[’] best interest and that severing the parental relationships is in the Respondents[’] best interest.

Additional facts will be supplied as needed for our discussion of the issues presented in the instant appeal.

STANDARD OF REVIEW

"Maryland appellate courts apply three different but interrelated standards of review when reviewing a juvenile court's decisions at the conclusion of a termination of parental rights proceeding." *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 47 (2019) (quotation marks and citation omitted). First, any factual findings made by the court are reviewed for clear error. *Id.* Second, any legal conclusions made by the court are reviewed *de novo*. *Id.* Finally, if the court's ultimate conclusion is "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 Ta'Niya C.*, 417 Md. 90, 100 (2010) (quotation marks and citations omitted) (alteration in original). "A decision will be reversed for an abuse of discretion only if it 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 J.J.*, 231 Md. App. 304, 345 (2016), *aff'd*, 456 Md. 428 (2017) (quotation marks and citations omitted).

DISCUSSION

"Parents have a fundamental right under the Fourteenth Amendment of the United States Constitution to 'make decisions concerning the care, custody, and control of their children.'" *In re C.E.*, 464 Md. at 48 (quoting *Troxel v. Granville*, 530 U.S. 57, 66 (2000)).

In *In re C.E.*, the Maryland Supreme Court summarized the law governing the termination of parental rights:

> In acknowledgment of the important rights at stake, we have previously described three elements of heightened protection provided to parents in a TPR proceeding. *See In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 498, 937 A.2d 177 (2007). First, we have recognized that there is the "presumption that the interest of the child is best served by maintaining the parental relationship, a presumption that may be rebutted only 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, 937 A.2d 177. Second, this presumption can only be overcome if the State establishes by clear and convincing evidence of unfitness or exceptional circumstances to justify a TPR. *Id.* at 499, 937 A.2d 177. This is a heavier burden than the preponderance of evidence standard utilized in a standard child custody case. *Id.* Third, the General Assembly provided factors that the juvenile court must expressly consider in determining whether termination is in the child's best interest. *Id.* While a juvenile court is permitted to consider additional factors, the statutory factors are intended to provide the basis for any termination of parental rights.
>
> The requisite factors are codified in FL § 5-323(d). FL § 5-323(d) is divided into four subparagraphs of factors that the court must use to assess both unfitness and exceptional circumstances. Maryland's guardianship statute does not define parental unfitness or exceptional circumstances. However, the existing statutory scheme is the appropriate mechanism for the evaluation of parental fitness or the kinds of exceptional circumstances that would suffice to rebut the presumption for continuing the parental relationship and justify the termination of that relationship. *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 715, 12 A.3d 130, (2011); *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 104, 8 A.3d 745 (2010) ("[T]he same factors that a court uses to determine whether termination of parental rights is in the child's best interest under the TPR statute equally serve to determine whether exceptional circumstances exist."); *Rashawn H.*, 402 Md. at 499, 937 A.2d 177.
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> The four subparagraphs of FL § 5-323(d) are divided by topic and include consideration of: (1) the services that the Department has offered to assist in achieving reunification of the child with the parents; (2) the results of the parent's effort to adjust their behaviors so that the child can return home; (3) the existence and severity of aggravating circumstances; (4) the

> child's emotional ties, feelings, and adjustment to community and placement and the child's general well-being.[] Ultimately, these factors seek to assist the juvenile court in determining "whether the parent is, or within a reasonable time will be, able to care for the child in a way that does not endanger the child's welfare." *Rashawn H.*, 402 Md. at 500, 937 A.2d 177. This is the appropriate inquiry because courts are required to afford priority to the health and safety of the child. FL § 5-323. As such, the best interest of the child is the overarching standard in TPR proceedings. *In re Adoption/Guardianship of Cadence B.*, 417 Md. 146, 157, 9 A.3d 14 (2010) (citing *Ta'Niya C.*, 417 Md. at 90, 8 A.3d 745) ("[T]he child's best interest remains the 'transcendent standard in adoption, third-party custody cases, and TPR proceedings.' ").

Id. at 50-53.

I.

Under FL § 5-323(d)(1), a juvenile court must consider the following factors:

> (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.

In the instant case, the juvenile court found, regarding FL § 5-323(d)(1)(i), that the efforts of BCDSS were reasonable and appropriate because before the commitment and placement of the Children on March 10, 2020,

> the BCDSS held a Family Involvement Meeting on February 5, 2020 during which, among other things, therapeutic needs of the [C]hildren were discussed, [Father] agreed to attend parenting and anger management classes, future visits between [Father] and the [C]hildren were discussed, and it was determined that a service agreement would be presented to [Father] shortly thereafter.

Further, regarding FL § 5-323(d)(1)(iii), the court found that BCDSS had presented a service agreement to Father shortly after the FIM meeting, but Father never signed the

agreement despite the efforts by BCDSS to have him do so. Appellant does not challenge these factual findings on appeal.

In his first question raised, appellant claims that the juvenile court erred in finding that BCDSS used reasonable efforts to unify the family under FL § 5-323(d)(1)(ii). Regarding that section of the statute, the court found that, notwithstanding Father and Children engaging in individual therapy to varying degrees, both of the Children expressed, almost invariably to the BCDSS workers at the near-monthly visits, that they were not interested in visits with Father offered by BCDSS, nor were they interested in participating in family therapy. The court further found that the Children's "mutual desire to not visit or engage[] in family therapy with their father is genuine and sincere, is informed and reasoned, has remained effectively unchanged for more than three years, and relates directly to the alleged abuse and circumstances surrounding their mother[']s death." Finally, the court found that there was "no reasonable expectation that the Respondents['] unwillingness to participate in visits or family therapy will change anytime within the foreseeable future."

On appeal, appellant argues that the juvenile court erred in finding that BCDSS used reasonable efforts to reunify the family because "1) the Department failed to set up *any* visitation between [F]ather and the [C]hildren for three years; and 2) the Department failed to adequately pursue family therapy." (Emphasis in original.) In reference to visits with Father, appellant asserts that BCDSS never attempted to set up any actual visits for over three years, even though the Children's "seeming resolve against seeing [F]ather actually wavered[,]" and "if visitation were set up, there was a greater chance the [C]hildren would

actually take advantage of it[.]" For family therapy, appellant claims that BCDSS did not diligently set up family therapy when the Children expressed a willingness to participate.

Regarding both visitation and family therapy, appellant argues that there was no evidence presented at the hearing that (1) resolving visitation issues was even identified as a treatment goal; (2) any therapist ever actually worked with either child to resolve the visitation issues; (3) the Children were addressing their alienation from Father in individual therapy so progress could be made toward family therapy; and (4) the Children's individual therapy included any therapist recommendations or opinions concerning family therapy. In sum, according to appellant, "asking two children their positions about visitation and family therapy but taking no–or, at best, minimal–concrete steps to put either in place does not amount to adequate reunification efforts." This Court disagrees.

Under Maryland law, the Department "must make good faith efforts to provide services to achieve reunification," *In re Shirley B.*, 191 Md. App. 678, 716 (2010), *aff'd*, 419 Md. 1 (2011), and "the obligation to render 'reasonable efforts' [toward reunification] rests on the Department, not the parent[.]" *In re James G.*, 178 Md. App. 543, 601 (2008). The "reasonableness" of the Department's efforts to achieve reunification is determined by a consideration of the particular circumstances of each case. *See In re Shirley B.*, 191 Md. App. at 710-11 ("[T]here is no bright line rule to apply to the 'reasonable efforts' determination; each case must be decided based on its unique circumstances."). Such determination by the juvenile court is a factual finding that is reviewed for clear error. *Id.* at 708-09.

In our view, appellant's argument fails when the particular circumstances of the instant case are considered. For when the efforts of BCDSS for reunification are viewed in context, the juvenile court did not err when it found those efforts to be reasonable. We shall explain.

The key circumstances of this case that relate to BCDSS's efforts for reunification can be summarized as follows:

When D.M. and A.M. were removed from Father's custody in December 2019, D.M. was 13 years old and A.M. was 11 years old. When the termination of parental rights hearing was held in January 2023, D.M. was 16 years old and A.M. was 14 years old. Except for possibly one summer, the Children lived with Mother until her death in 2019. Father refused to take the Children to see Mother prior to her death, despite their request for him to do so. Father inflicted serious physical abuse on D.M. on multiple occasions, including placing D.M.'s head in a sink with hot water that resulted in a burn to his nose, shaving his head and sending him to school without a head covering, beating him with a belt and fists, choking him, and throwing a clipboard at his face that injured his eye. Father physically abused A.M. one time, but inflicted emotional abuse when she witnessed his physical abuse of D.M. The Children were removed from Father's custody in December 2019 following allegations of abuse made by the Children. Father denied the allegations of abuse at the shelter care hearing and three years later at the TPR hearing. Beginning with the Family Involvement Meeting in February 2020, both D.M. and A.M. consistently and repeatedly expressed a desire not to visit or have any other contact with Father. D.M. continually refused to participate in family therapy with Father, and on the one occasion

when A.M. agreed to family therapy, that session occurred in February 2022, but it did not go well.

In light of the above summary, as well as the evidence presented at the hearing, BCDSS decided to offer the Children, at each near-monthly visit, the opportunity to visit or engage in family therapy with Father and to follow their wishes regarding visits and family therapy. The BCDSS social workers were well aware that the Children's continued refusal to visit or have other contact with Father was based, not on the whim of a young child, but on the severe physical and emotional trauma that Father inflicted on a pre-teenager (A.M.) and teenager (D.M.). Appellant claims that BCDSS should have set up visits with Father even if the Children did not want them. If it had done so, BCDSS would have in effect attempted to force the Children to have visitation with Father, and thus would have violated the juvenile court's CINA Orders, dated August 1, 2021 and April 25, 2022, that the Children "shall not be forced to have visitation/parenting time with [Father,]" and would have been contrary to the principle of law that "children should not be 'physically forced, kicking and screaming, into their [parent's] presence.'" *In re G.T.*, 250 Md. App. 679, 700 (2021) (quoting *In re Barry E.*, 107 Md. App. 206, 221 (1995)).

Appellant also complains that BCDSS did not set up any visits with Father when the Children's position against seeing him "actually wavered[,]" and that BCDSS delayed scheduling family therapy for one year after A.M. agreed to participate in such therapy. A review of the record indicates that since the shelter care hearing in December 2019, there has never been a "waver" in the Children's refusal to visit with Father. At most, during the caseworker visit in June 2021, the Children "stated that they will consider family therapy

and possibly a face to face visit." During the very next visit, in September 2021, the Children "stated today that they are not interested in seeing, visiting, speaking with, or participating in therapy with their father." Further, any delay in scheduling family therapy between Father and A.M. after A.M. indicated a willingness to participate is essentially irrelevant. A family therapy session was held on February 28, 2022, but "ended angrily by [A.M.] with statements being made to her father to the effect of not wanting to see or talk to him again." A.M. did not change her views at any time thereafter.

Finally, the lack of any evidence regarding the treatment goals of the Children's individual therapy or the progress toward those goals regarding visitation issues and family therapy does not render the juvenile court's findings to be clearly erroneous. It is undisputed that BCDSS referred the Children to individual therapy and that each child participated in therapy with his or her own therapist while in the custody of BCDSS. What appellant overlooks is that in May of 2020 and then again in August of 2020 Father stipulated that BCDSS "connected [R]espondents with therapy so that [R]espondents can prepare for family therapy and address other issues." It can be reasonably inferred that the "other issues" included (1) Father's cruel treatment of the Children by refusing to take them to see their dying mother, (2) Father's severe and repeated physical abuse of D.M., and (3) Father's physical and emotional abuse of A.M. The fact that the individual therapy did not change the Children's refusal to visit or have any other contact with Father does not mean, as appellant seems to imply, that their attitude and relationship with Father was not central to their therapeutic treatment. The evidence supports an inference that the severe physical and emotional trauma that Father inflicted on the Children produced a wound that simply

would not heal. For the above reasons, this Court concludes that the juvenile court did not commit clear error when it found that BCDSS made reasonable efforts to facilitate the reunion of the Children and Father, as required by FL § 5-323(d)(1)(ii).

II.

Appellant argues that "the court erred as a matter of law when concluding that exceptional circumstances warranted terminating [F]ather's parental rights and ultimately abused its discretion when finding that the TPR was in the [C]hildren's best interests." Appellant bases his argument on the juvenile court's consideration of the statutory factors under FL § 5-323(d) and claims that "a number of the court's factual findings and ultimate conclusions under the relevant factors were erroneous." Again, we disagree.

Under Maryland Rule 8-131(c), in a case tried without a jury, the appellate court "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." This Court has stated that "[a] trial court's findings are 'not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion.'" *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019) (quoting *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996)). Further, under Rule 8-131(c), "the evidence and all inferences drawn therefrom must be viewed in the light most favorable to . . . the prevailing party." *Gertz v. Maryland Dep't of Env't*, 199 Md. App. 413, 430 (2011). Finally, it is well established that the weight of the evidence is a question for the trial court, as the fact finder. *See Thomas v. Cap. Med. Mgmt. Assocs., LLC*, 189 Md. App. 439, 453 (2009).

A. FL § 5-323(d)(2)

FL § 5-323(d)(2) requires the juvenile court to 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[.]" Here, the court expressly found:

(1) Under FL § 5-323(d)(2)(i), Father had almost no contact with the Children since December 2019 due to the Children's "lack of interest;" Father's contact with BCDSS was "less than overwhelming;" and Father had no contact with M.M., the Children's caregiver.

(2) Under FL § 5-323(d)(2)(ii), Father made no financial contributions toward the Children since 2019, except for a single care package; and Father participated in no medical or dental appointments, nor sought to do so, and did not engage in the Children's education in a meaningful way.

(3) Under FL § 5-323(d)(2)(iv), there was no reason to believe that further efforts to bring Father and Children together would change the Children's unwillingness to do so; and a continued effort to force contact between the Children and Father "might be detrimental to the [C]hildren[']s mental state and overall well-being."

Appellant does not assert that the juvenile court's factual findings were not based on competent evidence. Instead, appellant points to other evidence in the record favorable to his position and claims error in the court's failure to consider that evidence. For example, appellant does not dispute the court's reference to Father's testimony that he "sent between 10-15 emails to case workers over the years; phone contacts and text messages have been even less frequent." Appellant cites to other evidence purporting to show Father's regular

contact with BCDSS and his consistent requests to participate in visitation and family therapy. Similarly, appellant does not deny that he never contacted M.M., but points to the lack of evidence that BCDSS ever informed him that he could reach out to her. In essence, appellant is asking this Court to reweigh the evidence. This we cannot do. Our review of the evidence and the court's factual findings thereon regarding FL § 5-323(d)(2) leads us to conclude that the court's factual findings are based on competent evidence, and thus are not clearly erroneous.

B. FL § 5-323(d)(3)

Under FL § 5-323(d)(3)(i), the juvenile court is required to consider whether the "parent has abused or neglected the child or a minor and the seriousness of the abuse or neglect[.]" Under this section, the court found that Father "repeatedly engaged in serious physical abuse of [D.M.] and that on at least one occasion physically abused [A.M.]" The court based such findings on the testimony of the Children, which the court found credible. The court also did not find Father's denial of the allegations of abuse to be credible, as well as Father's claim that M.M. "somehow caused the [C]hildren to fabricate the allegations in order to break off their relationships with their father."

Appellant initially acknowledges that under Rule 8-131(c) deference must be afforded to a trial court's credibility assessments. Then, however, appellant proceeds to cite evidence that calls into question the Children's credibility and that supports Father's credibility. Again, appellant is asking this Court to reweigh the evidence, but this time without any deference to the juvenile court's assessment of the credibility of the witnesses. Our review of the evidence and the court's factual findings thereon regarding FL § 5-

323(d)(3) leads us to conclude that the court's factual findings are based on competent evidence, and thus are not clearly erroneous.

C. FL § 5-323(d)(4)

Under FL § 5-323(d)(4), the juvenile court is required to consider "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[.]" The court found that (1) the Children "have significant and severely negative emotional ties to and feelings towards [Father], while their feeling and ties toward each other and toward [M.M.] seem genuinely positive"; (2) the Children have adjusted well to their placement, community, home, and school; (3) the Children want the parent-child relationship with Father severed; and (4) the severing of such relationship will have a net positive impact on the Children's well-being.

Appellant claims that the court emphasized the Children's bond with M.M. and their desire to be adopted by her and that the court should have given less weight to the Children's negative feelings toward Father than their positive feelings toward M.M. This Court is at a loss to find in the lower court's findings any emphasis on the Children's bonds with M.M. and their desire to be adopted by her. Moreover, any weight given to the Children's negative feelings toward Father is completely within the purview of the juvenile court. *See Thomas*, 189 Md. App. at 453. As before, appellant fails to assert a lack of any competent evidence to support the court's findings on this factor. This Court holds that the

juvenile court's factual findings regarding FL § 5-323(d)(4) are based on competent evidence, and thus are not clearly erroneous.

In sum, the juvenile court considered the required factors under FL § 5-323(d) and made specific findings of fact as to each factor, which we have determined are not clearly erroneous. From these findings, all of which favored a termination of Father's parental rights, the court concluded that under FL § 5-323(b) exceptional circumstances existed that would make a continuation of the parental relationship between Father and the Children detrimental to their best interests and that severing Father's parental rights was in the Children's best interests. Critical to its determination, the court expressly cited, among other things, (1) Father's denial of a final opportunity for the Children to see their dying mother, (2) Father's physical abuse of A.M. and D.M., (3) the Children's consistent and unequivocal view over three years that they did not want to have a relationship with Father, (4) the Children's views toward Father being well-formed, reflective of considered judgment, and unlikely to change in the foreseeable future, (5) the Children's stable and healthy current placement, and (6) the detrimental nature of a continuation of the parent-child relationship to the Children's mental and emotional well-being. Based on the court's stated reasons, and our review of the entire record, this Court holds that the juvenile court did not err as a matter of law by concluding that by clear and convincing evidence exceptional circumstances existed that would make the continuation of Father's parental relationship detrimental to the Children's best interests and that the court did not abuse its

discretion by concluding that the termination of Father's parental relationship was in the Children's best interests.

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