UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2508

September Term, 2014

IN RE: GARRICK H.

Wright,
Berger,
Friedman,

JJ.

Opinion by Wright, J.

Filed: July 16, 2015

This case concerns the Circuit Court of Baltimore City's termination of appellant's, Sherri H. ("Mother"), parental rights to appellee, Garrick H., her son born on February 14, 2013. On July 1, 2014, appellee, the Department of Social Services of Baltimore City ("Department"), petitioned the circuit court for guardianship with the right to consent to adoption or long term care short of adoption of Garrick. Mother and D'Andre H. ("Father") objected to the proceedings, and the parties proceeded to a termination of parental rights hearing. On December 22, 2014, the court terminated the parental rights of Mother and Father. Mother timely appealed and now presents the following question for our review:[1]

> Was the trial court's decision to terminate the parental rights of the appellant Mother erroneous where the trial court misapplied several of the required factors, was erroneous in its determinations of the facts, the ultimate decision was not supported by sufficient evidence, and, on the evidence presented, appellant should have prevailed on a majority of the factors and as to all important factors?

Facts

Garrick was born on February 14, 2013. At the time of his birth, Mother and Father had four other children together, all of whom were in foster care and remain there

[1] Father attempted to participate in this appeal to support Mother's arguments and contest the termination of his own rights by filing a brief as an appellee. On June 3, 2015, the Department filed a motion to strike his brief. Over Father's objection, we granted the motion to strike on June 28, 2015, and do not address his contentions.

After we granted the motion to strike Father's brief, Mother filed her reply and attempted to incorporate Father's stricken brief as a part of her arguments. By striking Father's brief, we render his contentions moot.

to date.[2] Although Garrick's siblings are not a part of this case, the background of his parents' long-standing interactions with the Department are important to our discussion of the case, *infra*, and we review it here.

I. Parents' Oldest Four Children

In April 2012, the Department first contacted Mother and Father about their four oldest children as a result of a neglect complaint.[3] When the Department met with the family, the family of six resided with Father's mother and stepfather in a two-bedroom apartment, along with two other adults — in sum, ten people resided in two bedrooms. At the time of the investigation, Mother, Father, and the three oldest children slept on the floor in the living room while the youngest child slept in a car seat. Mother and Father advised the Department that they could not remain in the apartment because it was a violation of Father's parents' lease.

During the investigation, between mid-April and early-May 2012, the Department learned that Mother and Father were using marijuana and alcohol several times per day. To support their habits, they would sell their food stamps and Women, Infants, and

[2] Mother and Father's four older children are D'Andra (born February 2007), Daquan (born August 2008), Danazure (born July 2010), and Davon (born March 2012). At the time of the proceedings, D'Andra and Danazure were placed in the same foster care home with a permanency plan of reunification. Similarly, Daquan and Davon were placed in the same foster care home with a permanency plan of reunification.

[3] Father's mother, Juanita W., had urged Father to contact the Department so that Father and Mother could receive assistance. Juanita W. cooperated with the investigation and, after she found suitable housing for her and the children, offered to be a resource for the children. An investigation by the Department revealed that Juanita W. had a prior history with Child Protective Services; resultantly, the Department did not allow Juanita W. to take custody of the children.

Children ("WIC") vouchers instead of using them to buy food for their children. Mother admitted that she also used her temporary cash assistance funds to purchase marijuana. When the Department asked about his drug use, Father claimed that he had no desire to stop using marijuana because it helped him with his attention deficit disorder[4] and anger issues. The Department also learned from Father's parents that the children were often left unsupervised, and that Father and Mother had hit the children.

Soon after meeting with the family, the Department scheduled a number of meetings for the parents to discuss the children's welfare, but neither Mother nor Father attended any scheduled meeting. On May 4, 2012, the Department removed all four children from Mother and Father's care and placed them in foster care. At the time, Mother and Father agreed that this placement would be best for their children until they could become drug-free and provide stable housing for their children. After the children were removed from the parents' care, the Department learned that there was no record that the children had ever been seen by a pediatrician; that the children were behind on their immunizations; that one child had a speech delay; that Mother did not receive prenatal care during her pregnancy with the youngest child; and that the youngest child was born on the couch.

II. Garrick's Birth

When Garrick was born in February 2013, he was born exposed to marijuana, and Mother tested positive for marijuana. As a result of the positive toxicology report, the

[4] Father's claim that he has attention deficit disorder was not supported by any medical documentation and remains unsubstantiated.

Department was contacted by a social worker at the hospital where Garrick was born. At the time, Mother identified Mr. H. as Garrick's father.[5] The Department investigated Mother and Mr. H.'s ability to care for Garrick and worked with Mother to find an alternative to foster care placement for Garrick. Mother said that she did not have anywhere to take Garrick and agreed to shelter care for him. When no other alternatives could be identified, a juvenile court held a shelter care hearing on February 19, 2013. At the hearing, Mother admitted that she smoked marijuana as a way to "take a break" from parenting, and both Mother and Mr. H. agreed to shelter care. At the conclusion of the hearing, the juvenile court awarded custody of Garrick to the Department. Garrick entered foster care immediately after his release from the hospital.

After the shelter care hearing, the Department and Mother entered into a service agreement for reunification with Garrick. The Department and Mother agreed that continued placement of Garrick was necessary because Mother did "not have stable housing" and "needs to address mental health issues and substance abuse." Mother

[5] We note that Father was not identified as Garrick's biological father until October 2013. Initially, Mother identified a different person, Mr. H., as Garrick's father. Mr. H. participated in the initial proceedings but, at a hearing on September 11, 2013, Mr. H. requested paternity testing to determine whether he was Garrick's father. At the time, Mr. H. had supervised visits with Garrick, attended an educational program, and lived in transitional housing. After Mr. H. submitted to paternity testing, it was determined that he was not Garrick's biological father. Mr. H. did not participate in any further proceedings below, and he does not participate in this appeal.

At a hearing on October 23, 2013, Father was present and agreed to submit to paternity testing, which revealed that he is Garrick's biological father. From that point, Father was involved in the proceedings below. Despite his involvement in the proceedings, Father has had only one visit with Garrick in November 2013.

agreed to "complete parenting classes[,]" "complete outpatient substance abuse treatment[,]" "seek outpatient mental health treatment and . . . comply with treatment[,]" and "secure adequate housing." To help Mother complete her goals, the Department referred Mother to housing resources, to parenting classes, and for a drug evaluation. Following her drug evaluation, Mother was referred to substance abuse treatment and mental health treatment. Initially, Mother attended mental health therapy in February 2013 but, by July 2013, she had stopped attending.

On March 12, 2013, the juvenile court held an adjudicatory hearing. At that time, Mr. H., who was still identified as Garrick's father, was not a resource for Garrick because he had been released from the Baltimore County Detention Center the day before and had pending criminal charges related to narcotics. Also, Mother was not a resource because she did not have appropriate housing, and she had not completed mental health nor substance abuse treatment. The juvenile court found Garrick to be a child in need of assistance ("CINA")[6] and awarded custody to the Department for Garrick's continued placement in foster care. Additionally, Mother was granted weekly supervised visits with Garrick, which she consistently attended for the remainder of the year.

On April 10, 2013, the Department referred Mother and Mr. H. to parenting classes and sent a letter to both informing them of the referral, of the class times, and of

[6] A CINA is "a child who requires court intervention because: (1) [t]he child has been abused, 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.), § 3-801(f) – (g) of the Courts & Judicial Proceedings Article.

the location. That same day, the Department referred Mother for an alcohol and other drug assessment.

Initially, Mother appeared to make progress toward reunification. On April 16, 2013, the Department received an e-mail regarding Mother's participation in a supportive housing program at Holbrock Estates ("Holbrock"). The e-mail said that Mother resided at Holbrock, where she had furnished housing with paid utilities, internet, and telephone, along with a monthly stipend of $82.00 and $96.00 worth of food stamps. There, Mother also received mental health and substance abuse counseling through an affiliate program, as well as paid treatment and paid transportation to treatment. Holbrock had advised Mother that, if she and Father could overcome their addictions, Holbrock could place them in housing where they could live with their children.

When Mother met with the Department in August 2013, Mother had completed parenting classes, but she still needed to complete substance abuse and mental health treatment. On August 15, 2013, Mother signed another service agreement with the Department, which noted that she was "noncompliant with the terms of her service agreement." As a part of the new service agreement, Mother agreed to attend scheduled visitation, attend substance abuse counseling, and receive mental health treatment.

Although Mother initially participated in substance abuse and mental health therapy in April 2013, she stopped attending therapy in July 2013. On July 23, 2013, Mother reported to her social worker that she had signed up for Section 8 housing assistance. Mother made additional progress toward reunification by obtaining

employment with a security service in September 2013, and by completing a parenting class in October 2013.

On December 26, 2013, the circuit court held a permanency planning review hearing. At that time, Mother had completed her parenting classes and was in compliance with her mental health and substance abuse treatment programs; although Mother could not provide verification of her employment, the Department noted that Mother's only barrier to reunification was housing. At the hearing, the Department agreed to allow Mother unsupervised visits with Garrick. Father did not attend the hearing, but the court found that Father "had little contact with the [Department] or [Garrick]." The Department "was advised that [Father] has substance abuse issues, is unemployed and homeless[,]" and the court continued supervised visits for Father.

In February 2014, Mother's employer learned that Mother had an outstanding warrant and suspended her employment. Soon after, Mother told the Department about her outstanding warrant for non-payment of child support, and that she could return to her job once she resolved the warrant. The Department allowed Mother two weeks of unsupervised visits to allow her to address the warrant. When Mother failed to do anything about the warrant during those two weeks, the Department scheduled weekly supervised visits at the Department until she resolved the warrant because Mother could be arrested during an unsupervised visit. Mother went to two supervised visits at the Department in February but did not return until March 21, 2014. Although Mother consistently promised to resolve the warrant issue, Mother did not report that she had resolved the warrant issue until June 2014.

Mother's last visit with Garrick took place on March 21, 2014. At a meeting in April 2014 with the Department, Mother revealed that she was not making progress toward reunification because she had no employment; she was not enrolled in mental health or substance abuse counseling; she had not addressed the outstanding warrant; she had submitted to only one urinalysis; and she was living in transitional housing. When the Department asked Mother about visiting Garrick, Mother said that she was having a tough time, and she promised to call the Department later to set up visits.

After the meeting, Mother briefly resumed mental health treatment through Holbrock. On April 21, 2014, Mother attended an intake meeting for substance abuse treatment, but she reported to the Department that it did not go well. She decided to go to a different substance abuse treatment program, but she did not submit to any urinalysis as a part of the new program. By June 2014, Mother had left Holbrock, claiming that she was not allowed to stay there because she was pregnant with her sixth child.

On June 4, 2014, Mother contacted the Department to "apologize[] for not maintaining communication with [the Department] and her son Garrick." Mother told the Department "that she had been referred to a new therapist and substance abuse counselor," and that she "ha[d] satisfied the warrant for her arrest[,]" and requested a visit with Garrick. The Department advised Mother that a date could be scheduled at the June 17, 2014 hearing, at which time Mother could "verify proof of her program compliance[.]"

Mother failed to attend the hearing on June 17, 2014. Because the parties were unable to reach an agreement, the circuit court set a contested hearing for July 28, 2014.

Before the hearing, the Department filed a petition for guardianship with the right to consent to adoption or long-term care short of adoption on July 1, 2014. Mother and Father, separately, objected to the petition on July 28, 2014.

By August 2014, Mother was living with her fiancé; she had been referred to a new drug treatment program (which she alleged she completed in September 2014); she learned that her rent was not being given to her landlord; she had been called back to work by her employer (but refused to return); and she had proposed to the Department that she be reunified with only two of her older four children and that the other two could be reunified with Father. When the Department met with Mother and her fiancé, it learned that her fiancé had a history with Child Protective Services ("CPS") and was not permitted to parent his own daughter. The Department's subsequent investigation revealed that when Mother's fiancé was fifteen, an eleven-year-old girl had alleged that he had raped her.[7] As a result, the Department required that Mother's fiancé not be left alone with her children.

In September 2014, the Department learned that Mother had not applied for rental assistance until October 2013, even though she had previously claimed to have done this in July 2013. Because Mother had waited, there were 1,021 clients ahead of her, and she would likely not be reached until October 2015.

On November 6, 2014, the Department wrote Mother and Father separately to advise them that they were "still entitled to visits with [Garrick] until the Court makes a

[7] Mother's fiancé admitted that these allegations had been made but denied that they were true. It is unclear from the record what was the final disposition.

decision regarding Termination of Parental Rights." The Department requested that the parents "contact [it] at [its] office to schedule a visit." Neither parent responded to the letter.

III. Garrick's Progress in Foster Care

When Garrick was about four months old, he began to live with his current foster caregiver, Michelle B. Garrick continues to reside with Michelle B. Michelle B. is a retired, stay-at-home mom, and she has an adopted son and a grandson, who is close to Garrick's age. Garrick has become a part of Michelle B.'s family and there have been no reported concerns about the care she gives Garrick. Although Garrick has a speech delay, Michelle B. has engaged the services of the Infants and Toddlers Program in order that Garrick receives weekly speech therapy. Garrick refers to Michelle B. as "Mom," and Michelle B. is willing to adopt Garrick.

IV. The TPR Proceeding

The termination of parental rights ("TPR") hearing began on November 21, 2014, before the circuit court. Mother did not appear. A caseworker for the Department testified, and the case was continued to November 25, 2014. On November 25, 2014, Mother did not appear because, as was reported, "the mother is currently in the hospital with her newborn child who is being circumcised at Mount Washington Hospital."[8] Because Mother was not present, the case was continued to December 8, 2014.

[8] At the time of the hearing, it was not clear whether the sixth child would return home with Mother after the procedure. Mother alleged to have custody of the sixth child at the hearing but, it has since been reported by the Department, the child has been removed from her care and placed in foster care.

At the hearing on December 8, 2014, Mother testified that she had not seen Garrick since March 21, 2014 – a period of almost ten months – because of a "nervous breakdown." Although Mother deemed her experience as a "nervous breakdown," she admitted that she had not been diagnosed by a medical professional, and she had not participated in any mental health treatment since June 2014, although she did state that she "graduated from Gaudenzia." Later, Mother claimed that it was the warrant that "set [her] back from trying to stay financially stable and find stable housing." According to Mother, she had lost her job with the security service company due to the warrant and had not worked.

She stated that she had been hired, on the day of the hearing, to work at the University of Maryland as a surgical supply server in the operating room, but that she still had to pass a drug screening test and have her paperwork processed. Mother, though, did not present proof of her employment.

As to housing, Mother testified that, although she no longer resided at Holbrock because "[t]hey didn't house women with children, so [she] had to be removed from the program,"[9] she had not applied to all available housing programs, and she had difficulty locating housing because she had a record of evictions. With regard to her relationship with Garrick, Mother admitted that she did "really [did] not [have] a strong relationship"

[9] Mother alleged that she was no longer allowed to stay at Holbrock, due to her pregnancy with her sixth child, even though Holbrock advised the Department that they could accommodate a family placement for Mother if she made progress in the program.

with him. Moreover, Mother testified that her warrant was still open "[a]s far as [she] kn[e]w."

At the conclusion of the two-day hearing on December 9, 2014, the circuit court ruled as follows:

> I've heard the testimony, considered the arguments from counsel, reviewed the exhibits. Garrick was born on February the 14th, 2013. He was sheltered shortly thereafter, February 19th of 2013. He was found to be a child in need of assistance and committed on March the 20th, 2013.
>
> Based upon all of the objections and the fact that the case is at issue right now, I'm prepared to consider the factors under [Md. Code Ann. § 5-323 of the Family Law Article ("FL")]. The [FL § 5-323(d)] factors are the services offered before placement of the child, whether offered by the Agency to which a child is committed or by other agencies or professionals, the evidence is fairly voluminous in terms of the exhibits that there were a series of services which were provided by Baltimore County regarding the other — Garrick's siblings, including substance abuse, parenting, other services.
>
> But in terms of specifically as it relates to Garrick, the extent, nature and timeliness of services offered by the Department to facilitate reunion, there was again a number of services offered by the Department in Garrick's case shortly after he was born.
>
> As a result of positive toxicology for marijuana, the Department put into place substance abuse or referred [Mother] for substance abuse treatment, set up visits, parenting classes, mental health, these were all referrals, provided transportation, entered into Service Agreements with the mother, had [Family Involvement Meetings ("FIMs")]. Again, provided visitation.
>
> So there was a fairly intensive effort immediately to begin working with [Mother] in order to provide — to allow for reunification. And it was actually going to be the third fact under [FL § 5-323(d)], which is the extent to which the Department and parent have fulfilled their obligations.
>
> And I don't think it was disputed that [Mother] actually did what she was supposed to do up until a certain point, which we'll get to in a second. She's continually had issues concerning housing, and in fact Ms. Williams

had indicated that the one obstacle to her unification, unsupervised visits was the housing issue, that there wasn't appropriate housing in the case. Wait a minute. Or was there — I think there was unsupervised visits. Let me see. I think for a short period. And then — it was until December they were supervised, December of 2013. One second . . . .

So the visitation was also provided in this case. And so the services were fairly extensive by the Department. Mother was actually complying. [Mother] was complying with the services. She was doing her part. And then as everybody — all the testimony shows that [Mother] hit a brick wall.

I'm going to couch a lot of this in reference to [Mother] . . . .

In terms of the extent to which [Mother] has maintained regular contact with Garrick, she did maintain very regular contact with him up until March of this year, March in 2014. The extent to which the Department — whether she's maintained contact with the Department, again up until March and this warrant popped up, all we get is [Mother] saying that she had a nervous breakdown which is I'm assuming her way of saying that she was overwhelmed and didn't know what to do so she stopped everything.

The extent to which because there's no expert testimony that she, in fact, had a nervous breakdown, my reading of the testimony, her account was that she was just — she had four kids in Baltimore County. She had one child here. She had a warrant out for her arrest. She lost her job. And I think she just shut down.

The communication between [Mother] and the child's caregiver, that's not an issue in this case.

Contributions. There was no significant contribution. I think there was testimony of toys, but there was no financial contribution. At least after early this year there really wasn't any ability to. The testimony really was pretty scanty in terms of whether or not she could have provided financial assistance. I think she was working up until early this year. You know, I — but there's no testimony that she, in fact, did contribute anything, certainly not a reasonable part of Garrick's care and support.

There's no real evidence of a disability. There's some evidence of — I mean, the marijuana use, but there's nothing which would indicate disability.

Whether additional services would likely bring about a lasting parental adjustment, certainly housing was the issue, but there were referrals for housing. We're beyond 18 months, April, May, June, July, August, September. So we're slightly beyond the 18 months from the time of placement. That's a bit of a question mark.

I mean, obviously, and Ms. Bandzwolek alluded to the fact that a lot of the services, the housing which was the issue in Baltimore County is the issue in Baltimore City that we're kind of at the same place we've been at, which is [Mother] not having housing and everything else seems to be taken care of except for that one issue.

The Department really can't find housing. They can refer for housing. They can help with applications for housing. They can help with security deposits, and I think they've offered to do all of that, but they can't find her a house and I think that's what she needs.

Whether the parent has abused or neglected the child and the seriousness of the abuse and neglect. The child was brought into care as a result of exposure to marijuana. It was certainly — there were other issues of housing and there were other matters that in the great spectrum I would not call this the serious, the most serious neglect case. It was a neglect case and obviously was — not in a relative way I would not describe it was "serious."

The positive toxicology. There was a positive toxicology not for any of the substances in the statute. And there's no evidence of chronic abuse, neglect, chronic or life-threatening neglect, sexual abuse, torture or any crime of violence. It's not applicable in this case or any derivative thereof.

There's no evidence of involuntary loss of parental rights.

As far as the emotional ties that the child has toward parents and siblings, there's no evidence that Garrick has of any ties with well, certainly not [Father]. There's no evidence of any ties that he has with [Mother], although he's had, certainly had a history with [Mother].

It's not as though this is a case in which he was removed and she never saw him again. She was working toward reunification and was seeing him regularly. And there's no evidence that Garrick has any relationship with his siblings in Baltimore County.

As far as any other individuals who may significantly affect his best interest, he obviously has the most significant relationship with [Michelle B.], who is his caretaker, his foster parent. And in her home he's made a very successful adjustment. He's, you know, he's just a child. I mean, she's raised him. And he sees his foster sibling as his brother. And so he's very secure in the community, the home placement. He's part of [Michelle B.]'s family. There's no evidence of his feelings about severance. He's too young.

As far as the likely impact of terminating parental rights on a child's well-being, I've — as I said in my discussion with counsel, you know, when I look at the case law in this case, and I'm quoting from the case, in that case, and this is the in [*In Re Alonza D.,* 412 Md. 442 (2009)] case, "The judge focused primarily on the length of time Alon[za] and Shayden (phonetic) had been in foster care and the apparent bond that had developed between Ms. B. who was the caretaker and the children to support a finding of exceptional circumstances." I'm saying this in the context because I think that particular factor, the likely impact of terminating parental rights is related with exceptional circumstances, although not directly, but I want to get to the point.

"The record does not reflect through evidentiary support, however, how a continued parental relationship would have caused a detriment to the children and the trial judge made no findings to that effect. Because the record is silent in this regard and because parental rights are among those deemed fundamental, we cannot say that exceptional circumstances warranted the termination of Mr. D.'s parental rights."

Similarly, I can't tell, based upon the testimony of the social worker and the caretaker, which is essentially the Department's case, what would be the impact of terminating parental rights on the child's well-being in the context of *Alon[za] D.*, because I disagree with it personally. I think it calls for a very harsh restriction of a judge being able to use their common sense to say that in this situation given the fact that the child has bonded with the parent, the fact that the one — the biological parent has been *in absentia* for a period of months, not years as in *Alon[za] D.*, but months, that I think it restricts the Court to finding that the impact of terminating parental rights on the child's well-being would be positive toward the child in the absence of evidentiary support.

Now, what does that mean? I mean, that means that, and I certainly have had cases in which the court medical doctor says, goes through a lot of the analysis that Mr. Hill and I were going back and forth about, about the

value of permanency, the value of adoption, the value of a child having a stable placement, and the damaging effect of taking a child away from a[n] authority figure, a parent figure, who is [Michelle B.], in this case, and how that actually traumatizes the child for years to come.

I think *Alon[za] D.* is telling me as Judge Harrell points out in the CINA that I don't have the capability of making that decision, that I need some expert. I don't like it, but I think what it's saying is that I need an expert spelling out to the Court that this is, in fact, the problem with taking a child away from a stable placement and either an expert is going to do it or, in fact, if I talk to the child, if they're old enough to tell me in their own words what they feel, that the child directly can tell me that.

But the two examples that this Court gave was to have an expert talk to the Court about what the separation would be, whether it would be positive or negative, or have the child come in. I've had children come in and children say I don't want to leave Mommy or I don't want to leave, you know, I want to be with both parents. It gets very confusing. We all know that.

* * *

It's the Department's obligation to put this case on and the Department has to show that, in fact, it would not be detrimental to terminate the parental relationship or detrimental to continue the parental relationship and that's the burden that the Department has.

So, I mean, in fairness to the Court of Appeals which, you know, I feel like I'm saying nasty things about them and I shouldn't say that, but in fairness, I do think that they're really sort of aligning, making sure that the burdens are aligned correctly.

For all those reasons in terms of the exceptional circumstances, I don't think that the Department, for the reasons that I've hinted at in my discussion, but also because of this issue regarding *Alon[za] D.*, I don't think the Department has shown by clear and convincing evidence that exceptional circumstances exist.

There is certainly a close bond between [Michelle B.] and the child. I presume, I think if you ask me as a lay person do I think that this would be really detrimental to take this child away from [Michelle B.], I think the answer would be yes.

If you're asking me whether under *Alon[za] D.* I can make that conclusion, I don't think I can. And the reason is because the Court again is indicating that there has to be evidence in place which is going to show the Court that, whether that's through the testimony of the child or whether it's through the testimony of an expert in terms of what the impact would be.

Unfitness. I'm reserving on that right now because I want to do more research. I need to look at, I'm going to look at, and I'm going to keep the record open for ten days. If anybody wishes to submit a memo to me in terms of what they think unfitness does or doesn't mean, I'm willing to accept that.

Unfitness is a circular — it's circular verbiage in the statute. It says unfit as defined under the factors. Like you look at the factors and then you define it. You look at the factors and then say whether the person is fit or unfit. Well, okay. So what are you looking at in the factors to determine whether they're unfit? There's no definition of what it means to be fit or unfit.

And I mean, Mr. Hill has proffered a definition which is that, which is the definition he said which is you look at basically food, shelter, clothing, financial support and you determine whether over a period of time that person is fit or unfit.

An alternative definition could be there really has to be something inherently wrong or not wrong in a judgmental sense, there has to be something inherently inappropriate about a person so that they cannot be a parent.

Certainly, there are some cases you could say in terms of disabilities, or disabilities or substance abuse or something of that nature, which we don't really have here. I mean, we have an indication of marijuana use off and on. Actually, there's no indication of current use.

So it's more an issue of whether or not Mr. Hill's definition is, in fact, appropriate for purposes of unfit, what unfit means in the statue. It's something that I've sort of grappled with over the years. What does it mean? So I will make a decision on that. I do think that's the only issue in my mind.

> I don't think that there are exceptional circumstances. I just have to look at the case law and see whether or not under these facts that constitutes unfitness so I'm holding this *sub curia* . . . .

The Department submitted a memorandum arguing that Mother was unfit based on her history with CPS; her history of unfitness with her four older children; her failure to cooperate with the Department concerning Garrick; her continued lack of interest in "establish[ing] a relationship and work[ing] toward reunification[;]" and her refusal of "virtually all services designed to remedy the issues that brought [Garrick] to the attention of the [Department]."

In her memorandum, Mother contended that "[t]here was no evidence concerning the mental capacity of the mother . . . [or] the physical health of the mother." Mother argued that, based on "the lack of a record on her mental capacity and the evidence being that mother according to her testimony having employment at the University of Maryland Medical Center[,]" her testimony was "un-contradicted[.]" Mother asserted that there was "evidence in the record from which one could conclude reasonably that mother possesses not only the physical but mental capacity to parent the child in these proceedings in an appropriate manner." Accordingly, she averred that "[t]he record in this case clearly shows this burden has not been met and [] there is a legal presumption the mother is fit to parent [Garrick]."

On December 22, 2014, the trial resumed, and the circuit court terminated the parental rights of Mother and Father to Garrick, ruling:

> I think the case that is relevant is the case of . . . *In Re Amber R., Mark R.*, which is 417 Md. 701, and it dealt with the issue of unfitness. And really, what the [C]ourt of [A]ppeals did in that case was tie the

definition of unfitness back into the factors themselves. In fact in that case, there was a proposal by the Public Defender's Office to create a four-step test for unfitness and the court of appeals rejected that and said that in reality, the unfitness is the judge's assessment of the parent's progress under the factors and what's in the child's best interests under the factors.

So it's not redundant with the term exceptional circumstances; it's something different, but it is looking at whether the parent is fit. And in that case there was also a long break in time between the contact between the mother and the child and the — basically, the struggle was that she was having in terms of getting her life together in order to have a relationship with the child. So to that extent it was not exactly like the test that was set out in *Alonz[a] D.*

Because in *Alonz[a] D.*, you're really looking at what the strength of the relationship between the child and the foster parent, what is the — and is there a bond between them, and whether or not severing the parent-child relationship would be detrimental to the child. So, here, you've got several children that are in the care of Baltimore County Department of Social Services. They have [four] children there; they've been there since 2012. They're still in the care of Baltimore County DSS.

Although [Mother] did make some efforts early on to come into compliance, there was sort of this unexplained absence of her in March. She just stopped completely. And so what I'm — I'm looking at this in terms of a combination of factors, in terms of the relationship of the extent to which she is, in fact, trying to keep in touch with the Department, keep in touch with the child, and overlaid onto that is the relationship with Garrick and his foster parent, and the extent to which there would be the detriment — or it would not be in his best interests to terminate because of his relationship with his mother. And because of his age, when, in fact, she stopped seeing him, there really isn't much of a relationship between him and his mother.

So I have based all — I have looked at all the factors. I've looked at the length of time, which, I think is to be considered in a case like this and the history that she's had with the Baltimore County Department of Social Services with the siblings and that they — all of her children, with the exception of the one that was just born, is committed.

So I do find she's unfit and I'm going to go ahead and terminate parental rights in her case . . . . Having made all these findings, I am going to find that it is in Garrick's best interests to grant the Department's

> petition. Accordingly, I am going to issue an order of guardianship of adoption — a guardianship to adopt a long-term care sure of adoption, thereby terminating the natural parental rights of [Mother] and [Father][.]

Mother appealed on January 16, 2014.

Standard of Review

FL § 5-323(b) allows a circuit court to grant guardianship of a child without the consent of a parent if it "finds by clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child . . . such that terminating the rights of the parent is in a child's best interests[.]" FL § 5-323(d) guides the court in determining what is in the child's best interest by enumerating factors that the court must consider prior to granting guardianship.

> Except as provided in subsection (c) of this section, in ruling on a petition for guardianship of a child, a juvenile court shall give primary consideration to the health and safety of the child and consideration to all other factors needed to determine whether terminating a parent's rights is in the child's best interests, including:
>
> (1)(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;
>
> (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:
> (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.

Along with the best interests of the child, the circuit court must also consider the fundamental right of a parent to raise her own child, which cannot be taken away unless clearly justified. *In re Adoption/Guardianship No. 95195062/CAD*, 116 Md. App. 443, 454 (1997) (citing *In re Adoption/Guardianship No. 10941*, 335 Md. 99, 112 (1994); *Santosky v. Kramer*, 455 U.S. 745, 759 (1982)). But, "[w]e have made clear, however, that the controlling factor in adoption and custody cases is not the natural parent's interest in raising the child, but rather what best serves the interest of the child." *In re Adoption/Guardianship No. 10941*, 335 Md. at 113 (citations omitted).

"On review, we must ascertain whether the trial court considered the statutory criteria, whether its factual determinations were clearly erroneous, whether the court properly applied the law, and whether it abused its discretion in making its determination." *In re Adoption/Guardianship No. 94339058/CAD*, 120 Md. App. 88, 101 (1998) (citing *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 311 (1997)); *see also In re Shirley B.*, 419 Md. 1, 18 (2011); *In re Ta'Niya C.*, 417 Md. 90, 100 (2010).

Discussion

Mother contends that some factors under FL § 5-323(d) were wrongly determined by the circuit court. In particular, she contests the findings under (d)(1), (d)(2), and (d)(4). She posits that, because of her history of "complian[ce] for most the case's life and her short disengagement from the Department due to issues which were uncontested and which would likely cause most people to become depressed and withdrawn for some period should not have been dispositive on her parental rights[,]" she should have received a brief extension to "permit both [her] and the department with a real opportunity to thoroughly assess her current status and determine what would be in Garrick's best interests."

The State argues that Mother "has failed to show that there was an error in the juvenile court's factual findings, which rest upon ample evidence in the record, or that the court abused its discretion in its ultimate decision to terminate parental rights." The State relies on Mother's "demonstration of unfitness" through the removal of Garrick from Mother's "custody at birth because he was born exposed to marijuana and she had nowhere for him to live;" because Mother's "four oldest children remaining in foster care

after more than two years;" because of Mother's continuing "inadequate and unstable housing" situation; Mother's "insignificant financial contribution to Garrick's care;" because of Mother's "cutting off all contact with Garrick in March 2014 — eight months prior to the commencement of the TPR, a time period constituting almost 40% of his life; because of Mother's "failure to complete the tasks necessary for her older children to be returned to her;" and because of Mother's failure to establish a "parental relationship with Garrick."

On behalf of Garrick, his best interest attorney echoes much of the State's contentions and highlights Mother's continuing issues of "substance abuse, mental health treatment, lack of income or financial support of her children and housing" as representative of her unfitness to parent Garrick.

I. FL § 5-323(d)(1)

Mother argues that factor FL § 5-323(d)(1)(i) was incorrectly determined. Mother avers that the circuit court erred in "not[ing] services which had been provided by Baltimore County DSS in connection with its case involving four other siblings removed from mother's care prior to Garrick's birth" because "the statute is confined, by its own terms, to the child presently before the court[.]" Mother contends that "no evidence was produced that any agency, department or other professional had rendered services to mother having to do with Garrick prior to removal and placement." Yet, as she must, Mother "concede[d] that, following removal of the child, the Department offered her all appropriate services which it could, and that such services . . . were timely and designed to facilitate reunion." Still, she argues that her "estrangement was short-lived and

peculiarly explicable due to the unsettling events of February[;] . . . she was also pregnant, . . . and by the time of the TPR trial, had located employment, remained free of substances, had obtained housing, was on the waiting list for Section 8 housing in both the City and County, had resolved the warrant issue and indicated that she wanted to resume visits with Garrick, and have him placed with family in the event that she was unable to have him placed in her care."

We cannot accept Mother's argument that the failure to address pre-placement services specific to Garrick is fatal. FL § 5-323(d)(1) requires consideration of 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.

The circuit court did not make specific findings about the services offered to Mother prior to Garrick's placement specifically regarding Garrick, but the court did reference the "series of services which were provided by Baltimore County regarding the other — Garrick's siblings, including substance abuse, parenting, other services." However, the court also made numerous findings about the services that the Department offered in an attempt to reunify Mother and Garrick, the extent to which the Department fulfilled its obligations under the service agreement, and the extent to which Mother failed to fulfill her obligations under the service agreement. As the court noted, the Department made an "extensive effort" to provide Mother services, but Mother "just

stopped completely" in complying with the service agreement and failed to explain why. Even if we subtract the court's findings related to the efforts to reunify Mother with her four oldest children, there is ample support for finding that the Department offered extensive services to Mother, that the Department fulfilled its obligations under the service agreement to do so, and that Mother failed to uphold her obligations under the service agreement. Accordingly, the court's factual findings under FL § 5-323(d)(1) were not erroneous.

II. FL § 5-323(d)(2)

Mother argues that the factors under FL § 5-323(d)(2) "were incorrectly determined in that the law was erroneously applied to these facts." In particular, Mother contends that the circuit court erred in finding "that she had not contributed anything, despite the fact that scant evidence was presented as to whether she could contribute, and the court acknowledged that after the early part of 2014 'there really wasn't any ability to[.]'" She couples that argument with her contention that "poverty alone, or lack of housing alone, cannot be used as a basis for termination of a parent's rights[,]" and that "to the extent that this case was ultimately determined solely on the parent's lack of housing (and no other continuing issue was presented), [her] parental rights should not be terminated on that basis alone." Mother points to the "trial court stat[ing] that the other issues were taken care of and housing was the only issue" as support for her "position that the case was ultimately determined on mother's lack (albeit temporary) of adequate housing." According to Mother, it was error to "resolve[] these factors against her" when she had made positive efforts to see the children and paid child support" and "the only

issues presented to the trial court were the three month failure of mother to engage with the Department after a year of compliance, and housing/employment." In sum, Mother characterizes herself as "a thoroughly compliant parent who had experienced a rough patch[.]"

FL § 5-323(d)(2) requires the court to examine:

> 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:
>
> (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.

Mother cannot seriously contend that the circuit court's findings under FL § 5-323(d)(2) were erroneous. Mother maintained contact with Garrick for about 13 months before abruptly stopping in March 2014. Since March 2014, 16 months have passed, and Mother still has not visited Garrick. Mother failed to maintain contact with the Department as well, despite efforts by the Department to reach Mother to remind her of her ability to visit with Garrick.

Mother's argument that, because she did not have a job, her contributions are irrelevant also fails. When Mother was working, she did not pay child support, nor did she buy gifts for Garrick or financially contribute in any other way. Indeed, it was Mother's failure to pay child support for her oldest four children that resulted in the warrant which caused her to be laid off from her job. Even though Mother told the Department that she had the opportunity to return to work should she resolve the warrant, she failed to address it, in spite of a number of promises that she would. In fact, according to Mother's testimony, the warrant remains active and unresolved.

Although Mother points to the fortuitous timing of her new job at the University of Maryland as providing her the financial ability to contribute to Garrick's care, Mother failed to corroborate her testimony with any evidence that she had received an offer of employment. Mother did not note her continuing employment (or that she was even employed) in her briefs or at oral argument. In sum, the record supports the circuit court's finding that "there was no significant contribution" by Mother.

As to factor FL § 5-323(d)(2)(iv), Mother asserts that, "a brief extension . . . would permit both mother and the [D]epartment with a real opportunity to thoroughly assess her current status and determine what would be in Garrick's best interests." According to her, the circuit court's finding "was clearly erroneous and a misapplication of the law, as the trial court stated that the other issues were taken care of and housing was the only issue. The finding also bolsters appellant's position that the case was ultimately determined on mother's lack (albeit temporary) of adequate housing."

Mother misrepresents the circuit court's findings. The court said that whether the time had extended beyond 18 months from the time of placement is "a bit of a question mark." The court emphasized that "certainly housing was the issue, but there were referrals for housing" and that the Department "really can't find housing. They can refer for housing. They can help with applications for housing. They can help with security deposits, and I think they've offered to do all of that, but they can't find her a house and I think that's what she needs."

The court's failure to find that additional services would bring about lasting parental adjustment is not clearly erroneous when the Department cannot offer the services that Mother needs. Granting an extension would not change the Department's ability to find Mother housing, especially when the Department has rendered all of the services it can with respect to housing by giving Mother abundant referrals for housing. Mother cannot fault the Department, either, when she was not truthful as to the follow up on the housing referrals.

As to her argument that the circuit court's decision rested solely on housing issues, Mother fails to recognize that her problems extended beyond simply housing by overlooking the other findings of the court. The circuit court did not rest its decision to terminate Mother's parental rights exclusively on housing. When the court summed up its findings, the court emphasized its consideration of all of the factors:

> I'm looking at this in terms of a combination of factors, in terms of the relationship of the extent to which she is, in fact, trying to keep in touch with the Department, keep in touch with the child, and overlaid onto that is the relationship with Garrick with his foster parent, and the extent to which there would be the detriment — or it would not be in his best interests to

> terminate because of his relationship with his mother. . . . So I have based all — I have looked at all the factors.

III. FL § 5-323(d)(4)

Mother does not find error with FL § 5-323(d)(4) but argues that the "factors did not advance the Department's case" because Garrick's bond with Michelle B. "was supported by no expert testimony . . . and no evidence was produced on the question . . . on the impact on the child of termination rights." In sum, Mother does not dispute the factual findings, but only that it should not be factored against her.

Under FL § 5-323(d)(4), the circuit court must make findings regarding:

> (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.

Mother ignores the circuit court's findings on these factors. Specifically, the court found that "there's no evidence that Garrick has any relationship with his siblings in Baltimore County." The court also highlighted Garrick's relationship with Michelle B. as his "most significant relationship" and noted that Garrick "sees his foster sibling as his brother." The court found that Garrick has "made a very successful adjustment" and that "[h]e's part of [Michelle B.]'s family."

Additionally, circuit court found that "there really isn't much of a relationship between [Garrick] and his mother." In making that determination, the court "overlaid onto that [his] relationship . . . with his foster parent[.]" Given the court's findings that there was not "much of a relationship" between Garrick and Mother, and that Garrick's "most significant relationship" was with Michelle B., it follows that the court would find that it "would be really detrimental to take this child away from [Michelle B.]"

Although Mother attempts to argue that the circuit court needed "some level of expert testimony pursuant to the Court of Appeals decision in *In Re Alonza D.*, 412 Md. 442 (2009)[,]" to make these decisions, she is correct only with respect to FL § 5-323(d)(4)(iv). *See In re Adoption/Guardianship of Alonza D., Jr.*, 412 Md. at 468 (requiring evidentiary proof of "how a continued parental relationship would have caused a detriment to the child[]"). No proof was submitted on this point, and no findings were made about how ending Garrick's relationship with Mother would have impacted Garrick — instead, the court noted that it would be detrimental to Garrick for him to no longer have his foster caregiver in his life. Because FL § 5-323(4)(iv) was not considered, it could not have been resolved against Mother.

IV. FL § 5-323(b)

Now that we have reviewed all of the factors that Mother contests under FL § 5-323(d), we return to FL § 5-323(b), to determine whether the circuit court's finding that Mother "is unfit to remain in a parental relationship with the child . . . such that terminating the rights of [Mother] is in [Garrick]'s best interest[.]" FL § 5-323(b).

We repeat that each of the judge's findings regarding the factors was dispositive: (1) that the Department provided extensive services and held up their end of the bargain; (2) that, still, Mother failed to make an effort to adjust her circumstances, maintain contact with the Department, maintain contact with Garrick, or contribute to Garrick's care; (3) that the Department could not render any additional services to Mother to find adequate housing for herself or Garrick; and (4) that Mother did not have much of a relationship with Garrick. After our review of the record, we cannot say that the circuit court abused its discretion in terminating Mother's parental rights based on its assessment of Mother's progress under the relevant factors and what is in the child's best interest in light of the evidence supporting Mother's unfitness.

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