Circuit Court for Howard County
Case No. C-13-JV-19-000142

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2244

September Term, 2019

IN RE: J.S.

Arthur,
Gould,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: September 18, 2020

In an order dated January 6, 2020, the Circuit Court for Howard County granted guardianship of two-year-old J. to the Howard County Department of Social Services, with the right to consent to adoption. At the same time, the court terminated the parental rights of both of J.'s biological parents. J.'s mother appealed.[1] We affirm.

FACTUAL AND PROCEDURAL HISTORY

A. Mother's History of Substance Abuse and Mental Health Concerns

J. was born on January 14, 2018. At birth, both J. and her mother ("Mother") tested positive for heroin and cocaine. Mother, who was 26 at the time, admitted to using heroin on the day she delivered.

Mother has an extensive history of substance abuse, including overdoses, and admits to having "alcoholic tendencies." Mother began using cocaine when she was 13 years old. She stopped attending school after completing the eighth grade and left home when she was 17 years old. She started abusing heroin shortly thereafter. Mother received drug treatment several times between 2011 and 2019. Mother's first child, E., had illegal drugs in his system when he was born in 2014. He was removed from Mother's care because of her drug addiction.[2]

[1] The juvenile court interpreted J.'s father's voluntary failure to appear or participate in the guardianship hearing proceeding as consent to the termination of his parental rights. He does not dispute the decision.

[2] J. and E. have different fathers. Before J.'s birth, the Circuit Court for Anne Arundel County found E., who is now approximately six years old, to be a child in need of assistance (*see infra* n.6) and awarded custody to his paternal grandmother. From 2014 until May 31, 2019, Mother had visited E. only once.

Mother struggles with mental health issues. She has admitted herself for psychiatric treatment on several occasions. When J. was born, Mother had been under the care of a psychiatrist for medication management, but she was not in mental health treatment. At that time, she reported diagnoses of anxiety, Major Depressive Disorder, and Attention Deficit Hyperactivity Disorder. After J.'s birth, Mother refused to take her prescribed psychiatric medications.

Mother and J.'s father ("Father") had been in an "on-again, off-again" relationship for six or seven years. Like Mother, Father has a history of cocaine and heroin abuse. Mother describes her life with Father before J.'s birth as "bad" because of their heroin addictions. She reported that they fought all the time.

Mother and Father each have criminal records. By Mother's own admission, she has been arrested at least 45 times. At J.'s birth, Mother was on probation for a fourth-degree sexual offense.

B. The Department's Placement of J. in Foster Care

On the day when J. was born, Mother was transported to the emergency room in active labor after reporting a domestic violence incident with Father. Mother reported that Father, who had also used heroin that day, had "beat her up." Father was arrested and incarcerated for three weeks.[3]

[3] Mother filed for a protective order against Father, but did not follow through with the final hearing. She later minimized the incident, describing it as a miscommunication.

On January 15, 2018, the Howard County Department of Social Services ("the Department") received a report that J. had been born substance-exposed. Thereafter, the Department began providing Mother with family-preservation services.

Mother's allegations of domestic violence and admitted substance abuse prompted the Department to present Mother with a safety plan, under which Mother and J. would be under 24-hour supervision upon being discharged from the hospital. Mother agreed to the terms of the plan, identifying an "acquaintance," Mr. B., as a person who would be willing and able to supervise her interactions with J. Mr. B., Mother, and a Department social worker each signed the plan, which specified that Mr. B. would not allow either Mother or Father to be alone with J. Mother later admitted that she had just met Mr. B. a few days earlier.

J., who was experiencing drug-withdrawal symptoms, remained in the hospital in the Neonatal Intensive Care Unit until January 24, 2018, when she was released to Mother under the safety plan.

On Saturday, January 27, 2018, local police officers went to Mother's home to conduct a welfare check and to ensure that the safety plan was being followed.[4] When the officers first arrived, at 5:00 p.m., Mother refused to answer the door.

The officers returned to the home at 9:00 p.m. with a Child Protective Services worker, Sarah Wise. When Mother opened the door to her single-room basement

[4] Since J.'s case had been assigned to a Department social worker on January 16, 2018, Mother had cancelled an appointment, been two hours late to another appointment, and been unavailable when unannounced home visits and phone calls were attempted.

apartment, it was difficult for Ms. Wise to walk throughout the room because the room was so cluttered. Mr. B. was not present, and Mother, who was alone with J., admitted that she had violated the safety plan. Ms. Wise smelled alcohol on Mother's breath, and Mother admitted that she had started drinking when the police came earlier that day. Ms. Wise removed J. from Mother's custody and placed her in the care of Mr. and Mrs. A., where she has remained ever since.

C. Mother's Failure to Visit J. Regularly or to Make Progress Addressing Her Drug Use and Mental Health Problems

January – June 2018

On January 29, 2018, the juvenile court held a shelter care hearing, at which the court found it contrary to J.'s welfare to remain in Mother's or Father's custody and continued her placement in shelter care with the A. family. Over the next several months, Mother did not maintain regular contact with the Department, missed several visits with J., and failed to make significant progress toward addressing her drug use and mental health problems, despite the Department's attempts at assistance.

Mother had her first supervised visit with J. on January 30, 2018. She cancelled the visit, however, so she could meet with Father's attorney and attend his bail review hearing.[5]

[5] Father was released the following day, but two months later was re-incarcerated because his heroin use, including four overdoses, violated his conditional release. Father remained incarcerated until he entered an inpatient drug-treatment program in May 2018.

In February 2018, Mother visited with J. three times. On each of these occasions, Ms. Wise discussed drug treatment with Mother, but Mother repeatedly refused to accept treatment or mental health referrals, claiming that she would find her own resources. During a phone call on February 6, 2018, Ms. Wise suggested that Mother participate in a substance abuse assessment through Partners in Recovery (which had contracted with the Department), but Mother declined. On February 8, 2018, Mother agreed to complete a psychological evaluation, but three days later she said that she would not participate in any evaluation arranged by the Department. When Mother missed her visit with J. on February 15, 2018, she Ms. Wise that she and Father were facing eviction; Ms. Wise directed Mother to the Community Action Council for eviction prevention, as she had done ten days earlier.

Following an adjudicatory hearing on the Department's petition on February 21, 2018, the juvenile court found that J. was a child in need of assistance ("CINA")[6] and ordered a permanency plan[7] of parental reunification. The Department was awarded

[6] A child in need of assistance is a child who requires court intervention because (1) "[t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder" and (2) "[t]he 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 (1974, 2013 Repl. Vol., 2018 Supp.), § 3-801(f) of the Courts and Judicial Proceedings Article.

[7] A court must create a permanency plan "when a child is removed from the home for health or safety reasons and put in an out-of-home placement." *In re James G.*, 178 Md. App. 543, 568 (2008). The plan is "'an integral part of the statutory scheme designed to expedite the movement of Maryland's children from foster care to a permanent living . . . arrangement.'" *Id.* at 571 (quoting *In re Damon M.*, 362 Md. 429, 436 (2001)). The plan "'provides the goal to which the parties and the court are committed to work.'" *Id.* (quoting *In re Damon M.*, 362 Md. at 436).

custody of J. for continued placement in foster care. The juvenile court permitted Mother to have supervised visitation with J. twice per week and ordered her to complete substance abuse and psychiatric or psychological evaluations.

Mother did not attend any visits with J. in March 2018.

Mother re-engaged with the Department on April 24, 2018, for a supervised visit with J., which the Department ultimately cancelled after Mother arrived 30 minutes late. Cheryl Lawson-Anderson, the licensed master social worker who was assigned to J.'s case following the adjudicatory hearing, noted that Mother was dirty and unkempt in appearance. Mother reported that she was going to be evicted from her apartment and confirmed that she was using drugs again, but expressed a desire to enter a drug-treatment program. Ms. Lawson-Anderson and Mother called a treatment program case manager, who agreed to see Mother the following day to assist her in getting into a program. Ms. Lawson-Anderson arranged for a taxi to transport Mother to the appointment, but Mother did not attend the appointment.

The Department did not hear from Mother again until May 2, 2018, when Mother informed Ms. Lawson-Anderson that she was living at an inpatient drug treatment facility, Hope House, and asked to see J. Ms. Lawson-Anderson arranged for a visit between Mother and J. on Mother's Day, May 12, 2018. When Mrs. A., J.'s foster mother, arrived with J., Mother was in the midst of a heated argument with another person.

On May 21, 2018, a counselor at Hope House notified Ms. Lawson-Anderson that they had to call the police twice in the past several days because of Mother's aggressive

behavior towards the staff and other residents at the facility. On the second occasion, the police had transported Mother to the hospital out of a concern about her mental health. According to the counselor, Hope House had to discharge Mother from the 30-day program before she completed it because the staff could not manage her significant mental health needs.

On June 4, 2018, Mother called Ms. Lawson-Anderson, "demanding to see her daughter." Ms. Lawson-Anderson advised Mother, who was "very belligerent on the phone," that Mother needed to meet with her before visitation could resume with J. Although the Department scheduled a taxi to transport Mother to a meeting the following day, Mother did not show up.

Mother was briefly incarcerated for a criminal offense in June 2018. She did not visit J. or maintain contact with the Department between Mother's Day and a CINA review hearing on June 27, 2018. At the review hearing, the juvenile court found that J. was still a CINA and continued her custody with the Department for placement in foster care. Despite having the opportunity to visit J. twice per week, Mother had only visited 11 times during the first 21 weeks when J. was in foster care.

July – December 2018

During July and August 2018, Mother lived at a residential sober-living facility in Washington, D.C. Although Mother had a standing appointment for two-hour weekly visits and the Department provided transportation for Mother any time she requested it, she visited with J. only twice in July 2018. Mother did not visit with J. in August 2018, but did attend two visits with J. in September 2018.

On September 14, 2018, Mother entered into a service agreement[8] with the Department. Under the agreement, Mother's tasks included: (1) participation in random drug screens; (2) participation in a psychiatric evaluation and following recommendations; (3) submitting to a psychiatric evaluation and following treatment recommendations; (4) attending weekly supervised visits with J.; (5) obtaining and providing proof of employment; (6) providing proof of housing in the form of a lease with adequate space for J.; (7) completing a parenting class; (8) maintaining contact with the Department; and (9) completing an outpatient substance-use program.

After Mother left her sober living program at some point in September 2018, she did not visit J. or communicate with the Department for nearly three months.

When Mother finally called the Department on December 7, 2018, to re-engage in services, she had reunited with Father. They had been homeless for approximately two months, they admitted to using drugs during this period, and Father had overdosed on one occasion. Mother informed the Department that at the beginning of December 2018 Mother and Father had moved to Crewe, Virginia, with Father's parents. Crewe is approximately three hours away from Howard County, where J. was residing with her foster family.

[8] A service agreement is an agreement between a parent and a local Department of Social Services that, among other things, identifies the issues a parent must work on while the parent's child is in foster care. Maryland Dep't of Human Resources, Soc. Servs. Admin., *A Handbook for Youth: Out of Home Placement – Foster Care* 3 (2005), http://www.dhr.state.md.us/blog/wp-content/uploads/2012/10/a-handbook-for-youth-out-of-home-placement.pdf.

On December 20, 2018, Mother and Father met with Ms. Lawson-Anderson to discuss their long-term plans for J. Ms. Lawson-Anderson reviewed the terms of the service agreement with them, as well as the Interstate Compact for the Placement of Children (ICPC) process,[9] as both parents indicated that they would be residing in Virginia for the foreseeable future. Both parents submitted to drug screens, which were negative. Mother informed Ms. Lawson-Anderson that she could find the resources she needed in Virginia to address her mental health needs, but that she would continue to receive drug treatment through MATClinic[10] in Maryland when she came to visit with J. After the meeting, both parents visited with J. for one hour. Ms. Lawson-Anderson noted that J. "cried a lot and was inconsolable for at least the first half hour of the visit," before eventually warming up to her biological parents.

January – July 2019

On January 15, 2019, Mother and Father participated in a psychological evaluation with Dr. Carla Rhodes. Dr. Rhodes diagnosed Mother with cocaine and opioid use disorders. She recommended that Mother attend outpatient substance-abuse programs

[9] *See* Md. Code (1984, 2019 Repl. Vol.), §§ 5-601- 5-611 of the Family Law Article. The ICPC is a binding contractual agreement among all fifty states that "extends the jurisdictional reach of a party state into the borders of another party state for the purpose of investigating a proposed placement [for a child in the foster care system] and supervising a placement once it has been made." *In re Adoption No. 10087*, 324 Md. 394, 404 (1991).

[10] MATClinics are "dedicated to helping people recover from addiction to opioids through access to Medication Assisted Treatment (MAT). Opioids include prescription pain medications such as codeine, Percocet, Vicodin, OxyContin, Hydrocodone and Demerol, as well as illicit street opioids like heroin and fentanyl." MATClinic, *Recover from Opioid Addiction*, https://www.matclinics.com.

and engage in individual psychotherapy "to identify emotions and circumstances that put [her] at risk for relapse[.]" Mother refused to submit to drug testing on January 23, 2019.

From her previous visit with J. on December 20, 2018, until the end of January 2019, Mother missed two out of three scheduled visits.

On January 29, 2019, Mother moved to transfer J.'s CINA case to Virginia, stating that it was "prohibitive and unrealistic" to require Mother to engage in services and attend visits in Howard County, given the distance from her new residence. The Department did not support Mother's motion, and the court ultimately denied it.

Mother visited J. once in February 2019. Although she missed most of the visits in March, April, and May 2019, she did begin to use some services. Mother completed parenting classes in Virginia; engaged with a local therapist and attended several sessions funded by the Department; and continued to attend MATClinics, where she had several negative urine tests,[11] until she stopped appearing for treatment after April 27, 2019.[12] Despite the Department's commitment to pay for therapy services, Mother did not attend further treatment after May 28, 2019.

At a hearing on May 31, 2019, the juvenile court changed J.'s permanency plan from reunification to adoption by a non-relative. The court found that J. was bonded to Mr. and Mrs. A., her foster parents. The court also found that because of their infrequent

[11] As later noted by the juvenile court, while the screening results were negative, those tests were neither random nor observed.

[12] Mother let her medical assistance lapse sometime in May 2019 and did not reapply for the benefits needed to continue treatment.

contact with J., she was not bonded with her biological parents. After expressing several other concerns regarding Mother's (and Father's) lack of significant progress, the court concluded that J. could not "be safely reunified with her parents in the near future" and did not deserve to remain in "limbo." At that hearing, Mother was arrested on several open warrants of which she had been aware for months.

Mother did not visit J. in June 2019, and she was no longer in drug treatment or individual therapy. Mother's last visit with J. occurred on July 26, 2019. In total, Mother attended just 11 of 51 potential weekly visits with J. in 2019.

On July 10, 2019, the Department filed a petition for guardianship of J. Mother and Father filed timely objections.[13]

Mother stopped communicating with the Department and did not visit J. or engage in any services after July 2019. She requested a visit in September 2019, but failed to attend the visit.

Mother continued to reside with Father in Crewe, Virginia, until she was incarcerated on outstanding warrants on November 1, 2019, and detained pending hearings in Anne Arundel County, Prince George's County, and Virginia.

D. J.'s Adjustment to Foster Care

J. was placed with her foster parents, Mr. and Mrs. A., when she was less than three weeks old and has remained with them since that time. J. is bonded to Mr. and Mrs.

[13] In November 2019, the juvenile court granted Father's counsel's request to strike her appearance. Father advised the Department that he would not attend the guardianship hearing, and he did not appear.

A., whom she calls "Mama" and "Pop Pop." Mr. and Mrs. A. consider J. part of their family and are willing to adopt her. J. is thriving in their home and is meeting all her developmental milestones.

Ms. Lawson-Anderson, who by the start of J.'s guardianship hearing in December 2019 had been assigned to J.'s case for nearly 22 months, explained to the juvenile court that J. is not bonded to Mother because she has not visited frequently enough to form a relationship with J. or to demonstrate to J. that she is important to her. Although Mother has Mrs. A.'s telephone number, she has only called J. two or three times during the nearly two years that J. has lived with the A. family. Ms. Lawson-Anderson supervised most of the visits between Mother and J. and observed that J.'s transition from her foster parents to Mother was difficult for J. Although Mother behaved appropriately in her interactions, J. would usually cry for approximately 15 minutes and cling to her foster parent at the beginning of the visit. Ms. Lawson-Anderson testified that, while she does not doubt that J.'s parents love her, she perceived that "their addiction was more important to them."

E. The Termination of Parental Rights Hearing

A hearing on the Department's guardianship petition commenced on December 19, 2019. At the start of the proceedings, Mother, through counsel, requested a postponement. Mother's counsel informed the juvenile court that Mother had refused to be transported to the courthouse from the detention center and that counsel had driven to the detention center and spoken to Mother. Counsel advised the court that Mother had

had a "spooky affect" and seemed to be in the middle of a mental health crisis that made her unable to participate in the proceedings that day.

The juvenile court denied the postponement request and proceeded with the first day of the hearing, with testimony from Ms. Wise (the Department's protective services worker), Mrs. A., and Ms. Lawson-Anderson. Mother was present for the remaining two days of testimony and the court's oral decision.

Mother did not request a postponement when the second day of the hearing began. After the first witness had concluded her testimony and the Department announced its intention to call Mother as its next witness, however, Mother made another request for a postponement. Mother's attorney alerted the court that Mother was not in the proper mental state to testify and needed additional time to "afford [her] the opportunity to receive medication." The juvenile court, having observed Mother's strange behavior[14] in the courtroom, granted the request, giving Mother a two-week continuance.

Mother appeared and testified on the third day of the hearing, January 2, 2020. The court later noted that Mother gave "rambling, sometimes vague, [and] inconsistent answers during her testimony[.]"

The juvenile court announced its decision granting the Department's petition for guardianship on Friday, January 3, 2020, followed by a written order on January 6, 2020.

[14] The court remarked that it had noticed Mother "drawing or writing something on a piece of paper, she almost put it up to her face, then took it down, and now she's torn it up." "She [was] sometimes mumbling or talking. . . and [the court learned] that during one of our breaks she started talking about a government conspiracy." At one point, the court admonished Mother for staring at Mrs. A., the foster mother.

Among other things, the court found that the Department had made reasonable efforts to facilitate J.'s reunification with Mother. The court found by clear and convincing evidence that Mother was unfit to remain in a parental relationship with J. "by virtue of [Mother's] lack of progress with mental health and substance abuse treatment; [her] failure to have or maintain regular contact with [J.] in order to build any kind of relationship or bond with [her]; . . . [and the lack of] change or progress in [Mother's] situation for the past two years." In addition, the court found that the facts demonstrated "exceptional circumstances that would make continuation of the relationship" between J. and Mother "detrimental to the best interests of the child" because J. had been in the sole care of her foster parents her entire life and they were the only people she knew and considered to be parents.

Mother noted a timely appeal.

QUESTIONS PRESENTED

Mother presents three questions, which we have rephrased for clarity:

1. Did the juvenile court abuse its discretion by denying Mother's requested postponement and proceeding with the first day of the guardianship hearing in Mother's absence?

2. Did the juvenile court err in finding that the Department made reasonable efforts to offer services to facilitate reunification to Mother?

3. Did the juvenile court err in finding that Mother was unfit and that exceptional circumstances made continuation of her parental relationship with J. contrary to the child's best interest?

For the reasons set forth below, we shall affirm the juvenile court's ruling.

STANDARD OF REVIEW

When reviewing a juvenile court's termination of parental rights, this Court "simultaneously appl[ies] three different levels of review." *In re Shirley B.*, 419 Md. 1, 18 (2011) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). Factual findings are upheld unless they are clearly erroneous. *In re Yve S.*, 373 Md. at 585. The trial court's legal conclusions are reviewed *de novo* to determine if they are correct. *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 708 (2011). The ultimate conclusion of the juvenile court will not be disturbed unless "there has been a clear abuse of discretion." *In re Adoption of Ta'Niya C.*, 417 Md. 90, 100 (2010). A court abuses its discretion if its decision "does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective." *In re Adoption/Guardianship of Jayden G.*, 433 Md. 50, 87 (2013) (citation omitted).

DISCUSSION

I. Commencement of the TPR Hearing Without Mother

Mother argues that the juvenile court abused its discretion and violated her right of due process when it decided not to allow a continuance on the first day of the termination of parental rights hearing, despite Mother's absence.

"The question of what process is due depends on the facts of each case." *In re Adoption/Guardianship No. 6Z98001*, 131 Md. App. 187, 199 (2000). This Court has held that parents are not necessarily denied due process when they cannot be physically present for all or part of a guardianship proceeding. *Id.*; *see id.* at 191-97 (rejecting an incarcerated father's claims that the juvenile court deprived him of due process in

denying his motions to dismiss and for a continuance based on his absence from the proceedings, either in person or by speakerphone). When a parent is unable to attend the hearing, due process requires only that the parent be afforded the opportunity to participate in the proceeding in some meaningful way. *Id.* at 193-94.

Mother had the opportunity to participate in the termination of parental rights hearing in a meaningful way. Although Mother refused to be transported from the detention center to the courthouse on the first day of proceedings, she was present for the remaining two days of testimony and had the opportunity to testify herself. When Mother was not physically present, she was represented by counsel with whom she had an existing professional relationship. Mother's attorney cross-examined each of the witnesses who testified in Mother's absence, and Mother never asked to participate by other means. When Mother appeared in court the following day, she had the ability to recall those witnesses, but chose not to do so.[15]

For the first time on appeal, Mother claims that the juvenile court erred because it should have allowed her the opportunity "to review the audio recording" of the first day of the hearing "and pose additional questions." Mother never made this request of the juvenile court; therefore, she failed to preserve any claim of error. *See* Md. Rule 2-517; Md. Rule 8-131(a). We cannot fault the court for failing to accede to a request that was not made.

[15] In fact, Mother did not object to the two witnesses from the first day remaining in the courtroom, despite the rule on witnesses. *See* Md. Rule 5-615. The failure to object suggests that Mother had no interest in recalling those witnesses once she had agreed to attend the hearing.

The decision to grant a continuance lies within the sound discretion of the trial judge, who is uniquely situated to evaluate the facts and make an informed determination of whether justice requires the continuance. *See* Md. Rule 2-508; *Serio v. Baystate Props., LLC*, 209 Md. App. 545, 554 (2013). In a termination of parental rights case, the court's paramount consideration is the best interests of the child. *In re Adoption/Guardianship of Jayden G.*, 433 Md. at 82 (citing *In re Adoption of Ta'Niya C.*, 417 Md. at 94). The Court of Appeals has repeatedly recognized that "'it is in a child's best interest to be placed in a permanent home and to spend as little time as possible in foster care.'" *Id*. at 84 (quoting *In re Adoption/Guardianship No. 10941*, 335 Md. 99, 106 (1994)). In this case, when denying Mother's request for a continuance, the juvenile court explained, "[t]his child has been out of care for a long time. [She] needs permanency. We have to get this matter resolved."

The court's decision to proceed with the first day of the hearing in Mother's absence had a reasonable relationship to the objective of seeking some permanency in J.'s life. When Mother refused to attend the first day of the hearing, the juvenile court acted well within its discretion in denying Mother's request, through counsel, for a continuance. The court did not deprive Mother of due process.

II. Termination of Mother's Parental Rights

A court may order the termination of parental rights ("TPR") upon a showing either "that the parent is 'unfit' or that 'exceptional circumstances' exist which would make the continued custody with the parent detrimental to the child's best interest." *In re*

Adoption/Guardianship of Rashawn H., 402 Md. 477, 498 (2007); *accord In re Adoption/Guardianship of H.W.*, 460 Md. 201, 217 (2019).

"[T]o guide and limit the court in determining the child's best interest" (*In re Adoption/Guardianship of Rashawn H.*, 402 Md. at 499), Md. Code (1984, 2019 Repl. Vol.), § 5-323 of the Family Law Article ("FL"), lists "a series of specific factors that a juvenile court must consider in any TPR proceeding." *In re Adoption/Guardianship of Amber R.*, 417 Md. at 709. In short, these factors concern: (1) the services offered to the parents; (2) the results of the parents' efforts to adjust their circumstances or conduct; (3) the parents' history of domestic abuse or neglect; and (4) the child's emotional ties to the family and adjustment to the new home. *See* FL § 5-323(d)(1)-(4).

The court does not "weigh any one statutory factor above all others" and "must review all relevant factors and consider them together." *In re Adoption/Guardianship No. 94339058/CAD in Circuit Court for Baltimore City*, 120 Md. App. 88, 105 (1998).[16] If, after consideration of the statutory factors, the "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

[16] The court may consider additional relevant factors, including: "'such parental characteristics as age, stability, and the capacity and interest of a parent to provide for the emotional, social, moral, material, and educational needs of the child.'" *In re Adoption of Ta'Niya C.*, 417 Md. at 104 n.11 (quoting *Pastore v. Sharp*, 81 Md. App. 314, 320 (1989)); *accord In re Adoption/Guardianship of H.W.*, 460 Md. at 220.

rights of the parent is in a child's best interests," the court may terminate the parent's rights and grant guardianship of the child without the parent's consent. FL § 5-323(b).

A. Efforts to Facilitate Reunification

Mother argues that the juvenile court erred in finding that the Department fulfilled its obligation under FL § 5-323(d)(1) to offer services to her in an effort to facilitate reunification with J. We review the court's finding under the clearly erroneous standard. *See In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. 30, 55 (2017). Under this standard, "[o]ur task is limited to deciding whether the circuit court's factual findings were supported by substantial evidence in the record[.]" *L.M. Wolfe Enters., Inc. v. Maryland Nat'l Golf, L.P.*, 165 Md. App. 339, 343 (2005). In our view, the record evidence fully supports the juvenile court's finding that the Department offered adequate services to Mother.

Section 5-323(d)(1) requires the court to consider: "(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[.]"

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. *In re Adoption/Guardianship of Rashawn H.*, 402 Md. at 500. 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 child[] 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. The concept of "*reasonable*" efforts reflects an understanding that a local department of social services need not devote "'excessive efforts to repair hopelessly dysfunctional families.'" *See In re Shirley B.*, 419 Md. at 23 (quoting Kathleen S. Bean, *Reasonable Efforts: What State Courts Think*, 36 U. TOL. L. REV. 321, 326 (2005)).

The record demonstrates that the Department repeatedly offered to make referrals for mental health and substance abuse treatment and to provide transportation for Mother when it was in contact with her, but Mother repeatedly refused to accept the Department's offers, claiming she was able to obtain her own resources.

When J. entered foster care, the Department immediately attempted to connect Mother with appropriate services, but Mother declined. In February 2018, Ms. Wise discussed drug-treatment options with Mother on each of the three times that they met, but Mother again declined. Ms. Wise also discussed drug treatment with Mother during a February 6, 2018, phone call and suggested that Mother participate in a substance abuse assessment though Partners in Recovery, with which the Department had a contract, but Mother refused. Similarly, on February 11, 2018, Mother told Ms. Wise that she would not participate in any psychological evaluation arranged by the Department.

When Mother re-engaged with the Department in April 2018, she admitted that she had resumed using drugs. Ms. Lawson-Anderson and Mother discussed the need to enter drug treatment, and together they called a case manager at a drug-treatment

program, securing an intake appointment for the following day. Ms. Lawson-Anderson arranged for a taxi to transport Mother to the appointment, but Mother did not attend the intake.

Mother remained out of contact with the Department in the second half of 2018 until eventually resurfacing in Virginia in December 2018. After she re-engaged with the Department, Mother's communications remained inconsistent and sporadic. Ms. Lawson-Anderson discussed the need for drug and mental health treatment with Mother at each of the 11 visits she attended in the first half of 2019, and each time Mother stated that she would seek her own resources. Despite her claims, Mother never successfully completed any drug treatment or mental health programs.[17]

The Department was not required to track Mother down and confirm that she was keeping her word and finding her own resources. *See In re Adoption/Guardianship of Rashawn H.*, 402 Md. at 500 ("The State is not obliged to . . . cure or ameliorate any disability that prevents the parent from being able to care for the child"). Mother's inability or failure to address her drug use or mental health needs on her own is not a shortcoming to be attributed to the Department. The evidence supports the juvenile

[17] Mother claims that the juvenile court gave "short shrift" to her efforts to engage in services, such as engaging in counseling and a parenting program on her own in Virginia. The court, however, is required to consider "the *results* of the parent's effort" to adjust her circumstances, condition, or conduct, not her incomplete attempts. *See* FL § 5-323(d)(2) (emphasis added).

court's finding that the Department fulfilled its obligation to Mother by making many recommendations and offering to make treatment referrals.

Finally, Mother faults the Department for not supporting her motion to transfer J.'s CINA proceeding to Virginia and not requesting a home study of the Virginia residence under ICPC. We agree with the Department that it would not have been in J.'s best interest to move her from the only home that she had ever known, particularly when Mother had not engaged in services, had no shown a commitment to raising her child, had seen J. only three times in the five months preceding the motion, and had refused to submit to drug testing on January 23, 2019, just days before the motion was filed.

B. Presumption that Parental Relationship is in Child's Best Interests

Because 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. at 495 (citations omitted). The natural rights of parents, however, are "not absolute[.]" *Id.* Parental 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.* at 497. 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.

Mother argues that the court improperly terminated her parental rights because its ruling did not specifically mention the presumption that a child's best interest is served by maintaining a parental relationship.

A juvenile court must be "mindful of the presumption" (*In re Rashawn* H., 402 Md. at 501), but it does not need to express any "magic words" if its factual findings demonstrate that the decision is in the child's best interest. *See In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 738 (2014) (upholding the juvenile court's decision that recited the statutory language and included the term "best interest," but "did not explicitly state that a termination of [Mother]'s parental rights would be in [the child's] best interest in either its oral opinion or written order"). In this case, the court addressed the presumption favoring a continuation of the parental relationship when, after reviewing the evidence and discussing the required factors under FL § 5-323(d), it concluded that Mother was unfit and that exceptional circumstances would make the continued relationship detrimental to J.'s best interest. From our review of the decision, we are confident that the experienced trial judge proceeded as he did with a full appreciation of the (rebuttable) presumption favoring a continuation of the parental relationship.

Mother challenges the juvenile court's consideration of her incarceration as a "disability" under FL § 5-323(d)(2)(iii), the statutory factor that requires the court to consider "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."

In addressing this factor, the juvenile court explained:

> Well, the [Department] argued to this Court that the mother's mental health issues of anxiety, depression, bipolar, in addition to her substance use issue rises to the level of a disability . . . And that makes [her] unable to care for the child's immediate, ongoing physical needs.
>
> I had asked during the argument what is the disability. Because I also see or consider the mother's incarceration as a disability. We don't know how long she is going to be unable or unavailable to be able to care for this child. So we know she has open warrants in three other jurisdictions. We know she still has something here. And that makes her unable to care for the child's immediate and ongoing physical or psychological needs.

Mother is correct that incarceration "does not literally qualify as a disability under the statutory definition[.]" *In re Adoption/Guardianship No. J970013*, 128 Md. App. 242, 252 (1999). The Department concedes this point, but emphasizes that "under the facts of a particular case," incarceration may be "a critical factor in permitting the termination of parental rights, because the incarcerated parent cannot provide for the long-term care of the child." *Id.* at 252.

We do not need to evaluate whether it was appropriate to consider Mother's current incarceration and (likely future incarceration) in this TPR proceeding, because the juvenile court did not rely on its characterization of Mother's incarceration as a "disability" as the basis for its ultimate findings of unfitness or exceptional circumstances. Here, the court found Mother unfit to continue her parental relationship with J. because of her lack of progress in addressing her substance abuse and mental health issues, together with her failure to maintain sufficient contact with J. so as to build "any kind of relationship or bond with [J.]" The court also expressly found that "the facts demonstrate exceptional circumstances that would make continuation of the relationship

detrimental to the best interests of the child," because J.'s foster parents "are the only people this young child knows and considers to be the parents," while Mother had no bond with J.

Moreover, assuming the court erred by considering Mother's incarceration as a disability under FL § 5-323(d)(2)(iii), the court nonetheless could have found (and did) the existence of a parental disability[18] by virtue of Mother's mental health and substance abuse issues, which are evidenced throughout the record. In these circumstances, the court's error, if any, is harmless.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[18] Under FL § 5-101(f), "disability" means any of the following conditions (as defined in Health-General Article of the Maryland Code): (1) alcohol dependence, (2) drug dependence, (3) a mental disorder, or (4) intellectual disability. Maryland Code (1982, 2019 Repl. Vol.), § 8-101(k) of the Health-General Article, defines "drug dependence" as a disease characterized by: (1) physical symptoms of withdrawal or tolerance and (2) "drug abuse," which is a "disease . . . characterized by a pattern of pathological use of a drug with repeated attempts to control the use, and with significant negative consequences in at least one of the following areas of life: medical, legal, financial, or psycho-social." *Id.* § 8-101(j). A "'[m]ental disorder' includes a mental illness that so substantially impairs the mental or emotional functioning of an individual as to make care or treatment necessary or advisable for the welfare of the individual or for the safety of the person or property of another." *Id.* § 10-101(i)(2).