UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2323

September Term, 2014

IN RE: ADOPTION/GUARDIANSHIP OF EVAH E. AND EVAN E.

Krauser, C.J.,
Graeff,
Kehoe,

JJ.

Opinion by Graeff, J.

Filed: June 10, 2015

Mr. G., appellant, appeals the order of the Circuit Court for Washington County, sitting as a juvenile court, terminating his parental rights over his two children, Evah E. and Evan H.[1] He asserts one question for our review:

Did the circuit court err in terminating father's parental rights?

For the reasons set forth below, we shall affirm the judgment of the juvenile court.

FACTUAL AND PROCEDURAL BACKGROUND

Within days after twins Evah and Evan were born, hospital workers contacted the Washington County Department of Social Services (the "Department") regarding concerns with respect to Ms. S's mental health status and living conditions. The Department sought to shelter the twins, and on December 3, 2012, the juvenile court found each child to be a child in need of assistance ("CINA").[2]

On June 18, 2014, the Department filed petitions for guardianship seeking guardianship of both Evah and Evan. Both parents filed objections to the petitions. On October 9, November 17, and November 20, 2014, the juvenile court held a termination of parental rights hearing.

Allison Lillis testified that she was an investigator for the Department. She testified to her contact with Ms. S. and Mr. G. at the hospital after the twins were born. Ms. S. and

[1] The children's mother, Ms. S., consented to the termination of her parental rights, and she is not a party to this appeal.

[2] A child in need of assistance ("CINA") is a child who requires court intervention because the child has been abused or neglected, or has a developmental disability or mental disorder, and whose parents, guardian, or custodian cannot or will not give proper care and attention to the child and the child's needs. Md. Code (2012 Supp.) § 3-801(f) of the Courts and Judicial Proceedings Article.

Mr. G. initially would not inform her where they lived, and Mr. G. refused to state whether he was the father of the children. Eventually, Mr. G. admitted that he was living in "a camper that was hooked up to his truck," but he refused to tell Ms. Lillis specifically where he parked his truck. Ms. S. eventually stated that she lived with her mother, but she refused to give Ms. Lillis an address.

Mr. G. was "verbally aggressive" with Ms. Lillis and the hospital staff throughout these interactions. The sheriff's department was called to monitor the interviews, and at one point, Mr. G. was forced to leave the room. Throughout Ms. Lillis' investigation at the hospital, Ms. S. was uncooperative. At one point, Evah began experiencing seizures, and the hospital was unable to locate Ms. S. to obtain consent for emergency treatment. It was not until approximately 40 minutes later, after Ms. S. consulted with Mr. G., that Ms. S. authorized treatment.

As a result of Ms. Lillis' investigation, and because Ms. S. and Mr. G. did not appear to have an adequate plan to care for the children, the Department sheltered Evah and Evan. The children were placed in foster care after they were discharged from the hospital.

In November 2012, on two separate occasions, Mr. G. went to the Department carrying a knife. The Department subsequently obtained a "no trespass order" against Mr. G.

Mr. G. testified on his own behalf. He stated that he was "not living officially anywhere."[3] With respect to his future living arrangements, he repeatedly stated that it was "up to [Ms. S.]" because she potentially was going to obtain government housing. Ms. S. applied to have Mr. G. added to the lease six months prior to the hearing, but Mr. G. was still filling out paperwork at the time of the hearing.

Mr. G. had two children, ages 16 and 14, with his ex-wife, but he had not seen them for more than a year prior to the hearing. He stated that he had a great relationship with his children for eight years, but when his ex-wife decided to end their marriage, she prevented him from seeing his children. He admitted that, in 2007, there was a finding of "indicated" for neglect of his children, and in 2009, there was a finding of "indicated" regarding his abuse of one of his girlfriend's children.

Regarding the events at the hospital at the time of the children's birth, Mr. G. refused to acknowledge his paternity because Ms. S. told him that he was not the children's father and the timing of the pregnancy coincided with a break in their relationship. Mr. G. did not acknowledge paternity until December 2013, after he took a paternity test.[4]

[3] Throughout his testimony, and on multiple days of the hearing, the attorneys questioning Mr. G., the children's father, attempted to ascertain his address. Mr. G. was consistently evasive and refused to give a definite answer.

[4] The court found inconsistencies in Mr. G.'s assertions regarding paternity. Although he stated that he initially did not believe that he was the children's father, the Department entered into evidence a picture from the hospital's website showing Ms. S., Mr. G., and the children with the caption "Baby's Proud Family." And prior to the paternity test, Ms. S. would call Mr. G. during her visits with the children and refer to him as their "daddy." Additionally, although Mr. G. testified that he "hoped" he was the children's father, Officer Eric Knode testified that, in October 2013, he attempted (continued . . .)

With respect to his action when the Department took custody of the children, he testified that he contacted the newspaper because Ms. S. had described to him how the Department had taken custody of her first two children, and he "felt like it was wrong and . . . like someone should be there to document it." He believed that the sheriff's department did not need to come to the hospital because the situation was "perfectly calm," and he did not refuse when they asked him to leave the hospital room. He also admitted that he filled out the Vital Statistics Administration form that listed Evan's middle name as "STOLENBYDSS" and Evah's middle name as "DSSTOLEMEFRMOMMY."

Mr. G. described his relationship with Ms. S. as "difficult at times . . . really, really, really . . . good at times." Unsolicited, he offered that "[a] lot of people suggest that I'm controlling with [Ms. S.] but actually it's kind of the opposite." He testified that he simply tried to "give her the benefit of whatever experience [he could] offer."

Mr. G. did not believe that he should have been forced to undergo a parenting evaluation simply because Ms. S. previously had issues with the Department. He believed that the evaluators at the Department were untrustworthy and inconsistent. He also expressed dissatisfaction with the Department's efforts to reunify him and Ms. S. with the children, stating that he did not like the place where visitation was held, that the Department's employees were "nasty" to him, that employees were uncooperative, and that he wished they had been more receptive to his desire to record the sessions he spent with

(. . . continued) to serve Mr. G. with a court order to take a paternity test. When he approached Mr. G., who was sitting in a car, Mr. G. saw him, made a "go away" gesture with his hand, and drove away.

the children. Throughout his testimony, Mr. G. repeatedly indicated that he felt the need to record all of his interactions with the Department on his cell phone for his own personal safety and so the Department could not lie about what he said to them.[5] He compared the actions of the Department in taking children from their parents to domestic terrorism.

Mr. G. stated that his employment consisted of working at flea markets selling antiques and other goods. He did not know how much money he made doing that, as Ms. S. handled the money. He recalled one "bad" weekend when he and Ms. S. made only $21. When asked how he intended to make income in the future, he stated: "I guess I'll just figure it out like I always have my entire life." Mr. G. said that it was hard for him to find work because he was a convicted felon; he had tried, but there was no work available to him.

John Brown, a clinical professional counselor, testified that he provided counseling to both Ms. S. and Mr. G. On September 29, 2014, after a counseling session with the parents, he wrote a letter to the Department stating that Mr. G. had made specific threats against the Department and its employees. In particular, Mr. G stated: (1) "If they bring harm to one of my children, I will kill them"; (2) "If they remove my children I will kill them"; and (3) "if he were to access an AK-47 and kill people that he would wake the United States up that they [the Department] were stealing children." These were not the first threatening statements Mr. Brown had heard Mr. G. make, but they were the most

[5] Mr. G., however, refused to allow one of the Department's employees to record their conversations because he did not trust the employee.

specific.[6] As a result of these threats, several members of the Department obtained protective orders against Mr. G.

Mr. G. denied threatening to kill employees of the Department. Rather, he stated that, after he and Ms. S. had found bruises on the children and observed Evah "licking the crotch of a Barbie doll," they expressed concern to Mr. Brown regarding these things. According to Mr. G., Mr. Brown refused to report these events to the Department because they were "not credible in court." In response, Mr. G. said he stated: "Sir, if I ever find out that this is occurring, if I find out and none of you will help and I find out whose [sic] responsible, I'm going to take care of it." He denied ever mentioning an AK-47. He repeatedly refused to elaborate on what he meant by the phrase "take care of it."

Kris Hoffman, an investigator for the Department, testified that she offered Mr. G. housing, employment, and mental health services following his acknowledgement of paternity in December 2013. Mr. G. refused all services. Mr. G. did, however, begin attending visitation with the children, and Ms. Hoffman described his interactions with them as being "very appropriate."[7] Mr. G. was "verbally engaging," played with the children, read and sang to them, and encouraged Ms. S. to do so as well. And although Mr. G. was argumentative, combative, and threatening with Ms. Hoffman prior to acknowledging paternity, he was not argumentative with her after that time. Nonetheless,

[6] John Brown deemed the threatening statements that Mr. G. had made in the past implausible. For example, Mr. G. had stated: "If I had a predator drone I would probably blow [the Department's] building up."

[7] By contrast, Ms. Hoffman testified that Ms. S. struggled to engage and interact with the children.

Ms. Hoffman obtained a peace order against Mr. G. due to his threats against the Department's employees, which prevented Mr. G. from coming to the Department.

Ms. Hoffman received several emails from Ms. S. in August 2013, which stated, in part, that Ms. S. would not attend any future meetings with Ms. Hoffman without her lawyer present and that, if Ms. Hoffman continued to abridge Ms. S.'s rights, Ms. S. was going to "take the gloves off so to speak and get this in a real court." Because these statements were out of the ordinary from Ms. S., and because of her prior interactions with Mr. G., Ms. Hoffman believed they were written by Mr. G.

Ms. Hoffman also testified that Evah and Evan were "safe, happy, and healthy" with their foster family. Their foster parents interacted well with them, and there appeared to be an attachment between them.

Emily Wills, a foster care worker with the Department, testified that she supervised visitation between Ms. S., Mr. G., and the children. She was forced to intervene in visits with Mr. G. "due to Mr. G.'s agitation" with the Department, as Mr. G. was "saying things completely inappropriate for the visitation." Mr. G. said: "This is not the right place to visit"; "They are going to push the envelope too far"; and "One day they will get theirs." Nonetheless, his interactions with the children otherwise were appropriate. Ms. Wills stated that the children had an attachment to their foster parents and a comfortable relationship in their foster home. Ms. Wills offered Mr. G. visitation, a suitability to parent assessment, and employment counseling. She did not offer him housing assistance because she knew he was a convicted felon, and convicted felons cannot obtain public housing.

Dr. Carlton Munson, a professor of Social Work, testified as an expert for the Department. Dr. Munson attempted to interview Mr. G. for a parental evaluation, but Mr. G. stated that he had to talk to an attorney before he spoke with Dr. Munson. At a later date, Mr. G. told Dr. Munson that he would submit to an evaluation only if Dr. Munson permitted him to record the evaluation. Dr. Munson told Mr. G. that this was not acceptable because the questions involved in the interview were standardized, and if the questions were recorded, "there are people who actually sell that information for people who are undergoing these kind of evaluations in the court systems." Mr. G. subsequently refused to attend the evaluation.

At the close of the evidence, Ms. S. consented to the termination of her parental rights. On December 15, 2014, the juvenile court issued a written opinion terminating Mr. G.'s parental rights. The court discussed Mr. G.'s testimony that he initially did not believe that he was the father of the children, finding that Mr. G. lied in that regard.[8] It stated that this lie caused detriment to the children, noting that "[i]t cost Mr. G. a full year of direct contact with the children," and that, due to Mr. G.s "self-created absence by his failure to acknowledge paternity, or the possibility of paternity, these children bonded with and formed attachments with only their foster parents." The court also noted that Mr. G. had not seen his other children for more than two years, that he had been found indicated for

[8] The court stated that evidence inconsistent with his denial included that Mr. G. came to the hospital with Ms. S. and they posed for a family picture with the children, that Mr. G. was "heavily involved at the hospital," and Ms. S. was "unwilling or unable to sign any documents or consents without the review, explanation, or approval of" Mr. G.

neglect of his daughter, and that he had been found indicated for abuse of his girlfriend's son.

Regarding Mr. G.'s plans to care for the children, the court stated that the parties intended to go to Ohio, but they had no plans with regard to where they would live, what doctors they would take the children to, or how they would pay to travel to Ohio and care for the children along the way. The court stated that Mr. G. was too reluctant to provide any information regarding his finances for it to find there would have been "adequate resources to provide for" the children. The court stated: "The only consistent thread to [Mr. G.'s] plan to take care of two very young children was the lack of consistency." It noted that Mr. G. refused to state what his future plans were at the time of the hearing, and he blamed the Department for that. Ultimately, Mr. G. presented only "vague and overly simplistic ideas . . . about how to care for" the children.

The court noted that Mr. G. was not employed, nor did he provide any information regarding how much he made selling antiques at flea markets. Although Mr. G. said that he could support the children as a flea market dealer, "no specifics were forthcoming about how that would work." The court found that the Department made reasonable efforts to help Mr. G. obtain employment, but Mr. G. believed that his felony record prevented him from obtaining employment, and there were not "other steps that the Department should have taken to support Mr. G. getting a job."

The court stated that another obstacle to reunification was Mr. G.'s lack of housing. It noted that Mr. G. was homeless and lived in a camper attached to his vehicle for the first year of the children's lives. With respect to his assertion that Mr. G. was attempting to be

added to Ms. S.'s lease, the court stated: "There was no reasonable or believable explanation given as to how Mr. G. would be eligible for addition to the lease." The court continued:

> Mr. G. has been living out of his vehicle for several years. He makes his living at flea markets, and travels in order to do that. It was not entirely believable that Mr. G. wants to change his living structure. It is not clear that the information that Mr. G. gave about his dealings with the Housing Authority is accurate. Just like the other major contested issues in this case, individual statements by Mr. G. considered one at a time may sound reasonable, but when put all together with the objective facts, Mr. G. is not believable.
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> The [c]ourt finds that the Department's efforts on the housing issue were reasonable, and that no other reasonable options for Mr. G. were available. The [c]ourt does not believe that Mr. G. is truly seeking to settle in a home which would create a foundation of stability for these children. Even if Mr. G. is truly desiring to obtain a stable home for these children, there is no information as to when this might become possible. This leaves the children in an uncomfortable state of limbo, and does not serve the goal of permanency for these children.

The court expressed concerns that Mr. G. might suffer from a mental health issue. The court noted that

> in less than 10 years, Mr. G. went from what Mr. G. described as having a normal home and family, to living in his vehicle for several years. Mr. G. has a criminal record including a felony for which he served prison time. Mr. G., despite living in his vehicle, and stating that he has little income, has a computer and multiple cell phones that he frequently uses to record interactions with DSS.
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> When asked why he insists on recording everything, he was adamant that recording was necessary for his own personal security and protection, so that if anyone tried to lie about him, he could show what happened.

The court stated that Mr. G. engaged in what it described as a "crusade" against the Department. As examples, the court cited Mr. G.'s posting on Facebook a video showing Evah "licking the crotch of a Barbie doll." The court stated:

> In pursuing their crusade against [the Department], Mr. G. and Ms. S. violated the privacy and modesty of a child under the age of two, because they are hell-bent on pursuing their disputes with [the Department]. The dispute with [the Department] took priority over the child's interests. And, as of November of 2014, Mr. G. had no problem with this being posted. Mr. G.'s judgment as to the best interests of and protection of his children is skewed significantly by his ire at [the Department], and his view that this Department, like others around the country, take children for no reason.

The court further cited Mr. G.'s action in listing middle names for the children on the vital statistics form that would send a message that the Department steals children. The court stated that "these children were relegated to being a weapon in the fight against the Department, despite the negative impact of being saddled with names like "stolen by DSS" or "DS STOLEME FR MOMMY." The court also found that Mr. G. was the true author of the emails Ms. S. purportedly sent to the Department. It stated that these demonstrated "venom, vitriol, and a desire to do damage to [the Department] and the individuals working there, even if there is collateral damage to the children in the process." These actions persuaded the court that Mr. G. needed to undergo a mental health evaluation before reunification was even a possibility. The court also noted as concerns regarding Mr. G.'s potential undiagnosed and untreated mental health problems his threats to the Department, and his "farfetched" idea that the Department was following him.

The court summed up its findings:

> With [Mr. G.]'s extreme views as expressed in [c]ourt and in the emails, the [c]ourt does not believe that Mr. G. would voluntarily submit to

[a parenting and/or mental health] evaluation in the future. He has been avoiding it for almost a year now. In fact, lack of demonstrated effort to get housing, obtain a job, or have the requested mental health/parenting evaluation, all fits Mr. [G.]'s internal script and beliefs. His lack of effort, which he rationalizes as not needed [the kids can live in the camper, he's self-employed, and he is a stable and balanced "great dad"] ensures that reunification will not work, ensures the termination of his parental rights, and ensures that the children can continue to be the symbol of the [Department's] conspiracy against many parents, including himself.

These children are two years old, and deserving of permanency with a family to whom they are bonded, and with whom they can have a happy and stable childhood.

Mr. [G.] lost one year of parenting, bonding, and moving toward reunification through what turned out to be an absurd denial of paternity, which seemed later like mere gamesmanship.

Mr. [G.] lost the second year of moving toward reunification because of three things. First, Mr. [G.]'s own lack of cooperation with the parenting evaluation, and psychological testing which could have, early in 2014, provided a roadmap for mental health treatment. It would have provided information about a time line to achieve reunification and permanency for these children.

Second, Mr. [G.] asserted that he had a resume, had applied for all jobs and had exhausted all job opportunities, and therefore there was no point to his using department resources related to employment. He seemed quite content with his "self employment" as an antique/flea market dealer, which has been represented as producing little or no income much of the time.

Third, on the housing issue, Mr. [G.] did not seem motivated to do anything but continue to move around in his vehicle. His assertions that [Ms. S.] applied for him to be on the lease [for government housing], but 8 months later, he was filling out necessary forms for the qualification, made no sense whatsoever. With his unwillingness to answer a question about where he kept the vehicle, and his seeming paranoia about [the Department] following him such that they knew where he was for the peace order, the [c]ourt is concerned that perhaps because of Mr. [G.]'s mental health concerns, he has no desire for stable housing, because he would feel vulnerable. Whether that vulnerability would be related to "people" following him, or related to child support orders, or both, is unknown.

The court then considered the requisite factors listed in Md. Code (2012 Repl. Vol.) § 5-323(d) of the Family Law Article ("F.L."). It found that the Department offered adequate services to facilitate reunification between Mr. G. and the children, but Mr. G. did not fulfill the obligations communicated to him, and Mr. G.'s failures "make it unsafe to reunify the children" with him. It further concluded that Mr. G. "has not been able to adjust to circumstances, conduct, or conditions to make it safe for or make it in the best interests of Eva[h] and Evan [] to return to him," that there was no evidence that Mr. G. had the financial ability to support the children, and that Mr. G. did not have appropriate housing for the children. The court found that the Department "made reasonable inquiry and efforts as to the three major safety concerns with Mr. G.'s lack of housing, lack of reasonable financial support, and a parenting/mental health evaluation," and that "additional services would not be likely to bring about a lasting parental adjustment so that the children could safely be returned to [Mr. G.] within an ascertainable time." It further found that the children were happy and well-adjusted in the foster home in which they had spent the entirety of their lives.

With respect to the likely impact of termination of parental rights on the children, the court concluded that Mr. G. was more interested in fighting the Department than he was in his children. His testimony was, in large part, about his efforts in evading the Department rather than about his children, and there was "none of the warm and fuzzy that one expects from parents." Moreover, Mr. G. actively avoided taking steps such as acknowledging paternity and having a parenting evaluation that would have allowed him

to have a closer relationship with the children. As a result of these actions, the children were more bonded with their foster family. The court stated:

> This [c]ourt finds that removal now from the only home and parents that these children have known would be detrimental to the children. Because of the lack of information regarding Mr. G.'s relationship with or bond with the children, and the lack of information about his parenting assets and challenges, and the [c]ourt's concern that Mr. G. suffers from unidentified and untreated mental health issues that contribute to him desiring to live in his car, and not obtain a reportable income, the [c]ourt has evidence to support that reunification would not be possible at any time in the future.
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> For reunification, Mr. G. needs a residence, and steady income, and to demonstrate mental health stability such that he can be a steady and stable resource for these children long term.
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> Certainly a felony record can be an impediment to easy housing and employment, however, there are plenty of people coming through the criminal courts who manage to find and maintain a home and a job. Mr. G. is smart, and he is articulate. His vague and conclusory information about not being able to find a job, not wanting job seeking help, and the 8 month process of trying to be approved to be added to the lease, leads this [c]ourt to find that Mr. G. does not seek that stability.
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> The [c]ourt finds that Mr. G. likes his nomad existence, likes being "off grid" in some respects, and that he will not voluntarily change that. The [c]ourt believes that his desire to expose his perceived "injustice" of [the Department's] actions is a much higher priority for Mr. G. than actually obtaining the stability to raise one, two, or three children.
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> ***
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> Based upon the evidence before this [c]ourt, the termination of parental rights of [Mr. G.] for each child provides little, if any, disruption to the positive progress that they are each making, and little disruption to their lives at this time. The termination also supports their current placement becoming a permanent home and family.
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> In terms of the longer term impact on the children of the termination of parental rights, when they are old enough to begin to understand, the [c]ourt finds that with the positive parental relationships that they have

formed with their foster family, there will be little, if any, long-term negative impact on the children from the termination of Mr. G.'s parental rights.

The court terminated Mr. G.'s parental rights, stating:

> Having considered all of the foregoing factual determinations, the [c]ourt finds by clear and convincing evidence that the facts demonstrate that [Mr. G.] is unfit to remain in a parental relationship with the children by virtue of his previous failure to take reasonable action to obtain a stable home, a stable income, and to submit to a parenting mental health evaluation. As detailed above, there is evidence of significant mental health instability of [Mr. G.], and [Mr. G.] has focused on the fight with [the Department], to the detriment of the children. The [c]ourt finds that reunification of these children with [Mr. G.] would be unsafe for the children because there is not evidence that [Mr. G.] would meet the basic survival needs of the children including shelter, food, clothing, and a stable home. The [c]ourt also finds that reunification of the children with [Mr. G.] would be detrimental to the children in that the [c]ourt finds that with the evidence of unidentified and untreated mental health conditions of [Mr. G.], the [c]ourt does not believe that [Mr. G.] could safely support the children's mental health needs, and their positive behavioral development, physical development, psychological development, emotional development, and/or social development. The foregoing findings of [Mr. G.]'s lack of fitness to parent cause it to be in the best interest of the children to grant the Department's Petition.

STANDARD OF REVIEW

In reviewing the juvenile court's decision to terminate parental rights, we employ three interrelated levels of review:

> [W]hen the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8–131(c)] applies. [Second,] [i]f it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

In re Adoption/Guardianship of Jasmine D., 217 Md. App. 718, 733 (2014) (quoting *In re Ariana T.*, 208 Md. App. 545, 553-54 (2012)).

DISCUSSION

Mr. G. contends that the juvenile court erred in terminating his parental rights. In that regard, he sets forth several findings that he contends were erroneous: (1) the court erroneously concluded that he knew he was the children's father before the paternity test; (2) "the court's decision was based upon an unfounded determination that the children would suffer harm if removed from foster care"; and (3) the "legally impermissible conclusion that [Mr. G.'s] troubles with housing and employment were sufficient" to demonstrate his unfitness.

The Department disagrees. It asserts that "the juvenile court properly exercised its discretion in terminating parental rights where its decision was supported by clear and convincing evidence of parental unfitness."

Maryland Courts have long recognized the "fundamental right [of parents] to direct and control the upbringing of their children." *In re Victoria C.*, 437 Md. 567, 589 (2014). "The termination of fundamental and constitutional parental rights is a 'drastic' measure, and should only be taken with great caution." *In re Adoption/Guardianship of Harold H.*, 171 Md. App. 564, 576 (2006) (quoting *In re Adoption/Guardianship Nos. J9610436 & J9711031*, 368 Md. 666, 699 (2002)). A parent's fundamental right to raise his or her child, however, is not absolute. That right "must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 497 (2007).

In determining whether to terminate parental rights, "it is unassailable that the paramount consideration is the best interest of the child." *In re Adoption/Guardianship*

No. T00032005, 141 Md. App. 570, 581 (2001). *Accord In re Adoption of Ta'Niya C.*, 417 Md. 90, 112 (2010) ("the child's best interest has always been the transcendent standard in adoption, third-party custody cases, and TPR proceedings"). It generally is presumed "that it is in the best interest of children to remain in the care and custody of their parents." *Rashawn*, 402 Md. at 495. That presumption, however, "may be rebutted upon a showing either that the parent is 'unfit' or that 'exceptional circumstances' exist which would make continued custody with the parent detrimental to the best interest of the child." *Id.*

F.L. § 5-323(b) gives juvenile courts the authority to terminate an individual's parental rights. It provides:

> *Authority*. — If, after consideration of factors as required in this section, a juvenile court finds by clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interests of the child such that terminating the rights of the parent is in a child's best interests, the juvenile court may grant guardianship of the child without consent otherwise required under this subtitle and over the child's objection.

The factors that a court must consider in determining the child's best interest are set forth in F.L. § 5-323(d). They include the following:

> (1)(i) all services offered to the parent before the child's placement, whether offered by a local department, another agency, or a professional;
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> (ii) the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent; and
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> (iii) the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any;
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> (2) the results of the parent's effort to adjust the parent's circumstances, condition, or conduct to make it in the child's best interests for the child to be returned to the parent's home, including:
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> (i) the extent to which the parent has maintained regular contact with:
>
> 1. the child;

2. the local department to which the child is committed; and
3. if feasible, the child's caregiver;

(ii) the parent's contribution to a reasonable part of the child's care and support, if the parent is financially able to do so;

(iii) the existence of a parental disability that makes the parent consistently unable to care for the child's immediate and ongoing physical or psychological needs for long periods of time; and

(iv) whether additional services would be likely to bring about a lasting parental adjustment so that the child could be returned to the parent within an ascertainable time not to exceed 18 months from the date of placement unless the juvenile court makes a specific finding that it is in the child's best interests to extend the time for a specified period;

* * *

(4) (i) the child's emotional ties with and feelings toward the child's parents, the child's siblings, and others who may affect the child's best interests significantly;

(ii) the child's adjustment to:
1. community;
2. home;
3. placement; and
4. school;

(iii) the child's feelings about severance of the parent-child relationship; and

(iv) the likely impact of terminating parental rights on the child's well-being.

F.L. § 5-323(d).

Mr. G. does not dispute that the juvenile court considered all the statutory factors. Rather, he argues that three of the court's findings were erroneous.

We begin with Mr. G.'s argument that the juvenile court was clearly erroneous in concluding that he knew that he was the children's father at the time of their birth. He asserts that "[n]o consideration was given to the potential that the children were conceived at any time other than nine months before their delivery date." Thus, he contends that "[t]he presumption of all individuals questioning [Ms. S. and Mr. G.] was that they were

dishonest about . . . their statements that the couple was living apart and not physically intimate during the months of January and February of 2012," i.e., 9 months prior to the children's birth in November, 2012. Mr. G. argues, however, that "it is highly unlikely that Ms. S. carried her twins to" a full 9 month pregnancy because over 60% of twins are born premature. Accordingly, because the parties could have conceived the children less than 9 months prior to November, 2012, "the court's conviction that the father lied about his beliefs regarding paternity is unsupportable."

The Department contends that "[t]here is ample support" for the "finding that Mr. G. lied about his paternity." We agree.

Mr. G. had a sexual relationship with Ms. S., accompanied Ms. S. to the hospital, posed for a family photo with her and the children, assisted Ms. S. in directing Evah's care after Evah had a seizure, selected the twins' inappropriate middle names, assisted Ms. S. in dealing with the Department during 2012 and 2013, was referred to as the children's "daddy" by Ms. S., and actively avoided being served with the court order directing that he take a paternity test. Given this evidence, we cannot say that the trial judge was clearly erroneous in concluding that Mr. G. knew he was the father of the children, and his dishonestly delayed his chance to unify with the twins.

Mr. G. next argues that the court inappropriately found that the children would be harmed if they were removed from their foster home, asserting that "there [was] no specific finding that indicated that the children could not be returned to their parent's care without sustaining trauma." He contends that neither his "poverty, nor the length of time that the children spent in care warranted a conclusion that reunification would be detrimental."

Furthermore, he asserts that the court placed "great emphasis" on the amount of time the children spent in foster care, and that such a consideration "cannot be the sole factor for determining that termination of a parent's rights is in a child's best interests." He characterizes the court's termination of his parental rights as a determination that the children's foster home was the better home for the children, which is an inappropriate consideration under Maryland and federal law.

To be sure, the premise of Mr. G.'s argument is correct; it is improper for a court to terminate a parent's rights simply upon a determination that a child would have a better life with his or her foster parents. *In r Yve S.*, 373 Md. 551, 572 (2003) ("'[T]hat appellant has a mental or emotional problem and is less than a perfect parent or that the children may be happier with their foster parents is not a legitimate reason to remove them from a natural parent competent to care for them in favor of a stranger.'") (quoting *In re: Barry E.*, 107 Md. App. 206, 220 (1995)). In this case, however, the juvenile court did not make the findings attributed to it by Mr. G. The court did not consider the children's time spent in foster care as the sole factor for terminating Mr. G.'s parental rights, and it did not make its decision based on a determination that their foster home was a better home for them. Although the court did consider, as required by F.L. § 5-323(d), the children's emotional ties to the foster family, this was not the sole basis for its decision to terminate Mr. G.'s parental rights. Rather, the court found that "removal from the only home and parents that these children have known would be detrimental to the children."

The record supports the court's finding in this regard. Dr. Munson testified that the first 18 months of a child's life is a fundamental stage for "attachment development."

Given this testimony, and the court's concern with Mr. G.'s potential undiagnosed mental health issues and his failure to accept services that would allow him to adequately care for the physical and emotional needs of the children, we perceive no error in the court's factual finding that it would be detrimental to remove the children from their foster home.

For these same reasons, we reject Mr. G.'s argument that, although "poverty [is] not a legitimate basis to find an inability to parent a child," the court terminated his parental rights "solely based on [his] homelessness." As indicated, the juvenile court's decision was based on much more than Mr. G.'s living conditions.

We agree with the Department that the circuit court's factual findings were not clearly erroneous, and there was ample evidence to support the court's finding that Mr. G. was an unfit parent. Accordingly, the court acted within its discretion in terminating Mr. G.'s parental rights.

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