

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2062

September Term, 2014

IN RE: ADOPTION/GUARDIANSHIP OF
TYRONE M.

Zarnoch,
Leahy,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: June 3, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from a November 14, 2014 order by the Circuit Court for Baltimore City, sitting as a juvenile court, which terminated the parental rights of Deshana B. (“Mother”) and Tyrone M., Sr. (“Father”), the natural parents of Tyrone M., Jr. (“Tyrone”) (DOB: 3/20/11), a child adjudicated in need of assistance (“CINA”).¹ Mother and Father noted timely appeals of the juvenile court’s order, in which they raise the following question for our consideration: Did the court err in terminating parental rights to Tyrone, where the finding that the father was unfit was erroneous?

Finding no error or abuse of discretion, we affirm the juvenile court’s order.²

FACTS AND LEGAL PROCEEDINGS

The following evidence was adduced at the November 13-14, 2014 termination of parental rights (“TPR”) hearing:

Tyrone came to the attention of the Baltimore City Department of Social Services (“the Department”) when both he and Mother tested positive for cocaine and opiates upon his birth on March 20, 2011; Mother reported a “long history” of drug abuse, including during her pregnancy. In addition, Mother had received no prenatal care, allegedly due to lack of health insurance, and Tyrone was born prematurely, at 32 weeks’ gestation, with severe respiratory problems.

¹Pursuant to Md. Code (1974, 2013 Repl. Vol.), §3-801(f) of the Courts & Judicial Proceedings Article, a “Child in need of assistance” means “a child who requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.”

²In light of our disposition of this case, we need not decide whether the Mother can appeal an adverse ruling affecting the Father.

Finding an indication of neglect on the part of Mother because her drug use during her pregnancy and lack of prenatal care placed her child's health at risk, Child Protective Services caseworker Toni Crocker placed Tyrone in shelter care with Tonya Mo. upon his discharge from the hospital on March 29, 2011.³ The Department was unable to locate Mother and Father to inform them of Tyrone's placement because the address they had provided to hospital personnel at the time of Mother's admission was inaccurate. On April 1, 2011, Mother phoned Valerie Glee, Tyrone's Department case worker, and Ms. Glee scheduled two visits for her with Tyrone. Mother cancelled both visits and refused to provide Ms. Glee with any contact information.

Tyrone was adjudicated CINA on May 26, 2011, committed to the care and custody of the Department. At that time, his permanency plan was reunification with Mother and Father.

After Mother's April 2011 phone call, Ms. Glee did not hear from either Mother or Father until October 2011, when Father called to set an appointment for a visit with Tyrone.⁴ During that visit, which occurred on November 7, 2011, Father advised Ms. Glee that he was then unemployed and living in a homeless shelter. Mother, he said, was incarcerated. Also during the visit, Father and Ms. Glee discussed a service agreement, which Father signed on December 15, 2011.

³Tyrone has remained in foster care since birth and has never lived with Mother or Father. Other than seven weeks spent in the care of Father's niece, Tyrone has resided with Ms. Mo. continuously.

⁴Father testified that he had been incarcerated for 45 days, beginning in August 2011.

On January 27, 2012, the juvenile court changed Tyrone’s permanency plan to placement with a relative for adoption or custody and guardianship. Father offered his niece, Tasha M., as a resource for Tyrone.⁵ In March 2012, Tyrone was placed with Tasha M., but he remained with her for only seven weeks before being returned to foster care with Tonya Mo. because Tasha M., who had her own young child, had not received the assistance Father had promised her.⁶

Father obtained employment as a security guard near the end of 2011.⁷ Between December 2011 and June 2012, Father attended parenting classes and generally cooperated with the Department. He visited with Tyrone in June and July 2012.

According to Ms. Glee, Tyrone’s permanency plan changed to a concurrent plan of reunification and relative placement in August 2012.⁸ After Father signed a service agreement in August, Ms. Glee recommended that he partake in weekly visits with Tyrone. Initially, Father appeared regularly for visitation, but he decreased his allotted three hour visits, first to two hours and then to one hour, purportedly as a result of his work schedule.

⁵Ms. M.’s first name is sometimes spelled “Dacha” in the transcripts of the TPR hearing.

⁶Tyrone, who had been diagnosed with asthma, was often sick and unable to attend daycare, which was necessitated by Ms. M.’s employment. During seasonal changes, he required doctor’s visits approximately every two weeks. In addition, Father left it to Ms. M., with the help of the Department, to obtain a crib, car seat, and other necessities for Tyrone.

⁷By the time of the November 2014 TPR hearing, Father said he was employed as a warehouseman.

⁸The record documents, however, reflect that the plan actually changed in January 2013.

In August 2012, Mother was released from prison into an in-patient drug treatment program at Marion House, a women’s halfway house. Citing problems with the other women at Marion House, however, Mother left that program prematurely in October 2012 to live with Father, who had obtained a one bedroom apartment. Although Mother was referred to another in-patient drug treatment program, she did not attend. She also enrolled in a parenting class, but she did not complete it. Shortly thereafter, she cut off all communication with the Department and all visitation with Tyrone.

By December 2012, although Father had obtained an apartment and a job, Ms. Glee said the Department did not place Tyrone with Father because the Department “still needed to watch this case,” as Father was not yet stable in his housing or employment. Moreover, although Father’s one bedroom apartment was appropriate when Tyrone was a baby sleeping in a crib, the Department urged Father to obtain a larger apartment for the growing child, which Father did not attempt.

In January 2013, the juvenile court changed Tyrone’s permanency plan to placement with a relative for adoption or custody and guardianship, with a concurrent plan of reunification. Despite the concurrent plan of reunification, Father did not visit Tyrone at all between January and April 2013 and “[v]ery seldom” during the spring and summer of 2013, nor did he maintain contact with Tyrone. After April 2013, Father refused to sign any further service agreements and became sporadic in his contact with the Department.

Sometime in 2013, Mother was re-incarcerated. Upon her release from prison on that occasion, she was again referred for drug treatment, but she did not attend any treatment sessions.

By the fall of 2013, the Department suggested that Tyrone’s permanency plan be changed to adoption. The juvenile court agreed and changed the plan. The Department filed its petition for guardianship with the right to consent to adoption, or long term care short of adoption, on December 16, 2013.

In January 2014, Mother returned to prison for violating parole, and she remained incarcerated at the time of the TPR hearing.⁹ From the time of Tyrone’s birth in March 2011 through the hearing in November 2014, Mother had visited with him only four times.

Father stopped visits altogether from August 2013 through February 2014. From February 2014 until the TPR hearing, Father visited Tyrone monthly with positive interaction. Despite the positive interaction, Tyrone had no difficulty returning to his foster home and was never upset when separated from Father.

Ms. Glee said that the relationship between Tyrone and Ms. Mo. was very loving, with a good connection between them. She had no concerns about Tyrone’s safety or the quality of his care while living with Ms. Mo., whom he calls “Ma” or “Mommy.”

⁹Mother anticipated being released from prison in June 2015. Upon her release, she hoped to enter a drug treatment program and then live with Father but was “really undecided,” planning to wait “until [she entered] the program and see how that goes and . . . take it from there.”

According to Ms. Mo.'s testimony, Tyrone gets along very well with her family, including her husband, her three children, and the 10-year-old relative who lives with them. He is also especially bonded to Ms. M.'s mother, whom he calls "mama," and her sister, whom he calls "aunt." Ms. M. related that Tyrone is a "momma's boy," whom she enjoys "spoil[ing] rotten." He had recently started school in a Head Start program and was excited to get on the school bus to attend the program.

Father professed to wanting custody of his son, claiming to be prepared to take Tyrone into his care. Although supportive of Father's bid for custody, Mother appeared less sure of her ability to provide care for Tyrone, admitting that she would like to end her dependency on drugs first; when asked if she had heard Father testify that he wanted custody of Tyrone, Mother answered, "I know I've done some things, but Tyrone has done everything that CPS has asked him to do."

At the close of all the testimony, the Department's attorney asked the court to find, by clear and convincing evidence, that granting the petition for guardianship would be in Tyrone's best interest, as his parents were unfit to provide a parental relationship to him. Despite all the services the Department offered to Mother and Father, including parenting classes, housing assistance, family involvement meetings, drug treatment programs, and service agreements, reunification "was not able to be achieved."

Moreover, counsel continued, Mother and Father had made little effort to adjust their circumstances so that it would be in Tyrone's best interest to be returned to them. Mother remained in jail; Mother had not maintained contact with the Department; Mother had not

visited with Tyrone; Mother continued to struggle with drug addiction; and Father had not maintained contact with the Department or visited Tyrone for six or seven months at a time. Counsel for Tyrone was in agreement with the Department's assertions.

Father's attorney denied that Father was unfit to care for Tyrone. Father had done most of the things the Department asked of him, including attend parenting classes, visit with Tyrone, and find a job and an apartment. In addition, there was no evidence that either of his other two older children had ever been in the foster care system. And, because it was his first time in the system, Father did not know how to navigate his way through it and did not have a case worker who properly explained things to him or was fully engaged in his case. Moreover, counsel concluded, even Ms. Glee, the case worker, could say only that Father was "somewhat unfit," almost as if "she couldn't quite bring herself. . . to say that he was flat out unfit."

Mother's attorney, conceding that Mother would not immediately be ready to care for Tyrone upon her release from prison, believed that Father was "perfectly capable and able and willing to be a good father." Both parents agreed that it was in Tyrone's best interest to be given an opportunity to have a father.

The juvenile court, in a lengthy oral ruling, considered the required factors as set forth in Md. Code (1984, 2012 Repl. Vol.), §5-323 of the Family Law Article ("FL"), discussed more fully below, and found that the Department had fulfilled its obligations by offering sufficient services to Mother and Father but that the parents had not fulfilled their obligations (despite some effort, particularly by Father), by failing to maintain consistent visitation and

contact with the Department, offer support to the child, and adjust their own circumstances to make it in the best interest of the child to be returned to them.

The court went on to find:

The Rashawn H. factors. Is a parent unfit to have custody or are there such exceptional circumstances as to make such custody detrimental to the best interests? With respect to Mr. M., the Court is satisfied that the evidence establishes that while good intention [sic] he is unfit at this time. He has failed to establish and maintain housing such that would be appropriate for him to have custody with his son. But also the Court thinks it's noteworthy that the respondent, while not a special need's [sic] child, it [sic] does have a significant asthma condition, which requires daily medication—medication and during asthmatic emergencies the administration of Albuterol. And I—from prior cases I have presided over the failure to recognize a crisis for an asthmatic child and to respond appropriate [sic] thereto can have deadly consequences.

The Court also is very concerned and is satisfied that Mr. M. knew or quite reasonably should have known that Ms. B. was using controlled dangerous substances while pregnant. And in my mind it does raise concern because—and I can't tell you who to love and who to live with, and I can't tell you to terminate your marriage, but to me that does—is a factor to be considered in whether or not based on everything that happened—has happened you are fit to have custody of—Mr. M. is fit to have custody of the child.

In terms of Ms. B., I'm satisfied that she is both unfit based on the fact that she is at no time provided [sic] any care to the respondent during his lifetime, has no—he has no bonding or attachment with her and listening to her testimony, she has none with him. Her testimony did not go to her feelings for her son, but the fact that she feels Mr. M. ought to have custody because of what he's done. Nor was there any indication of what she was willing to do. It's of grave concern to the Court that she has and will continue to face significant challenges with respect to her addictions to substance abuse [sic]. She has a lengthy criminal history and she failed to seek prenatal care.

The kind or [sic] unfitness or exceptional circumstances necessary to rebut the substantive presumption must be established by clear and convincing evidence and I'm satisfied that it was. For lengthy periods of the pendency of this case Mr. M. was homeless and/or unemployed. And even when he had a home and he has a home now it is appropriate for him, but I am not satisfied that it would be appropriate if he were granted custody of the respondent. Mr.

M., unfortunately, has demonstrated a great deal of instability in his own life. With respect to Ms. B., she has a long history of substance abuse, a lengthy criminal record, has failed while in the community to address appropriately her addiction [sic], and has failed while in the community to demonstrate any behavior such that would rebut the—such that would demonstrate fitness to be involved in a meaningful way in the respondent’s life.

The court concluded that a continued parental relationship would be detrimental to Tyrone’s best interest. Having considered all the required factors, the court found itself satisfied that clear and convincing evidence established that it was in Tyrone’s best interest to grant the Department’s petition for guardianship terminating Mother and Father’s parental rights and to rescind the child’s commitment under the CINA petition. The court’s written order was entered on November 14, 2014.

DISCUSSION

Mother and Father argue that the juvenile court erred in terminating their parental rights based on a finding that Father was unfit to care for Tyrone.¹⁰ The evidence presented at the TPR hearing, they assert, was insufficient to overcome the constitutionally protected presumption that maintaining the parent-child relationship with Father was in Tyrone’s best interest.

The Court of Appeals has “recognized that parents have a fundamental, Constitutionally-based right to raise their children free from undue and unwarranted interference on the part of the State, including its courts.” *In re Adoption/Guardianship of*

¹⁰Mother and Father make no claim of error in the juvenile court’s finding of Mother’s unfitness. Therefore, we concentrate our discussion on the claim regarding Father.

Rashawn H., 402 Md. 477, 495 (2007). The parental right to retain custody of a child is not absolute, however, and “[t]he presumption that protects it 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.*

Our appellate courts have long acknowledged the gravity of the decision to terminate one’s legal status as a child’s parent. *In re Adoption/Guardianship No. 95195062/CAD*, 116 Md. App. 443, 454 (1997). In TPR cases, however, the parent’s fundamental right to custody of his or her children “‘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 Amber R.*, 417 Md. 701, 709 (2011) (quoting *Rashawn H.*, 402 Md. at 497).

As termination of parental rights involves two strong, but often competing, interests—that of the parent and that of the child—the General Assembly has set forth a detailed statutory scheme to guide and limit juvenile courts in determining the child’s best interest, which is the overarching standard. *Id.* The State bears the heavy burden of proving, by clear and convincing evidence, that termination of the parent’s rights serves the best interests of the child. *Id.* at 710. In making decisions concerning the best interest of the child, however, the juvenile court is “‘endowed with great discretion.’” *Id.* at 713 (quoting *Petrini v. Petrini*, 336 Md. 453, 469 (1994)).

In reviewing a juvenile court’s decision with regard to a termination of parental rights, this Court must “‘ascertain whether the [juvenile 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 of Cross H.*, 200 Md. App. 142, 155 (2011) (quoting *In re Adoption/Guardianship/CAD No. 94339058*, 120 Md. App. 88, 101 (1998)). It is not our function to determine whether, on the evidence presented, we might have reached a different decision. Instead,

‘it is to decide only whether there was sufficient evidence—by a clear and convincing standard—to support the chancellor’s determination that it would be in the best interest of [the child] to terminate the parental rights of the natural [parent]. In making this decision, we must assume the truth of all the evidence, and of all of the favorable inferences fairly deducible therefrom, tending to support the factual conclusion of the [juvenile] court.’

Id. at 155-6 (quoting *In re Abigail C.*, 138 Md. App. 570, 587 (2001)).

FL §5-323 enumerates specific factors a juvenile court must consider in any TPR proceeding. These factors serve both “as the basis for a court’s finding (1) whether there are exceptional circumstances that would make a continued parental relationship detrimental to the child’s best interest, and (2) whether termination of parental rights is in the child’s best interest.” *In re Adoption of Ta’Niya C.*, 417 Md. 90, 116 (2010). Section 5-323 provides, in pertinent part:

(b) 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.

* * *

(d) 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;

(3) whether:

(i) the parent has abused or neglected the child or a minor and the seriousness of the abuse or neglect;

(ii) 1.A. on admission to a hospital for the child's delivery, the mother tested positive for a drug as evidenced by a positive toxicology test; or

B. upon the birth of the child, the child tested positive for a drug as evidenced by a positive toxicology test; and

2. the mother refused the level of drug treatment recommended by a qualified addictions specialist, as defined in §5-1201 of this title, or by a physician or psychologist, as defined in the Health Occupations Article;

(iii) the parent subjected the child to:

1. chronic abuse;
 2. chronic and life-threatening neglect;
 3. sexual abuse; or
 4. torture;
- (iv) the parent has been convicted, in any state or any court of the United States, of:
1. a crime of violence against:
 - A. a minor offspring of the parent;
 - B. the child; or
 - C. another parent of the child; or
 2. aiding or abetting, conspiring, or soliciting to commit a crime described in item 1 of this item; and
- (v) the parent has involuntarily lost parental rights to a sibling of the child; and
- (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) If a juvenile court finds that an act or circumstances listed in subsection (d)(3)(iii), (iv), or (v) of this section exists, the juvenile court shall make a specific finding, based on facts in the record, whether return of the child to a parent's custody poses an unacceptable risk to the child's future safety.

* * *

In order for a juvenile court to grant the Department guardianship of a child without a parent's consent, the court must find, by clear and convincing evidence, that terminating the parent's rights is in the child's best interest. The statutory scheme requires the court to

consider and make specific findings with respect to the factors enunciated in FL §5-323(d), and, mindful of the presumption favoring a continuation of the parental relationship, determine if the findings suffice to show either an unfitness of the parent or constitute exceptional circumstances that would make a continuation of the parental relationship detrimental to the best interest of the child. *Rashawn H.*, 402 Md. at 501.

In this case, the juvenile court did consider the §5-323(d) factors during its oral ruling. With regard to FL §5-323(d)(1)(i), the services offered to the parents before Tyrone's placement, the court pointed out that no services could have been offered to Mother and Father prior to Tyrone's placement in foster care, as he had come to the attention of the Department and removed into foster care immediately upon being born addicted to opiates and cocaine.

As far as the extent of services offered by the Department to facilitate reunion between Tyrone and Mother and Father, pursuant to FL §5-323(d)(1)(ii), the court found that the Department had offered two service agreements to Father while Mother was incarcerated, which included help with applications for housing, job referrals, and parenting classes. The Department also identified an appropriate relative for placement, although that placement lasted only seven weeks.

Pursuant to FL §5-323(d)(1)(iii), the extent to which the Department and the parents had fulfilled their obligations, the court found that the Department had made appropriate referrals, undertaken a bonding assessment, and offered flex fund assistance to meet Tyrone's needs. Despite the Department's best efforts, which the court found "significant" and timely,

bonding between Tyrone and his parents had not solidified. Father did complete parenting classes and obtain employment and housing, and he did visit with Tyrone for a period of time, but he also discontinued visits for lengthy periods of time. Mother, incarcerated for a significant period of time during Tyrone's life, had not bonded with the child.

As for findings with respect to FL §5-323(d)(2), the parents' efforts to adjust their circumstances to make it in the children's best interest to be returned to the parents' home, the juvenile court stated:

[T]he court has to not consider the passage of time. . . .The mere passage of time does not mean—is not in and of itself a basis for TPR. To a young child—to us a year is no big deal. To a child who has been out of the care and custody of their parent—I think the child is three and a half years old now—but for a child to have been out of the care and custody of his parents for virtually the entirety of his life, with the exception of seven weeks in the care and custody of a relative, is huge.

Mr. M. is a good man. I don't doubt that. He loves his son. I don't doubt that. But sometimes, and I've had to say this, love is not enough. Love in the case of a child is an action verb as opposed to an adjective describing one's emotions. He did maintain regular visits—has maintained regular visits since this case has been snowballing toward TPR. But the Court has ample evidence to establish that even the visits had to be shortened because of work. And I don't denigrate the fact that people have to work. But while he was missing appointments because of work he was also missing valuable time, which the Court believes could have and should have been used adjusting his own circumstances, maintaining regular contact, communicating with the custodian, communicating with the Department such that his child could have been returned to him. Ms. B., even when not incarcerated, failed to participate in visitation.

The Court also has to consider the local Department to which the Department—to which the child is committed and if feasible the child's caretaker. The Department scheduled visits. Many of them were canceled. The Department also rescheduled and reformatted the visit after which visits were canceled. And with respect to Ms. B., she failed to satisfy any of the terms, the Court is satisfied, of the service agreement that she was offered...

The Court also has to consider the—whether or not the parent maintained regular contact with the child’s care giver. Now we didn’t hear from Mr. M.’s cousin, but it is noteworthy that the child was returned to care because the niece—the relative felt she didn’t receive the necessary support. And with respect to Ms. B., her whereabouts were unknown.

The parents’ contribution to the reasonable part o[f] the child’s care and support if the parents are financially able to do so. There was minimal support. And I realize Mr. M. was struggling to keep a roof over his own head. That is important. But one of the factors to be considered is what he did. And according to the testimony he bought one pants suit.

There is no disability, the Court is satisfied, on each of the—either of the parties—the parents part that make the parent consistently unable to care for his immediate and ongoing physical or psychological needs. Although Ms. B. has a serious addiction to controlled dangerous substances which she now says is being addressed or will be addressed prior to her release from incarceration.

Whether or not additional services would be likely to be—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 exceeding 18 months. Mr. M. has made some efforts, but the Court has to conclude based on the fact—the nature, quality, and extent of his response and his achievements thus far that additional services are not likely to bring about lasting parental adjustment so that the child could be returned to him. He’s still struggling and I give him a great deal of struggle—credit for being willing to struggle because many people in his circumstance would throw in the towel. But I’m not satisfied that his efforts are such—his accomplishments and achievements to establish—to reorient his life and to do what’s necessary to allow his son to be with him would result in lasting parental adjustment. He has made some adjustments. As far as Ms. B., she really has not. And she failed to comply with the terms and conditions of her probation according to the exhibit by failing to comply, failing to report, failing to work or attend school as required and failing to participate in court ordered substance abuse treatment.

With regard to FL §5-323(d)(3)(i) and (ii), the court found the evidence to demonstrate that it was neglectful for Mother to receive no prenatal care. The court found it “of grave concern” that Mother and Father were still together as a couple, as Father knew that Mother had used controlled dangerous substances during her pregnancy—and continued

to do so—but made no effort to intervene or assist her in obtaining substance abuse treatment. Also “of grave concern” was Mother’s and Tyrone’s positive test for cocaine and opiates at the time of Tyrone’s birth, which caused serious withdrawal symptoms for the child. In addition, Mother failed to follow through with recommended drug treatment.

The court heard no evidence that Mother or Father subjected Tyrone to chronic abuse, chronic and life-threatening neglect, sexual abuse or torture, or that either parent had been convicted of committing, or aiding and abetting in, a crime of violence against any of their children or each other. FL §5-323(d)(3)(iii) and (iv). Pursuant to FL §5-323(d)(3)(v), the court noted that Mother had involuntarily lost her parental rights to one of Tyrone’s half-siblings in 1998.

Turning to FL §5-323(d)(4)(i)-(iv), the court found that Tyrone had minimal contact with Mother and that although Tyrone called Father “daddy,” the court was not satisfied there were significant emotional ties and feelings between Tyrone and Father; according to the bonding assessment, when visits with Father ended, Tyrone had no problem returning to his foster mother. On the other hand, the child, who had never lived with his biological parents, interacted well and was bonded with his foster siblings and parents. He appeared to be well-adjusted in his placement and appeared to be doing well there and in school, although he was too young to express his feelings about the severance of the parent/child relationship. The court was satisfied that the likely impact of terminating Mother’s and Father’s parental rights on Tyrone’s well-being would be minimal.

The juvenile court found, by the following clear and convincing evidence, that Mother and Father are unfit to care for Tyrone such that parental custody is detrimental to his best interest. The court considered the fact that Tyrone had been away from his parents his entire life; in demonstrating the negative emotional effect of changing custody from Ms. Mo. to Mother and Father, the court medical report had shown that Tyrone regresses in both speech and behavior after visits with his parents.

The court also determined that Tyrone was in “a loving supportive circumstance,” having bonded with his foster parents and siblings. His ties to them were “strong, meaningful, positive, proactive and healthy.” On the other hand, Mother had never sought to reclaim Tyrone and appeared not to desire custody, and Father waited months after Tyrone’s placement in foster care for the Department to locate him before making any claim on Tyrone; while Father declared his love for Tyrone, the court stated, he was “unable to walk the walk and his efforts amount to merely talking the talk.”

If Mother and Father were granted custody, the court was satisfied Tyrone would have “a most uncertain future and would quite likely experience instability with respect to the meeting of his most basic needs.” In the care of his foster parents, however, he has experienced “a positive reality,” with “stability, love, care nurturance, compassion, and is well-adjusted,” which will likely lead to a positive outcome.

We are not persuaded that the juvenile court abused its discretion in finding unfitness that would render a continued parental relationship with Mother and Father detrimental to Tyrone’s best interest and in terminating their parental rights based on that ground. Although

Mother and Father aver that Father was fit because he had obtained stable housing, maintained employment, paid child support when he could for his two other children, completed parenting classes, and visited with Tyrone, we cannot say that the court's findings that his actions did not go far enough toward parental fitness were clearly erroneous.

The juvenile court painstakingly related the parents' failures in working toward reunification to the FL §5-323(d) factors and cogently enunciated its findings of parental unfitness as it related to those statutory factors. With regard to Father's fitness, the court found that Father, who lived with Mother during her pregnancy with Tyrone, had failed to intercede in her prenatal drug use. After Tyrone's birth, Father waited eight months to inquire as to the child's whereabouts in the foster care system and never sought to have the child returned to his custody. Once involved with the Department, Father did not take full advantage of the visitation offered to him, often canceling visits after Tyrone had already been brought to the visitation facility, and he ceased visiting with the child entirely for a lengthy period. Father failed to participate in Tyrone's medical and dental appointments, despite Tyrone's chronic and serious respiratory ailments, which necessitated frequent medical intervention. Father had maintained stable housing for two years prior to the TPR hearing, but his apartment had one bedroom, which the Department deemed inadequate for the parents and a growing child, and Father made no effort to obtain a larger apartment.

The foregoing, along with Father's apparent choice not to adjust his circumstances to Tyrone's best interest, especially in light of the child's success in his foster care situation and his lack of attachment to his parents, provided ample evidence for the juvenile court to

conclude that Father is unfit to maintain custody of Tyrone and that it is in Tyrone's best interest to terminate Mother's and Father's parental rights. We thus perceive no error or abuse of discretion in the juvenile court's decision to grant the Department's petition for guardianship.

**ORDER OF THE CIRCUIT COURT FOR
BALTIMORE CITY AFFIRMED. COSTS TO
BE PAID BY APPELLANTS.**