

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1930

September Term, 2015

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IN RE: ADOPTION/GUARDIANSHIP  
OF B.L. AND H.L.

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Eyler, Deborah S.,  
Woodward,  
Salmon, James P.  
(Retired, Specially Assigned),

JJ.

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Opinion by Woodward, J.

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Filed: May 26, 2016

\*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.

Kenisha L., appellant, is the mother of B.L. (born September 2009) and H.L. (born May 2012). On August 20, 2013, the Circuit Court for Baltimore City, sitting as the juvenile court, declared B.L. and H.L. to be Children in Need of Assistance (“CINA”). The children were committed to the Baltimore City Department of Social Services (“the Department”), appellee, and placed in foster care. In April 2015, the court changed the children’s permanency plan from reunification to adoption by a non-relative, and the Department filed a petition for Termination of Parental Rights (“TPR”). On October 15 and 16, 2015, the juvenile court held a hearing on the petition, at the conclusion of which the court entered an order terminating appellant’s parental rights as to both B.L. and H.L.

On appeal, appellant presents one question for our review, which we have rephrased as two questions:<sup>1</sup>

1. Did the juvenile court err by considering the children’s adjustment to their foster care placement?
2. Did the juvenile court abuse its discretion by concluding that exceptional circumstances existed such that the termination of appellant’s parental rights was in the children’s best interests?

We answer both questions in the negative and, accordingly, affirm the judgment of the juvenile court.

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<sup>1</sup> Appellant’s question, as presented in her brief, is as follows:

Did the circuit court err by comparing the girls’ placement in their foster home with the life that their mother could provide for them; and did the court further err by finding that severing the children’s legal ties with their mother was in their best interests?

## **BACKGROUND**

On July 21, 2013, the Department received a report that B.L. and H.L. were left with appellant's boyfriend, Uston C., who resided in a halfway house. The children had been left in Mr. C's care three days earlier. Mr. C. told the Department that he was unaware of appellant's whereabouts, but that she was homeless and lived "a transient lifestyle." The Department removed both children from Mr. C. and placed them in foster care with Ms. S. At the time of their placement with Ms. S., B.L. was three years old and H.L. was fourteen months old.

The Department located appellant at a motel in Baltimore County and contacted her by phone. Appellant was notified that an emergency shelter care hearing was to be held on July 22, 2013, but she informed the Department that she would not be able to attend. Appellant denied abandoning the children and claimed that they had been kidnapped. She also admitted to not having stable employment or housing, and told investigators that she was unable to care for the children.

On August 20, 2013, another hearing was held, and both children were declared CINA. Once again, appellant did not attend the hearing. The children's grandmother did attend the hearing, but the juvenile court determined that she was not a suitable placement for the children because she was also homeless. On October 3, 2013, appellant was indicted for neglect of the children.

In April 2015, the juvenile court changed the children's permanency plan from reunification with appellant to adoption by a non-relative, and the Department filed a

TPR petition. At that time, appellant had not attended a single scheduled visit with the children since October 2013, a period of approximately eighteen months. The whereabouts of B.L.'s putative father were unknown, and he was served by publication and posting. The identity of H.L.'s father was unknown. Appellant filed a timely notice of objection on May 29, 2015.

A hearing on the TPR petition was held on October 15 and 16, 2015. Appellant did not attend the first day of the hearing. Appellant's counsel proffered that appellant had been discharged from the hospital on October 15 after an anxiety attack, but was drowsy from medication and did not have money to get to court. The court contacted a nurse at the hospital who confirmed that appellant had received a small dose of medication, but was discharged from the hospital that morning, appeared lucid, and was encouraged to go to court. Appellant did attend the second day of the hearing.

Cornella Johnson, the children's case manager, testified at the hearing. She stated that, when she first got involved in the case, she had trouble contacting appellant. Johnson finally met with appellant on September 25, 2013, and went over a service agreement with her and explained the steps that would be necessary for her to regain custody of the children. Appellant was informed that she would need to seek housing and medical assistance, attend parenting classes, provide the Department with a phone number and address, obtain a psychiatric evaluation, and visit with the children. Johnson also referred appellant to a shelter, but later found out that appellant left after one day. During the children's two years in the Department's custody, appellant never provided a

lease or mortgage statement to show that she had housing. Johnson believed appellant was living in New Jersey at the time of the TPR hearing, but appellant refused to provide her with an address. Appellant claimed to be living with her mother in Baltimore at the time of the hearing, but appellant's mother told the court that she was not.

Appellant failed to satisfy most of her requirements under the service agreement that she signed. Appellant did not obtain medical assistance or attend any parenting classes. Appellant also admitted that she never got a psychiatric evaluation. Appellant did not work from 2013 through 2015, and testified that she had no employment prospects. As for visitation, appellant visited the children once in October 2013, and then did not attend weekly scheduled visits for nearly two years before finally seeing the children twice in September 2015. She also visited the children once in October 2015 just before the TPR hearing. When asked why she had missed so many visits over the two year period, appellant stated that she was “out of town” and focused on her relationship and getting engaged, which she said had “nothing to do with what’s going on with my kids.”

Appellant is the mother of two other children. Dineria, age fifteen, has been in the custody of appellant's mother since Dineria was a baby. Appellant gave birth to another daughter, A.L., in July 2010. The Department removed A.L. and placed her in foster care in July 2011, because appellant had no relative resources available. A.L. was found to be a CINA, and custody was awarded to a non-relative who had been caring for A.L. since

A.L. was seven months old. In 2014, appellant gave birth to another baby; however, the child died from a brain aneurysm.

Appellant testified that she was an “on and off” alcoholic. Despite having no income, she stated that she was able to afford alcohol by receiving money from family members, and that how she used her food stamps was her business. In asking for the return of her children, appellant testified that she wanted to “be given a chance as anybody else would to see what I’m capable of.” Appellant claimed that she had clothes for the children, but no “toys or anything like that.” Appellant also admitted that she did not have plans for the children’s schooling arrangements.

Ms. S., the children’s foster care provider, also testified. Ms. S. has been a licensed foster care provider for over twenty years. She testified that the children refer to her as “mom,” and do not ask for appellant. The Department had no concerns about the children’s safety or health in Ms. S.’s care and recommended her as an adoptive resource. Ms. S. stated that she was willing to adopt the children and “love[d] them just like my own daughters.”

The juvenile court issued an oral ruling at the conclusion of the hearing on October 16, 2015. After addressing each of the statutory factors in Md. Code (1984, 2012 Repl. Vol.), § 5-323(d) of the Family Law Article (“FL”), the court found “that there are exceptional circumstances that would make a continued parental relationship detrimental to the best interest of the [children].” The court concluded “that it’s in the children’s best interest to grant the Department’s petition for guardianship with the right

to consent to adoption or long-term care short of adoption, thereby terminating parental rights of [appellant].” The Department was appointed guardian of the children, with the right to consent to adoption, and granted Ms. S. limited guardianship. Appellant filed her appeal on November 2, 2015.

### **DISCUSSION**

When 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.

FL § 5-323(b) (emphasis added).

“With this understanding, the General Assembly has set forth criteria to guide and limit the court in determining the child’s best interest. Section 5-323 enumerates a series of specific factors that a juvenile court must consider in any TPR proceeding.” *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 709 (2011) (citation and footnote omitted).

In the instant case, the court began its ruling by stating: “In these matters of petitions for guardianship and attempt to terminate parental rights, the Court weighs the statutory factors pursuant to Family Law Article Section 5-323 in making a decision on the petition for guardianship filed by the Department of Social Services.” The court then proceeded with its oral opinion that covered each of the required factors.

After considering all of the required factors, the court ended its opinion by stating that there was “clear and convincing evidence . . . that there are exceptional circumstances that would make a continued parental relationship detrimental to the best interest of the” children, such that the termination of appellant’s parental rights was in the children’s best interests.

On appeal, appellant challenges only two aspects of the juvenile court’s ruling, contending that: (1) the court improperly compared the children’s life in foster care to their life with appellant; and (2) the court erred in finding that termination of appellant’s parental rights was in the best interests of the children.

### **I. Foster Care Factor**

Appellant contends that the juvenile court “erred by its determinative consideration of the life that the foster parent could provide the children and comparing that with the life that their mother was able to give them.” Appellant argues that “the consideration of any potential adoptive resource must be separate and independent from the termination of parental rights hearing.”

The Department counters that the juvenile court did not compare the life that the children had in the foster home to the life they would have with appellant. Instead, the Department asserts that the court considered evidence of the children’s foster placement as a factor that it was required to consider under the statute. According to the Department, the court’s decision to terminate appellant’s parental rights “was based not on what [the foster parent] was offering the children, but rather on what [appellant]



herself had failed to do.” The Department concludes that the court “was not comparing lifestyles, but rather determining that [appellant] had not made any efforts to adjust her circumstances so she could provide the children *any* kind of stable life.” (Italics in original).

As appellant correctly points out, the Court of Appeals has stated that “a child’s prospects for adoption must be a consideration independent from the termination of parental rights.” *In re Adoption/Guardianship of Victor A.*, 386 Md. 288, 317 (2005). In the instant case, the juvenile court did in fact consider evidence regarding the children’s foster care placement. But, as the Department stresses, the court was required to do so, because one of the statutory factors, FL § 5-323(d)(4)(ii), requires the court to consider the children’s adjustment to community, home, placement, and school. The court did exactly that, finding that

all the children in the home get along well. They play together, go on trips, show and visit the extended [ ] families together. They visit Ms. S.’s people, for lack of a better term, about one time a week or on the weekends and Ms. S.’s parents every other weekend or call them every day and they have a loving relationship with Ms. S.’s sisters and sister’s children and extended family.”

The court “believe[d] that there is a strong relationship between Ms. S. and the [children].

They call Ms. S. mother or ma.” The court concluded that

pursuant to the testimony that these [children] are healthy, safe, have established their emotional ties with Ms. S., [her daughter], her adopted son who’s a little older, the extended family, and they have established feelings and emotional ties with the extended family of grandparents, aunts, cousins and the like.

Contrary to appellant’s contention, the juvenile court did not base its decision on a comparison between the children’s lives in foster care with their lives with appellant. Instead, the court considered all of the factors required under FL § 5-323, and one of those factors was the children’s adjustment to placement in foster care. Moreover, we agree with the Department’s contention that the final decision to terminate appellant’s parental rights was “based not on what Ms. S. was offering the children, but rather on what [appellant] herself had failed to do.” Appellant did not visit the children for two years while they were in the care of Ms. S., and only started attending scheduled visitation in the weeks immediately before the TPR hearing. The court found that appellant had “not formed a sufficient bond with her children over the last 27 months that they have been out of her care.” Furthermore, appellant’s circumstances had not changed “one iota” from the time the children were taken away from her and placed in foster care up until the time of the hearing. Nor was there any indication that appellant had made any effort to improve her circumstances.

In sum, the juvenile court properly considered the children’s adjustment to placement in foster care, along with the other required statutory factors, to reach its determination that it was in the children’s best interests to terminate appellant’s parental rights. The court did not err by considering this factor.

## **II. Finding of Exceptional Circumstances**

The juvenile court’s ultimate conclusion in a TPR case is reviewed for abuse of discretion. *In re Adoption of Jayden G.*, 433 Md. 50, 96 (2013). Appellant contends that

the court abused its discretion in terminating her parental rights, because it focused on “her ability to presently have custody of [the children], rather than whether it was [in] their best interests to have a continued legal relationship with her.” Appellant admits that, at the time of the hearing, she was not in a position to take immediate custody, but that “the evidence did not support the conclusion that her obstacles warranted the permanent severance of their legal relationship.” According to appellant, exceptional circumstances did not exist here, because although “[s]he suffered from substance abuse and poverty,” “there was no evidence that she harmed her children” or would do so in the future. Appellant concludes that maintaining ties to her and her family was in the children’s best interests.

The Department responds that the juvenile court did not abuse its discretion in terminating appellant’s parental rights. The Department argues that in TPR cases, a parent’s right to custody must be balanced against the State’s responsibility to protect children from abuse and neglect. The Department points out that the court complied with the statute by considering all of the relevant factors before finding that there were exceptional circumstances that supported the termination of appellant’s parental rights. According to the Department, appellant’s parental rights were terminated due to the harm resulting from neglect. The Department concludes that the court properly found that appellant’s past conduct was an indication of her future conduct, as there was a “continuing picture” of neglect, and appellant refused to take advantage of the services offered to her.

A juvenile court can terminate a parent’s parental rights “where (1) the parent is deemed unfit, or extraordinary circumstances exist that would make a continued relationship between parent and child detrimental to the child, and (2) the child’s best interests would be served by ending the parental relationship.” *In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 734 (2014). In the instant case, after going through all of the required factors of Section 5-323(d), the court concluded:

**This Court finds by clear and convincing evidence, having considered the facts, testimony and documentary evidence in this case, that return of [the children] to their Mother poses an unacceptable risk to their future, that there are exceptional circumstances that would make a continued parental relationship detrimental to the best interest of the [children], and that the presumption favoring the continuation of the parental relationship has been successfully rebutted by clear and convincing evidence, and that these findings suffice to show exceptional circumstances in this case.**

(Emphasis added). The evidence adduced over the two-day hearing and the court’s summary of it supports the court’s ultimate conclusion that a termination of parental rights was in the best interests of the children.

There was overwhelming evidence of chronic neglect on the part of appellant that led to the Department’s initial involvement in the case, which was then followed by appellant not visiting the children for two years despite regularly scheduled visits. The court properly found that the “lack of contact and lack of visitation cannot be conducive to forming a proper bond between Mother and child, [and] cannot even be conducive to maintaining some kind of proper familiarity between Mother and child.” As a result, the

court determined that appellant had “not formed a sufficient bond with her children over the last 27 months that they have been out of her care.”

During the children’s time in foster care, appellant made practically no effort whatsoever to adjust her life for the children, and as the court noted, appellant did not change her circumstances “one iota” over the course of the case. Appellant signed a service agreement with the Department, but failed to fulfill almost all of her obligations. At the time of the TPR hearing, appellant had neither a job nor stable housing. The court found that “past conduct of [appellant] is an indication of [appellant’s] future conduct.” See *In re Priscilla B.*, 214 Md. App. 600, 625 (2013) (“As a practical and legal matter, though, the circuit court could not ignore the family’s turbulent past—not just as an indicator of the future, but as part of the *continuing* picture of neglect that has overshadowed, and continues to overshadow, Priscilla’s young life.”). Citing the children’s need for stability and permanence, the court also found that continuing appellant’s parental rights despite her complete inability to make any changes over a twenty-seven month period would needlessly frustrate this goal, and that doing so would not be in the children’s best interests.

The overriding theme of both the federal and state legislation is that a child should have permanency in his or her life. The valid premise is that it is in a child’s best interest to be placed in a permanent home and to spend as little time as possible in foster care.

*In re Adoption/Guardianship No. 10941 in Circuit Court for Montgomery Cnty.*, 335 Md. 99, 106 (1994). “Under the CINA and TPR statutory framework, [the Department] and

we, the courts, must make every reasonable effort to ensure that every child who has found himself in foster care obtain permanency within twenty-four months of placement.” *Jayden G.*, 433 Md. at 92 (citation and internal quotation marks omitted).

The instant case had been going on for twenty-seven months at the time of the TPR hearing, and the juvenile court reasonably concluded that permanency with appellant was exceedingly unlikely given her inability to make any changes to her circumstances during that lengthy time period. The court’s finding of exceptional circumstances was amply supported by the evidence, as was its conclusion that the termination of appellant’s parental rights was in the best interests of the children.

**JUDGMENT OF THE CIRCUIT  
COURT FOR BALTIMORE CITY  
AFFIRMED; APPELLANT TO PAY  
COSTS.**