UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0798

September Term, 2016

IN RE: ADOPTION/GUARDIANSHIP
OF I.M.

Woodward,
Berger,
Shaw Geter,

JJ.

Opinion by Woodward, J.

Filed: January 6, 2017

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The Circuit Court for Baltimore City, sitting as a juvenile court, granted the petition filed by appellee, Baltimore City Department of Social Services ("the Department"), to terminate the parental rights of appellant, M.M., ("Mother"), over her child, I.M., and for guardianship with the right to consent to adoption or long-term care.

On appeal, Mother presents two questions for our review:

1. Was [M]other denied her due process right to a fair and impartial trial?
2. Did the trial court err or abuse its discretion by terminating [Mother's] parental rights?

For the reasons discussed below, we conclude that the juvenile court did not err or abuse its discretion, and thus, we shall affirm.

SUMMARY OF BACKGROUND

I.M. was born on December 2, 2008. During the first seven-and-one-fourth years of I.M.'s life, three separate CINA proceedings involving I.M. took place, each resulting from the arrest and incarceration of Mother. I.M. was placed in foster care as a result of each proceeding. At the conclusion of the first two CINA proceedings, I.M. was returned to the care of Mother. I.M. was not returned to Mother's care after the third CINA proceeding, because that proceeding arose out of the death of I.M.'s infant sister, Iz., when Mother rolled over on her while Mother was "drunk asleep." Mother was charged and convicted of manslaughter and related charges. On October 9, 2015, the Department filed a Petition for Guardianship with the Right to Consent to Adoption or Long Term Care Short of Adoption ("TPR") with the juvenile court.

The TPR trial took place on March 30-31, 2016, and April 26-27, 2016. At the time of the TPR trial, I.M. had been in foster care for five-and-one-third years, or 73.5% of her whole life. On May 19, 2016, the juvenile court rendered an oral opinion, comprising twenty-eight pages of transcript, granting the Department's petition and terminating Mother's parental rights. Additional facts will be included as necessary to address the questions presented. A more detailed discussion of the background will be set forth in our discussion of Question 2.

STANDARD OF REVIEW

When reviewing a juvenile court's decision to terminate parental rights, three standards of review are employed. *In re Adoption/Guardianship of Jayden G.*, 433 Md. 50, 96 (2013). The appellate court reviews factual findings for clear error, but reviews legal conclusions *de novo*. *Id.* "If the [trial] court's factual findings are not clearly erroneous, and [the court's] legal conclusions are correct, [the appellate court] review[s] the court's 'ultimate conclusion' for abuse of discretion." *Id.*

DISCUSSION

I. ALLEGED JUDICIAL BIAS REGARDING MOTHER

In the case *sub judice*, two conversations took place in the courtroom between the trial judge and the courtroom clerk during a short recess in the TPR trial on March 31, 2016. The first conversation between the judge and the clerk lasted forty-five seconds, and the second conversation lasted one minute and fifty seconds. Both conversations were apparently at the bench outside of the presence and hearing of the parties' attorneys.

At the time of the first conversation, the parties were over halfway through day two of the TPR trial, and four witnesses had been called to testify. Three witnesses testified for the Department: Ms. K., Stephanie Hamlin, and Robin Akehurst. During the Department's case, the court permitted Mother to call I.M. as a witness out of turn. A review of the transcript indicates that Mother's trial counsel objected approximately twenty-four times during the direct examination of Akehurst. At the end of Akehurst's testimony, the following ensued:

THE COURT:	Ma'am, you may stand down. The Court will take a brief recess. Thank you. Only for about five minutes, I need a --
[DEPARTMENT TRIAL ATTORNEY]:	Okay, thank you.
THE COURT:	-- mental health break.

The judge then exited the courtroom. At the end of the recess, the judge re-entered the courtroom, took the bench, and immediately had a conversation with the courtroom clerk at the bench:

THE COURT:	(Inaudible).
THE CLERK:	Mental health made you, all that mental health done made you (laughter).
THE COURT:	**(Inaudible). Is [sic] she don't shut up so we can get this testimony --**
THE CLERK:	She won't, she won't, because that's her MO, to object to everything. She thinks it makes her look smart (inaudible) pain in the ass.

THE COURT:	In front of a juror [sic] she won't loose [sic] her place. (Inaudible).
THE CLERK:	(Inaudible) when people, when other courts see her name on the docket, especially on the trial docket --
THE COURT:	**Right.**
THE CLERK:	-- they know.
THE COURT:	They're like oh, man.
THE CLERK:	Right. Right. Right. Exactly.

(Emphasis added).

At the end of the above conversation, the judge addressed the Department's trial attorney:

THE COURT:	Who would be your next witness, [Department trial attorney]?
[DEPARTMENT TRIAL ATTORNEY]:	Ms. Ruby.
THE COURT:	Oh, okay. Where is your client?
[MOTHER'S TRIAL COUNSEL]:	Um, I'm not sure. I believe she may have stepped down stairs.
[I.M.'S COUNSEL]:	To have a smoke.
[MOTHER'S TRIAL COUNSEL]:	I went to the ladies room and we were walking together and --
THE COURT:	Okay, thank you.

[MOTHER'S TRIAL COUNSEL]:	Can I ask just to wait a minute, maybe, for her?
[DEPARTMENT TRIAL ATTORNEY]:	One minute.
THE COURT:	Yes.

* * *

[MOTHER'S TRIAL COUNSEL]:	Judge [ ], may I step out and call [Mother]?
THE COURT:	Please do.
[MOTHER'S TRIAL COUNSEL]:	Thank you.

Following Mother's trial counsel's request to call Mother, the judge had another conversation with the courtroom clerk at the bench:

THE COURT:	Don't start. Don't get me started. **It's like asking me can I go up on the roof and jump off (inaudible).**
THE CLERK:	All that back and forth and all this talk about her, I think she having a mental health time right -- minute. She can't help it.
THE COURT:	**She can't, they done put this child through a water torture test.**
THE CLERK:	Right.
THE COURT:	**She's hot, she's cold, she wants to keep on (inaudible).**
THE CLERK:	Right. Right.
THE COURT:	(Inaudible).

THE CLERK:	Right, but she don't have (inaudible).
THE COURT:	**This child, she had her third foster care before she was five years old.**
THE CLERK:	Right, right. But she --
THE COURT:	(Inaudible).
THE CLERK:	But that's crazy. The children are right down in Virginia.
THE COURT:	What are?
THE CLERK:	The children are in Virginia.
THE COURT:	Yeah, yeah.
THE CLERK:	I don't know what she wants? (inaudible).
THE COURT:	No, (inaudible). **It's just a shame.**
THE CLERK:	It is.
THE COURT:	**It'[s] a shame. And then we (inaudible). What do you want me to do with this lady?**
THE CLERK:	Right.
THE COURT:	**I don't [k]now what you want, I don't know what you want me to do with this. I try to give you every benefit, anybody every benefit of the doubt.**
THE CLERK:	Right.
THE COURT:	**But what the hell am I supposed, and you getting ready to (inaudible). I know you got some time built up but you getting ready to go back to jail.**

THE CLERK:	I believe you.
THE COURT:	**At least for a little while. So I don't know what she wants me to do.**
THE CLERK:	I think so too. I believe the prosecutors (inaudible) try to stick it to her.
THE COURT:	They going to try to stick it to her.
THE CLERK:	Yeah.
THE COURT:	That's what they do.
THE CLERK:	Yeah, they do.

* * *

THE COURT:	Have mercy, have mercy.
THE CLERK:	Uh-huh.
THE COURT:	Have mercy, have mercy.

(Emphasis added).

Mother argues that she was denied her due process right to a fair and impartial trial based on the judge's two conversations with the courtroom clerk. Mother contends that the content of the conversations "demonstrated a lack of impartiality on the part of the judge," and that the judge "had already decided on the outcome of the case based on improper considerations instead of basing it on the correct legal standard set forth by Md. Code, Family Law [ ] § 5-323 and relevant law." Mother also argues that the judge's

demeaning comments about Mother's trial counsel gave the appearance of bias against Mother.[1]

The Department responds that it is clear from the totality of the record that the trial judge held no biases and afforded Mother due process of law. The Department argues that the judge's comments "did not demonstrate 'an egregious display of partiality and bias' against [Mother,]" and even if the comments showed bias, the bias was from a judicial, not personal, source, the latter being required for recusal. The Department contends that the judge's verbal pondering of his decision during the conversations, when viewed in light of his conduct during the remainder of the trial, such as reminding the Department of Mother's fundamental right "to try to parent her child[,]" announcing the need to review the most recent exhibits, and waiting three weeks to issue a decision, indicates that the judge "had not decided the case prior to the trial's conclusion."

The attorney for I.M. responds that "[t]here was no inclination from the exchanges between the clerk and the judge that there was actual bias or prejudice[,] which would support the appearance of impropriety and lead to a due process violation." The attorney for I.M. further argues that "the judge's comments were not threatening, egregious[,] or demeaning[,]" and did not indicate that he had formed or expressed an opinion about Mother or the outcome of the case.

[1] Mother argues that the judge's conversations constituted structural error and/or plain error, which deprived Mother of a fair trial. Because, as discussed *infra*, there was no error, we need not address this argument.

A fair and impartial trial is "no less deserving" in a civil setting as it is in a criminal setting. *Dinkins v. Grimes*, 201 Md. App. 344, 361 (2011) ("'We recognize that criminal trials might be thought to present even more compelling fair trial rights than do civil trials, but think that the importance and potential effects of this case sufficient to justify scrupulous care for those rights here.'" (quoting *In re San Juan Star Co.*, 662 F.2d 108, 118 (1st Cir. 1981))), *cert. denied*, 424 Md. 292 (2012). "It is axiomatic that '[a] fair trial in a fair tribunal is a basic requirement of due process.'" *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868, 876 (2009) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)). In *In re Murchison*, the United States Supreme Court stated that due process guarantees an "absence of actual bias" on the part of a judge. 349 U.S. at 136. The Supreme Court further opined in *Liteky v. United States*:

> **[O]pinions formed by [a] judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias** or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, **judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge.**

510 U.S. 540, 555 (1994) (emphasis added).

The Court of Appeals in *Jefferson-El v. State* stated that there is a strong presumption in Maryland "that judges are impartial participants in the legal process, whose duty to preside when qualified is as strong as their duty to refrain from presiding when not qualified." 330 Md. 99, 107 (1993). In order to overcome the strong presumption of impartiality, a "party requesting recusal must prove that the trial judge has 'a personal bias

or prejudice' concerning him or 'personal knowledge of disputed evidentiary facts concerning the proceedings.'" *Id.* (quoting *Boyd v. State*, 321 Md. 69, 74 (1990)). "Where the bias of a trial judge against a party is alleged as the basis for recusal, the bias must have derived from a 'personal,' rather than judicial source." *Goldberger v. Goldberger*, 96 Md. App. 313, 318, *cert. denied*, 332 Md. 453 (1993). "Where knowledge is acquired in a judicial setting, or an opinion expressing bias is formed on the basis of information acquired from evidence presented in the course of a judicial proceeding before that judge, neither that knowledge nor that opinion qualifies as personal." *Id.* at 318 (internal quotation marks omitted).

A party attempting to demonstrate that a judge does not have the appearance of impartiality has a slightly lesser burden than the burden of overcoming the presumption of impartiality. *Chapman v. State*, 115 Md. App. 626, 632 (1997). "Appearance of disinterestedness or impartiality is determined by examining the record facts and the law, and then deciding whether a reasonable person knowing and understanding all the relevant facts would recuse the judge." *Id.* (internal quotation marks omitted).

Mother never made a recusal motion during the trial, because the alleged bias of the trial judge did not come to light until after the judge had made his ruling. Nevertheless, we apply the above case law as it relates to determining whether the judge held a personal bias or prejudice against Mother, or that he appeared to hold such a bias. After considering the two conversations at issue and the totality of the record, we conclude that the trial judge did not hold a personal bias or appear to hold a personal bias against Mother or her trial counsel.

The first conversation between the trial judge and the courtroom clerk focused on the conduct of Mother's trial counsel. Prior to that conversation, the judge called a recess for a "mental health [ ] break." It appears the judge may have been frustrated at this point because of Mother's trial counsel's approximately twenty-four objections during the direct examination of Akehurst. The statements made by the clerk that the judge agreed to, or the statements made by the judge himself, do not indicate a "personal" bias against Mother's trial counsel or Mother. The judge formed an opinion of Mother's trial counsel based on the events occurring during the course of this trial, as well as other trials. As stated in *Liteky* "opinions formed by [a] judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, [are not] a basis for [ ] bias [ ] unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." 510 U.S. at 555. Even if the judge's comments or his agreement with the clerk's comments could be construed as being critical or disapproving of Mother's trial counsel, such statements still would not constitute personal bias. *See id.* ("[J]udicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge."). We thus see no basis for concluding that the judge held a personal bias against Mother instead of an opinion about Mother's trial counsel formed during judicial proceedings. *See Goldberger*, 96 Md. App. at 318.

Also, there was no appearance of personal bias on the part of the trial judge, because an examination of the record reveals that the judge provided Mother's trial counsel with additional assistance during trial, such as explaining to counsel how to refresh a witness's

recollection, assuring counsel that there was "no rush[,]" prompting trial counsel to offer a witness as an expert, and reminding the Department's trial attorney that "Mother is fighting for [her] fundamental right to try to parent her child."

The second conversation involved the topic of I.M.'s cycle through foster care three times before the age of five-years-old, Mother's decision to call I.M. to testify, Mother's other children, and Mother's pending sentencing for her convictions for manslaughter and related charges. Contrary to Mother's contentions, it does not appear from this conversation that the trial judge had decided the outcome of the case at that time. Instead, it seems that the opposite is true. It is clear to us that the judge was thinking aloud and grappling with the issue of whether Mother's parental rights should be terminated or not. Specifically, the judge's statements, "I don't [k]now what you want, I don't know what you want me to do with this[,]" and "what the hell am I supposed [to do,]" demonstrate that the judge was attempting to process the evidence as it was introduced at trial, and at that point, still had no clear idea what the outcome of the case would be. The judge's comment, "I know you got some time built up but you getting ready to go back to jail[,]" properly refers to Mother's pending sentencing for her convictions, because "the best interests of the child do not permit the juvenile court to ignore the reality of a child's life." *In re Jayden*, 433 Md. at 102 (internal quotation marks omitted).

Further, the trial judge's statement about putting the "child through a water torture test" involves Mother's decision to call I.M. to testify at the TPR trial. The judge was entitled to criticize such decision because of the emotional stress placed on a seven-year-old child by having to testify at a trial that involves her relationship with Mother. The

judge's later comment that "I try to give you every benefit, anybody every benefit of the doubt" shows that the judge was not only unbiased against Mother, but intended to give Mother every benefit of the doubt in reaching his final decision.

Finally, on April 26, 2016, the judge stated to each party's counsel that in light of certain newly admitted evidence, there was "no way in the world" that he would have a decision in the case at the conclusion of the trial, which was the next day, April 27, 2016, and that he would need at least three weeks to make his decision. The judge then rendered an oral opinion on May 19, 2016. Therefore, it is clear from a consideration of the entire record that, when the second conversation took place, the judge had not decided the outcome of the case. That decision was not announced until May 19, 2016, after the judge had considered all of the evidence and the argument of counsel.

For the foregoing reasons, we conclude that the trial judge did not hold a personal bias or appear to hold a personal bias against Mother or her counsel, and did not decide the outcome of the case until after a full consideration of all of the evidence and argument, with "every benefit of the doubt" to Mother. Accordingly, Mother's due process right to a fair and impartial trial was not denied.

II. TERMINATION OF MOTHER'S PARENTAL RIGHTS

A. Background

1. Mother's background and criminal history

Mother has given birth to seven children, two of whom are deceased. Mother's remaining children, four boys and one girl, I.M., no longer live with her. The boys' ages were 11, 14, 22, and 24 at the time of the TPR trial. The two youngest boys reside in

Virginia with a relative. Of the two deceased children, one child passed away in the hospital due to a medical condition, and the other child, Iz., died while in Mother's care.

Mother has a long history of contact with the criminal justice system. At age 17, Mother served time in a juvenile detention center. Later, Mother was arrested and convicted of parental kidnapping of her two oldest sons, who were minors at the time, and served nine months in jail. Mother also had separate arrests and convictions for assaulting a police officer and unlawful entry, which led to her two youngest sons being placed with a relative in Virginia. Mother's subsequent criminal history is set forth below.

2. First CINA Proceeding

The first CINA proceeding involving I.M. was initiated on February 23, 2010 as a result of Mother being arrested and detained by the Baltimore City Police on charges arising out of an alleged beating of a neighbor with a chair. At that time, I.M. was fourteen months old and was placed in foster care. Thereafter, while Mother was incarcerated and I.M. was in foster care, I.M. and Mother had limited contact due to Mother's disciplinary infractions in jail. On February 4, 2011,[2] the magistrate recommended that I.M. be found CINA and committed to the Department. On February 20, 2011, Stephanie Hamlin was assigned as the caseworker and arranged for I.M. to visit Mother three or four times at the jail. Hamlin attempted to discuss mental health services with Mother, but Mother was not receptive.

[2] Numerous hearings were held between February 23, 2010, and February 4, 2011.

Mother was acquitted of the charges and released from incarceration on September 9, 2011. Following her release, Mother failed to appear for her scheduled visit with I.M. On September 19, 2011, the Department requested dismissal of its Petition with Request for Shelter Care, the juvenile court signed an order dismissing the petition, and I.M. was returned to Mother's care.

3. Second CINA Proceeding

One week later, on September 26, 2011, Mother was arrested by the Baltimore City Police and detained on assault charges. I.M. was left with a non-relative during this time. Approximately two weeks later, on October 12, 2011, the Department received a report that the non-relative was no longer willing or able to provide care for I.M. The second CINA proceeding was initiated by order dated October 14, 2011, which authorized the placement of I.M. in foster care. During the next five months of incarceration, Mother was not permitted to have visitors and spoke with Hamlin only twice. On March 7, 2012, Mother was acquitted and was released from jail shortly thereafter. She called Hamlin demanding a visit with I.M. and became irate when Hamlin denied her request. I.M. remained in foster care.

From March until November of 2012, the Department arranged weekly supervised visits with Mother and I.M. at the zoo, the aquarium, the park, and other public areas. Mother signed two service agreements during this time, which required her to take a mental health evaluation, parenting classes, and participate in I.M.'s therapy and medical appointments. Mother came to some of I.M.'s appointments and completed the required parenting course, but she remained unemployed.

Prior to her mental health evaluation by Jennifer Neemann, Ph.D on September 8, 2012, Mother discovered that she was pregnant with Iz. Dr. Neemann determined that Mother suffered from chronic PTSD and needed therapy but believed reunification could begin prior to the completion of therapy.

By order signed on November 26, 2012, the juvenile court found I.M. CINA but returned her to Mother's custody under an Order of Protective Supervision.[3] The court terminated the CINA proceeding on February 13, 2013. Mother then moved out of state with I.M. and lost contact with the Department.

Mother gave birth to Iz. in the Spring of 2013. Mother, I.M., and Iz. moved back to Baltimore in mid-May 2013. In early September 2013, Mother and the two children moved into a single room in a rowhouse in Baltimore, all sharing a full-size bed. The room was small, very cluttered, and disorganized.

4. Third CINA Proceeding

The third CINA proceeding involving I.M. was initiated as a result of the death of Iz. After putting four-month-old Iz. and four-year-old I.M. to bed at approximately 10 p.m. on September 1, 2013, Mother left the children alone to go drink beer with friends, and did not return until 2:30 a.m. Mother noticed nothing unusual about Iz. when she changed Iz.'s diaper. When Mother awoke the next morning, Iz. was lying at the foot of the bed,

[3] The magistrate's recommendation dated November 15, 2012 was mistakenly signed by the juvenile court on November 26, 2012 after Mother filed an exception to the magistrate's recommendation. The juvenile court order dated November 26, 2012 was vacated, and an order signed on January 16, 2013, became the final order affirming the magistrate's recommendation finding I.M. CINA and placing I.M. under an Order of Protective Supervision.

unresponsive and motionless, while I.M. was sitting on the floor watching television. I.M. told Mother that Mother had been sleeping on Iz. I.M. told Mother that she tried to wake Mother to alert her but was unsuccessful. Mother called 911, and Iz. was pronounced dead at the hospital. Mother told a police officer during the investigation that she had been "drunk asleep" and could not remember anything about the previous evening. Later that day, Mother told a Department social worker that she had rolled over on Iz.

As a result of the apparent smothering death of Iz. by Mother, I.M. was placed in foster care on September 2, 2013. On September 3, 2013, the Department's shelter care petition for I.M. was granted. Mother was arrested and detained on September 26, 2013, for causing the death of Iz. I.M. has since blamed herself for Iz.'s death.

While she was incarcerated in 2014, Mother did not maintain any contact with her caseworker, Ruby Meekins. However, telephone contact between I.M. and Mother began on February 28, 2014. I.M.'s therapist helped I.M. talk with Mother about how I.M. missed her greatly and loved her, but was angry at Mother for laying on her sister and not waking up when I.M. called her. During this time, I.M. also experienced encopresis.[4] Mother's telephone contact with I.M. was discontinued on April 24, 2014, when Mother's telephone privileges at the jail were revoked.

[4] Encopresis, "sometimes called fecal incontinence or soiling, is the repeated passing of stool (usually involuntarily) into clothing." *Encopresis*, Mayo Clinic, http://www.mayoclinic.org/diseases-conditions/encopresis/home/ovc-20253388 (last visited Dec. 29, 2016).

5. I.M.'s placement with Ms. K.

On June 4, 2014, I.M. was placed with Ms. K., a family friend of Mother. At trial, Meekins described I.M. and Ms. K. as having a "close, loving relationship." Ms. K. is considered an adoptive resource by the Department. On September 12, 2014, the juvenile court entered an order changing the original permanency plan of reunification with Mother to a concurrent plan of reunification with Mother and placement with Ms. K., for custody and guardianship.

On December 17, 2014, Mother posted bail and was released from jail pending her trial on charges relating to the death of Iz. Thereafter, Mother did not maintain regular contact with Meekins. Mother did not visit I.M. but called I.M. four times from December 2014 until February 2015. On February 17, 2015, Mother was arrested and detained on a charge of assault. Although she was incarcerated from February-September 2015, Mother regularly called I.M., but not always at appropriate times.

Between July and August 2015, Mother wrote a letter to Meekins expressing an interest in reunification with I.M. On August 28, 2015, Meekins met with Mother at the jail and attempted to determine what services were available to Mother, but was unsuccessful. On September 2, 2015, Mother was acquitted of the assault charges and released from jail. Meekins learned of Mother's release from jail, although Mother never personally informed her. Mother did not have regular contact with Meekins after her release, despite Meekins's repeated efforts to have such contact. During 2015, I.M. struggled emotionally, demonstrated extreme mood swings, and engaged in physical

confrontations with peers. By August 2015, I.M. had made progress in therapy in controlling her behavior and temper.

6. Reunification Efforts - September 2015-March 2016

After her September 2015 release from jail, Mother moved to her father's and grandmother's home in Portsmouth, Virginia. Thereafter, Mother stated that she was "back and forth so much" between Virginia and Baltimore. In November 2015, Mother was homeless in Baltimore. Mother then began living in transitional housing on January 27, 2016, where she received treatment and counseling for alcohol and narcotics abuse, but had not engaged in any mental health treatment. Meekins stated that she did not have any contact with Mother in 2016. Mother remained unemployed and did not provide I.M. with any support in 2016. On March 9, 2016, Mother was convicted of manslaughter, reckless endangerment, and neglect of a minor as a result of the death of Iz.[5] On March 22, 2016, the juvenile court entered an order changing the permanency plan to adoption by a non-relative.

7. TPR Trial

On March 30-31, 2016, and April 26-27, 2016, the TPR trial took place. On May 19, 2016, the juvenile court rendered an oral opinion granting the Department's petition to terminate Mother's parental rights as to I.M. On June 17, 2016, Mother filed this timely Notice of Appeal.

[5] Mother's sentencing hearing has been postponed until January 2017.

On appeal, Mother challenges only two aspects of the juvenile court's decision terminating Mother's parental rights as to I.M under Maryland Code (1984, 2012 Repl. Vol., 2016 Supp.), § 5-323 of the Family Law Article ("FL"). The first aspect is the court's finding of a lack of bond between Mother and I.M. The second aspect is the court's finding of exceptional circumstances warranting termination of Mother's parental rights. We will discuss each aspect in turn.

B. Lack of Bond between Mother and I.M.

Appellant argues that the juvenile court erred by finding that there was a lack of bond between I.M. and Mother and that severing I.M.'s ties to Mother would not have a negative impact on I.M. Appellant asserts that the court misconstrued the analysis by asking whether a bond could be formed instead of asking "whether there was a bond between I.M. and [Mother,] such that severing their ties to each other would negatively impact I.M."

The Department responds that the juvenile court appropriately exercised its discretion in terminating Mother's parental rights, because it properly found that no bond existed between I.M. and Mother. The attorney for I.M. argues that the court considered many factors in coming to the finding that there was no bond between Mother and I.M. According to the attorney for I.M., the court was correct in finding that the severance of the parent-child relationship would not have a negative impact on I.M., because I.M. had moved on, and I.M.'s future physical and emotional health were best served by continuing to live with Ms. K.

One of the factors that a juvenile court must consider in coming to the ultimate decision that a parent's rights should be terminated is listed in FL § 5-323(d)(4). Subsection (d)(4) states that the court shall assess

> (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.

FL § 5-323(d)(4).

Prior to trial, Dr. Ruth T. Zajdel of the Medical Services Office of the circuit court conducted a bonding evaluation of Ms. K. and I.M. Dr. Zajdel created a report based on her evaluation that was admitted into evidence at the TPR trial on March 31, 2016.

In her report, Dr. Zajdel stated that there are four main components that are needed to form a secure attachment between a child and a caregiver: 1) "stability[,]" 2) "consistency[,]" 3) "security and nurturance[,]" and 4) "caregiver's respect for the child's task of separating and becoming an individual." Dr. Zajdel's report further stated:

> The first three years of life is the primary window of opportunity for children to develop the secure attachments that will affect later functioning. People with whom a child has formed a secure attachment with are not interchangeable and bonds are not replaceable.
>
> * * *

> If a child's secure attachments are severed, it can cause trauma and lead to long-term difficulties . . . [F]or example, [ ] children who move from one foster home to another tend to be at risk for developing insecure attachments [which has been associated with] low self-esteem, difficulty dealing with stress, lack of self-control, aggression, depression and other psychiatric problems, academic difficulties, and feelings of hopelessness.

During the bonding evaluation, Dr. Zajdel observed Ms. K. and I.M. interact and play for thirty minutes. Dr. Zajdel wrote in her report:

> Based on the interactions observed between Ms. K. and I.M. in the waiting area and during the current bonding session, **it can be concluded that I.M. is securely bonded to Ms. K. I.M. was able to verbally express her desires to continue living with Ms. K.** An individual parenting evaluation revealed that Ms. K. is interested in adopting I.M. and appears to be willing and able to provide a nurturing, stable, and consistent environment for I.M. at this time and in the foreseeable future.

(Emphasis added).

In addition to Dr. Zajdel's report, detailed reports from each time there was contact or attempted contact between Mother and the Department were admitted into evidence at the TPR trial. Also admitted into evidence at trial was the case plan that was created upon the initiation of the third CINA proceeding involving I.M. The case plan contained information about I.M.'s living arrangement, the caseworker's services and plan, services needed for I.M., and other information about I.M. In the case plan, the caseworker stated: "[Mother] and daughter [I.M.] are closely bonded. Both openly demonstrate physical affection to the other."

During its oral ruling on May 19, 2016, the juvenile court found that Mother and I.M. "may have a tie. And they may be the ties that bind[,] but they're not the ties that

bond." The court further stated that I.M. appeared to have "moved forward in her life" and that Ms. K. was providing her with the consistency and the security that she needed.

In support of these findings, the juvenile court pointed to the following evidence: Mother's visits and telephonic contact with I.M. "amounted to, at best, five to ten times per year[;]" I.M. had been in Ms. K.'s care for over two years; the Department's attempts to facilitate bi-weekly telephonic contact between Mother and I.M., which turned into "telephonic contact when it could be had[;]" and Ms. K.'s care for I.M.

The juvenile court also stated that Mother was mistaken in her reliance on the Department's case plan notes from her supervised visits with I.M. that referred to Mother and I.M. as "bonded." The court determined that the caseworker's use of the term "bonded" "was [ ] in the colloquial sense of an attachment and/or tie . . . ." Relying on Dr. Zajdel's report, the court observed: "Bonding includes residential stability, caretaker consistency, provision of security and nurturing, the care giver's respect for the child developing into an individual, and that when a bond occurs people to whom the child has bonded, they're not interchangeable nor are they replaceable." The court ultimately found that there was no bond between I.M. and Mother, because in order to be bonded, there needed to be some form of residential stability, caretaker consistency, provision of security, and nurturing, among others.

It is clear the juvenile court properly assessed the relationship between Mother and I.M. and between Ms. K. and I.M., as required by FL § 5-323(d)(4). The court's finding of a bond between I.M. and Ms. K. was based on the evidence that Ms. K. was the primary caretaker, provided a home for I.M., was diligent about I.M.'s therapy and education,

provided I.M. with stability and consistency, and ensured the health and safety of I.M. The court's finding of a lack of bond between I.M. and Mother was supported by evidence of Mother's failure to provide residential stability, caretaker consistency, security, and nurturing. We conclude that the court was not clearly erroneous in adopting this finding.

C. Finding of Exceptional Circumstances

Appellant contends that the juvenile court "erred in its determination that exceptional circumstances existed to warrant terminating [Mother's] parental rights." Appellant argues the court failed to review the proper factors in determining whether exceptional circumstances existed as set forth in *McDermott v. Dougherty*, 385 Md. 320, 419 (2005). Appellant also contends that the court's ruling is in error because the considerations relied on by the court to find exceptional circumstances did not warrant "a termination of parental rights absent [a] finding that a continued relationship between I.M. and [Mother] would be detrimental to I.M."

The Department responds that the juvenile court properly found by clear and convincing evidence that there existed exceptional circumstances to terminate parental rights pursuant to FL § 5-323(d). The Department argues that, although the factors set forth in FL § 5-323(d) are used to determine whether termination is in the child's best interest, they also serve as criteria for determining whether exceptional circumstances exist and should be used instead of the factors set forth in *McDermott*. The Department contends that in light of Mother's failures, convictions, and health issues, the court did not commit error in concluding that exceptional circumstances existed and that it would be in I.M.'s best interests to terminate Mother's parental rights.

The attorney for I.M. responds that the juvenile court properly exercised its discretion in finding that exceptional circumstances existed warranting the termination of Mother's parental rights. Specifically, the attorney for I.M. argues that the court properly addressed the factors set forth in FL § 5-323(d), detailed in its findings the reasoning for why exceptional circumstances existed, and properly exercised its discretion in terminating Mother's parental rights.

A parent has a constitutional right under the Fourteenth Amendment to raise his or her children. *See McDermott*, 385 Md. at 332, 353 (explaining that the term "liberty" in the Fourteenth Amendment includes the right to "establish a home and bring up children"); *see In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 494-95 (2007). Maryland courts have recognized a rebuttable presumption in termination of parental rights proceedings that it is in the best interest of children to remain in the custody of their parents. *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 103 (2010). A parent's right is not absolute, however, and "must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves from abuse and neglect." *Id.* (internal quotation marks omitted). Thus the presumption "may be rebutted upon a showing that the parent is either unfit or that exceptional circumstances exist that would make continued custody with the parent detrimental to the best interest of the child." *Id.* (internal quotation marks omitted).

Although the child's best interest has always been "the transcendent standard" in TPR proceedings, juvenile courts must keep in mind three critical elements in order to protect parental rights. *Id.* at 103, 112. First, "the court must focus on the continued

parental relationship and require that facts [ ] demonstrate an unfitness . . . or exceptional circumstances that would make a continued parental relationship detrimental to the best interest of the child." *In re Ta'Niya C.*, 417 Md. at 103 (internal quotation marks omitted). Second, "the State must show parental unfitness or exceptional circumstances by clear and convincing evidence." *Id.*; FL § 5-323(b). Third, "the trial court must consider the statutory factors listed in [FL § 5-323(d)] to determine whether exceptional circumstances warranting termination of parental rights exist." *Id.* at 103-04 (footnote omitted); FL § 5-323(d).

FL § 5-323 governs the termination of parental rights. FL § 5-323(b) states that

> [i]f, 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 interest, the juvenile court may grant guardianship of the child without consent . . . .

FL § 5-323(b).

The factors listed in FL § 5-323(d) serve both as the basis for a juvenile court's determination of "(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 Ta'Niya C.*, 417 Md. at 116.

Whenever a juvenile court considers the factors in FL § 5-323(d), the Court of Appeals has held that poverty; homelessness; physical, mental, or emotional disability; or

passage of time, alone, will not justify the termination of parental rights. *See In re Rashawn H.*, 402 Md. at 499-500; *In re Ta'Niya C.*, 417 Md. at 112. The Court held that it is not error for the juvenile court to consider the child's attachment to the foster family because FL § 5-323 expressly states the court shall consider the child's "emotional ties with and feelings toward . . . other [ ] [persons] who may affect the child's best interest significantly." FL § 5-323(d)(4)(i); *In re Jayden D.*, 433 Md. at 93, 102 ("[T]he juvenile court was required to consider [the child's] emotional attachment to his foster parents and the impact terminating parental rights would likely have on his well-being.").

In its ruling, the juvenile court considered each relevant factor under FL § 5-323(d). The court began with FL § 5-323(d)(1), which states that the court must consider:

> (i) all services offered to the parent before the child's placement, whether offered by a local department, another agency, or a professional;
> (ii) the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent; and
> (iii) the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any[.]

FL § 5-323(d)(1).

In its opinion, the juvenile court stated that each time I.M. came into contact with the Department, the Department offered Mother a number of services, such as referrals for mental health evaluations, parenting classes, and housing assistance. The court explained that, although Mother completed a parenting class during the first CINA proceeding, she failed to complete most of the other requests by the Department. The Department even attempted to provide services to Mother while she was in jail. The court stated:

> [I]n the three times that [the Department] had the child under the care, Mother refused to sign various service agreements. However, the -- even when Mother was incarcerated the Department made attempts to continue visitation and contact with the Department and [I.M.] and [ ] [M]other by contacting the jailhouse case manager to see if certain services could be offered.
>
> And each time that Mother was released from incarceration they would engage in attempts at weekly visitation. Sometimes they occurred, sometimes they did not.

To prepare Mother and I.M. for reunification, which was the original permanency plan goal, the Department paid for I.M.'s therapy and medical care, and notified Mother when such appointments would be held, giving her the opportunity to attend. Mother attended some of I.M.'s appointments but did not attend most of them.

FL § 5-323(d)(2) states:

> (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[.]

The juvenile court noted that Mother had little if any contact with I.M., namely, five to ten telephone calls or visits per year depending on the year. The court discussed Mother's recurrent incarcerations as being a cause for her difficulty in maintaining contact:

> [T]here was a lack of visitation because [ ] [M]other had gone through some blackout periods. She had gone through a blackout period during the first time that the child was in care. She had gone through a blackout period during the second time that the child was in care . . . . The visitation as supervised at that time [during the second proceeding] . . . at the aquarium . . . [,] the zoo[,] . . . and in the park.

The court noted that during 2014, Mother did not maintain any contact with Meekins, and in 2015 Mother's contact with Meekins was irregular.

> [T]he inference that the Court received is that [ ] Mother was not viewed as working towards reunification . . . . [ ] Meekins testified to the various tasks that were identified for Mother for reunification; a parenting class, psychological evaluation and follow through with any recommendations, individual therapy for trauma suffered as a child, alcohol counseling for the latest offense for which Mother faces the court later this month, anger management and things of that nature.
>
> Now, as to the issue of cooperation, Mother refused to sign any service agreements that were offered by [ ] Meekins.

Further, the Department assisted with telephonic contact between I.M. and Mother that began as a bi-weekly conversation and turned into "just telephonic contact when it could be had." The juvenile court focused on the testimony of Dr. Neemann, who had conducted a seven-and-one-half hour evaluation of Mother, that revealed Mother's "propensity for violence . . . and other related anger management issues that, when triggered [by a wrong touch], cause various stresses on Mother and that the doctor would recommend and had recommended that Mother go through some kind of trauma stress

therapy -- so that she can parent her child." The court went on to say that, although Mother's PTSD would not have a "direct interference with her ability to parent the child[,] parenting would be troublesome without a" PTSD specialist to help her address her issues. More worrisome, the court explained that

> [o]ne thing that is exceedingly obvious to this Court as testified by Dr. Neeman[n], . . . **Mother's multiple incarcerations have interfered with and intercepted her ability to parent her child.** There are no documents from Mother that she has either addressed or completed any tasks propounded by the Department [ ] with regard to the specific petition before the Court and the specific CINA finding before the Court and that **the only time that [ ] Mother has addressed her issues was a parenting class in the first time that the child came into care five plus years ago.**

(Emphasis added). The court also noted that Mother's contacts with law enforcement resulted in detentions five to ten times and that Mother had a pending sentencing hearing for her manslaughter conviction. Finally, the court observed that Mother had not made any contribution to the reasonable expense for the care and support of I.M., other than a collect card for telephone expenses.

The juvenile court next addressed the factors listed in FL § 5-323(d)(3), which are as follows:

> (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[.]

FL § 5-323(d)(3) (emphasis added).

In addressing FL § 5-323(d)(3), the juvenile court noted that Mother is pending sentencing for her March 9, 2016 involuntary manslaughter, reckless endangerment, and neglect of a minor convictions arising out of the death of Iz. The court suggested that the pending sentencing was "neither here nor there" as the court did not know the sentencing guidelines. The court characterized Akehurst's testimony, who was accepted by the court as an expert in permanency planning, as explaining that Mother's incarcerations and I.M.'s subsequent placements in foster care

> indicated that this pattern of children going into foster care and coming back out of foster care and then going back into foster care and coming back out of foster care disrupts permanency for a child, particularly, [ ] under the age of [five].
>
> **She indicated that the child, specifically [I.M.], was continually being recycled from foster care to reunification with [ ] [M]other and that this has a negative impact on [I.M.].** So

> actually the second removal repeated the same pattern of the first removal.

(Emphasis added).

Lastly, the juvenile court, as set forth above, addressed FL § 5-323(d)(4) and I.M.'s lack of a bond with Mother.

After considering the statutory factors under FL § 5-323(d), the juvenile court determined that

> Mother has failed to comply with or complete any of the tasks requested by [the Department]. She has not been able to maintain consistency on the care issues, she has repeatedly placed herself in positions of risk with regard to the multiple incarcerations that have taken away -- her away from [I.M. for] . . . 74 to 75 percent of [I.M.]'s life.

The court also found that Mother's "visitation has been inconsistent and woeful, maintaining sporadic contact with the Department[,]" that there are no additional services that would be useful to return I.M. to Mother, and that Mother's financial condition is "woeful." Finally, the court pointed to the lack of a bond between Mother and I.M., stating that "[I.M.] and Mother may have a tie. And they may be the ties that bind[,] but they're not the ties that bond."

The juvenile court concluded that exceptional circumstances existed such that returning I.M. to Mother would not be in the best interest of I.M. "The [c]ourt realizes the presumption of the . . . biological parent to parent the child but on the totality of the testimony and the evidence and the voluminous exhibits that the [c]ourt went through, exceptional circumstances do exist and the petition [for guardianship with the right to consent to adoption or long-term care or short of adoption] is granted."

The juvenile court also concluded by clear and convincing evidence that I.M.'s "future physical and emotional health are best served by continuing to live with [Ms. K.] and that the impact of TPR, the permanency in the home of [Ms. K.] has been consistent, that [I.M.] has progressed with [Ms. K.], and that [Ms. K.] has addressed all of her issues, whether they be therapeutic, academic[,] and/or spiritual." Ms. K. "has been consistent in her love and support of [I.M.] and has taken the role, quote/unquote, of mother."

Based on our review of all the factors in FL § 5-323(d), as determined by the juvenile court, there was ample evidence to support (1) a finding that exceptional circumstances existed that would make a continued parental relationship with Mother detrimental to I.M.'s best interest, and (2) the ultimate conclusion that the termination of Mother's parental rights over I.M. was in I.M.'s best interest. Accordingly, the juvenile court did not abuse its discretion by granting the Department's petition terminating Mother's parental rights over I.M.

CONCLUSION

For the foregoing reasons, we hold that Mother's due process right to a fair and impartial trial was not denied, and that the trial judge did not hold a personal bias or appear to hold a personal bias against Mother or Mother's trial counsel. We also hold that the juvenile court did not commit clear error in finding that Mother and I.M. did not have a bond and in finding that exceptional circumstances existed warranting the termination of

Mother's parental rights. Thus the juvenile court did not abuse its discretion by terminating Mother's parental rights over I.M.

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