

Circuit Court for Montgomery County
Case No. 06-Z-17-0004

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 926

September Term, 2017

IN RE: ADOPTION/GUARDIANSHIP OF
J.M.

Nazarian,
Shaw Geter,
Fader,

JJ.

Opinion by Fader, J.

Filed: January 5, 2018

* 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.

Marcus L. (“Father”) challenges the termination of his parental rights as to his son, J.M., by the Circuit Court for Montgomery County, sitting as a juvenile court.¹ The court found Father to be an unfit parent and that termination of his parental rights was in J.M.’s best interest. In doing so, the court gave careful consideration to each of the relevant statutory criteria and made specific findings based on the evidence as to each of them. Finding no error or abuse of discretion, we affirm the termination of Father’s parental rights.

Father also challenges the juvenile court’s decision to appoint the Montgomery County Department of Health and Human Services (“the Department”) as J.M.’s guardian, rather than Father’s maternal aunt. In light of our affirmance of the termination of Father’s parental rights, he lacks standing to challenge J.M.’s placement. Even if he had standing, we would affirm.

BACKGROUND

The Department’s Involvement with J.M.’s Sister, K.L.

J.M. was born in March 2016 to Karen M. (“Mother”) and Father. The story of the Department’s involvement with J.M.’s parents begins with their first child, K.L., who was born several weeks premature in October 2014. Mother tested positive for marijuana at K.L.’s birth, prompting the Department’s involvement. K.L. remained in the hospital for almost two months due to her low birthweight and various other complications.

¹ Father frames his two questions presented as: “1. Did the lower court err in terminating Father’s parental rights? 2. Did the lower court err in refusing to place J.M. in the care of Father’s aunt rather than granting guardianship to the Department?”

K.L. had breathing problems starting less than a month after her release from the hospital. Although Mother initially sought treatment, the problems persisted. During one visit, concerned staff with the Montgomery County Infants and Toddlers Program advised Mother to act quickly to take K.L. to the hospital if the condition worsened. Shortly thereafter, the condition worsened. But when K.L.'s maternal grandmother woke Mother and advised her to take K.L. to the hospital, Mother refused and instead went back to sleep. The grandmother called 911. Although initially uncooperative, Mother eventually allowed the emergency services personnel to take K.L. to the hospital, where she was diagnosed with acute bronchiolitis.

K.L. remained in the hospital for seven days, until January 26, 2015. While visiting the hospital that day, Father and Mother argued and, according to hospital employees, “trashed” the hospital room. After leaving the hospital, Mother collapsed. The hospital discharge papers indicate she was physically assaulted, although Mother denied this. That incident was one in a series of domestic violence reports involving Father and Mother. Mother obtained a temporary restraining order against Father in December 2014, after he kicked her and her belongings out of his car. There were at least four other reports of domestic violence involving Father and Mother in 2015 alone.

K.L. was removed to foster care on the same day as the altercation between Father and Mother in the hospital. The following month, the juvenile court declared K.L. a child

in need of assistance (“CINA”).² The Department placed K.L. with a foster mother, T.D., with whom she has lived ever since.

In its initial February 2015 CINA order, and in at least five more orders over the next 20 months, the juvenile court ordered Father to participate in services including individual therapy, substance abuse evaluation, parenting education, and domestic violence counseling, as well as undergo regular urinalysis and a psychological evaluation. Father participated in almost none of these services. He did not submit to urinalysis because he did not “feel like it.” Nor did he undergo individual therapy. Although he completed the orientation for domestic violence counseling, he failed to attend any further sessions. He repeatedly and consistently denied his involvement in any domestic violence, stating that any incidents were Mother’s fault.

Father attended only the first of two required days for the psychological evaluation. The psychologist nonetheless obtained sufficient information from the first session to make a preliminary diagnosis of Antisocial Personality Disorder. Among other findings, the psychologist noted that Father’s “vision of parenting . . . was extremely concerning” in that Father was “self-focused, entirely concerned about how [K.L.] made him feel, and showed absolutely no empathy toward his daughter.”

² A “child in need of assistance” is one who requires court intervention because the child has been abused or neglected, or has a developmental disability or mental disorder; and his or her “parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” Md. Code Ann., Cts. & Jud. Proc. § 3-801(f).

The Department's Involvement with J.M.

Although Mother's tests for drug use were clean at J.M.'s birth, she had tested positive for marijuana one month earlier. The Department took J.M. into shelter care three days after his birth. The juvenile court granted the Department temporary custody shortly thereafter and, by the end of the month, declared J.M. a CINA. The court initially placed J.M. into kinship care with a cousin, but soon after ordered an emergency change of placement because of the cousin's lack of cooperation with the Department. The Department then placed J.M. in the care of T.D., the same foster mother caring for K.L.

In April 2016, one month after J.M.'s birth, Father was arrested for human trafficking, human trafficking by force, and assault. A jury convicted Father of those crimes in December 2016. The Circuit Court for Montgomery County sentenced him to 20 years in prison, and this Court affirmed. That incident was the latest in a series of interactions between Father and the criminal justice system, including convictions for second-degree assault in 2013, possession with intent to distribute on school property in 2014, and affray and second-degree assault in 2015.

In July 2016, the juvenile court held a review hearing in which it determined that J.M. remain in foster care as a CINA. The order required that father participate in services, if available where he was incarcerated and under the direction of the Department, including substance abuse evaluation, parenting education, and domestic violence counseling. As with the services ordered in connection with proceedings related to K.L., Father participated in almost none of these. Indeed, Father refused to sign a service agreement with the Department, purportedly out of concern that he would be unable to comply while

incarcerated and that non-compliance would be used against him. He testified, however, that since his incarceration he had tested clean for drugs, participated in a parenting education class, and was evaluated by prison officials as not requiring domestic violence counseling. He did not provide any evidence of these steps beyond his own testimony.

Father's Preferred Placement Options

Father identified both his mother, C.A., and maternal aunt, T.L., as preferred placement options for J.M. and K.L. In September 2016, the juvenile court found C.A. unsuitable. Despite identifying T.L., Father initially refused to provide her contact information to the Department and the Department's own attempt to reach out to her in December 2016 was unsuccessful. It was not until January 2017, *after* the court changed J.M.'s permanency plan from reunification with his parents to adoption by a non-relative, that T.L. first reached out to the Department. When she met with the Department, T.L., who lived in a two-bedroom apartment with her own 14-, 16-, and 23-year-old children, expressed reservations about raising additional children. She also, however, expressed a willingness to do so for the sake of Father and so that the children did not feel abandoned by their family.

The Petitions to Terminate Mother's and Father's Parental Rights

In early January 2017, the Department petitioned the juvenile court for the termination of Mother's and Father's parental rights as to both K.L. and J.M. Mother consented, conditioned on the children being adopted by their foster mother, but Father objected. In April 2017, after a hearing, the juvenile court terminated Father's rights as to K.L. and granted guardianship to the Department. This Court recently affirmed that

judgment in an unreported opinion. *In re Adoption/Guardianship of K.L.*, No. 592, Sept. Term 2017, slip op. (Ct. Spec. App. Dec. 4, 2017).

On June 7, 2017, the juvenile court held a hearing on the termination of Father's parental rights as to J.M. The court heard live testimony from J.M.'s social worker, foster mother, and Father. The court also considered the transcript of T.L.'s testimony from K.L.'s hearing and, in lieu of expert testimony, the report of the 2015 psychological evaluation of Father.

On June 26, 2017, the juvenile court ordered the termination of Father's parental rights as to J.M. Based on a thorough review of the relevant statutory factors and evidence, the court found that "Father is not a fit parent for J[M.]" and that termination of Father's parental rights was in J.M.'s best interest. The court also determined that T.L. was not a suitable placement for J.M. at that time and granted guardianship to the Department. Father noted a timely appeal.

DISCUSSION

Termination of parental rights decisions are reviewed under "three different but interrelated standards": clear error review for factual findings, de novo review for legal conclusions, and abuse of discretion for the juvenile court's ultimate decision. *In re Adoption of Jayden G.*, 433 Md. 50, 96 (2013) (quoting *In re Adoption of Ta'Niya C.*, 417 Md. 90, 100 (2010)). "A trial court abuses its discretion when its 'ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.'" *Ingram v. State*, 427 Md. 717, 726-27 (2012) (quoting *McLennan v. State*, 418 Md. 335, 354 (2011)). It is for this Court to decide only

whether there was sufficient evidence on which the juvenile court could reasonably have determined, by clear and convincing evidence, that terminating parental rights was in the best interest of the child. *In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. 30, 46 (2017).

This Court “must treat the juvenile court’s evaluation of witness testimony and evidence with the greatest respect,” *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 719 (2011), and we must “consider the record in a light most favorable to the prevailing party,” *In re Jayden G.*, 433 Md. at 88. The juvenile court’s determination of the best interest of the child must be “accorded great deference, unless it is arbitrary or clearly wrong.” *In re C.A. & D.A.*, 234 Md. App. at 46.

I. THE JUVENILE COURT DID NOT ABUSE ITS DISCRETION IN CONCLUDING THAT FATHER WAS AN UNFIT PARENT AND THAT TERMINATION OF FATHER’S PARENTAL RIGHTS WAS IN THE BEST INTEREST OF J.M.

The juvenile court made extensive findings of fact regarding Father’s history (or lack thereof) with J.M. and K.L.; his lack of engagement and cooperation with the Department; past instances of domestic violence; and other factors relevant to his fitness as a parent, including but not limited to issues arising from his long-term incarceration for human trafficking by force. The decision listed and discussed the applicability of each of the relevant statutory criteria in light of the court’s factual findings. In consideration of each of these findings and relevant law, the court found by clear and convincing evidence that “Father is unfit, that . . . Father poses an unacceptable risk to J[.M.]’s future safety, and that it is in J[.M.]’s best interest that the parental rights of [Father] be terminated.”

Father argues that the juvenile court abused its substantial discretion by not properly supporting all of its conclusions with facts, ignoring the context of various facts, and failing to articulate why all of the statutory factors indicated that a continued relationship with Father was detrimental to J.M.’s interest. In particular, Father argues that the juvenile court: (1) should not have relied on the Department’s “incomplete” psychological evaluation of Father; (2) erred in finding that Father did not participate in court-ordered services while incarcerated; (3) improperly penalized Father for his incarceration; and (4) gave improper consideration to J.M.’s attachment to and prospects with his foster family. We disagree.

Cases involving the termination of parental rights require a careful balance between two important interests: a parent’s liberty interest in raising his or her child and the State’s interest in protecting at-risk children. *In re C.A. & D.A.*, 234 Md. App. at 47-48. Under both the federal and Maryland constitutions, parents have a fundamental liberty interest in caring for and raising their own children as they see fit. *In re Yve S.*, 373 Md. 551, 565-68 (2003). But that right is not absolute; it “must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect.” *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 497 (2007). The touchstone of the court’s analysis must always be the best interest of the child, which “is of transcendent importance,” *id.*, and “trumps all other considerations,” *In re Ta’Niya C.*, 417 Md. at 111; *see also* Md. Code Ann., Fam. Law § 5-323(d) (requiring court to “give primary consideration to the health and safety of the child”).

Although “the ultimate focus of the juvenile court’s inquiry must be on the child’s best interest,” *In re Ta’Niya C.*, 417 Md. at 116, the parent’s liberty interest is protected by “three critical elements,” *In re Rashawn H.*, 402 Md. at 498. First, there is a rebuttable presumption that the best interest of the child is to remain in the care and custody of a biological parent. *Id.* at 498-99. That presumption “may be taken away 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).

Second, a finding of unfitness or exceptional circumstances must be made based on clear and convincing evidence. *In re Rashawn H.*, 402 Md. at 499; *see* Fam. Law § 5-323(b).

Third, the juvenile court’s discretion in determining what is in the child’s best interest is guided by the specific statutory factors it is required to consider, which are enumerated in Family Law § 5-323(d). *In re Rashawn H.*, 402 Md. at 499.³ That said, no

³ Other relevant factors a court may consider, in addition to the statutory factors, include: “age, stability, and the capacity and interest of a parent to provide for the emotional, social, moral, material, and educational needs of the child,” *In re Ta’Niya C.*, 417 Md. at 104 n.11; as well as “the length of time that the child has been with his adoptive parents; the strength of the bond between the child and the adoptive parent; the relative stability of the child’s future with the parent; the age of the child at placement; the emotional effect of the adoption on the child; the effect on the child’s stability of maintaining the parental relationship; whether the parent abandoned or failed to support or visit with the child; and, the behavior and character of the parent, including the parent’s stability with regard to employment, housing, and compliance with the law,” *In re C.A. & D.A.*, 234 Md. App. at 50 (citing *In re No. A91-71A*, 334 Md. 538, 562-64 (1994)).

factor necessarily receives more weight than any other, nor is it “necessary that every factor apply, or even be found, in every case.” *In re Jasmine D.*, 217 Md. App. at 737. Also, the court need not wait for actual injury to occur before acting; it may consider a parent’s past conduct, including care for another child, in determining his or her future ability to care for the child before the court. *In re Adriana T.*, 208 Md. App. 545, 570-71 (2012); *see also* Fam. Law § 5-323(d)(3)(v) (requiring the court to consider whether “the parent has involuntarily lost parental rights to a sibling of the child”)); *In re Priscilla B.*, 214 Md. App. 600, 625-27 (2013) (stating same with respect to the CINA statute).

If the juvenile court lays out all of the statutory factors and relevant considerations, determines that the parent is unfit or that there are exceptional circumstances, and expressly finds that the child’s best interest lies in terminating the parent’s rights, then “the parental rights we have recognized and the statutory basis for terminating those rights are in proper and harmonious balance.” *In re Rashawn H.*, 402 Md. at 501.

We find nothing in the record or the juvenile court’s decision indicating that the court abused its discretion by terminating Father’s parental rights. There is no need to recount at length each of the juvenile court’s findings. What matters, for the purposes of reviewing the ultimate decision for abuse of discretion, is that the court, having stated the correct legal standard to guide its analysis, provided an extensive summary of its findings of fact, identifying evidentiary support; reviewed each of the required statutory factors; explained whether and, if applicable, how each of those factors applied; and considered all of those factors in determining J.M.’s best interest. *Id.*; *In re Jasmine D.*, 217 Md. App. at 736-37.

The juvenile court concluded that Father’s narcissistic personality, lack of empathy for his children, clinical diagnosis of Antisocial Personality Disorder, and “serious criminal convictions consistent with his diagnosis . . . do not bode well for his ability to demonstrate the basic ability and instincts necessary to care for a child.” It found that Father had never provided care for either of his children, showed no interest in engaging in services necessary to resume his role as a father, and “demonstrated no insight with regard to” past instances of domestic violence. Although the Department had offered appropriate services, Father “demonstrated little effort to adjust his circumstances to make it in J[.M.]’s best interest to be returned to him.” Instead, Father absented himself from the lives of both of his children “through acts of commission,” including the human trafficking convictions for which he is now serving a 20-year sentence, and “through acts of omission . . . when not incarcerated.” The court also found that Father neglected both children, exposing them to ongoing domestic violence and substance and mental health issues.

By contrast, the juvenile court found that J.M. “thrived outside his father’s care.” J.M. developed a particularly close bond with his sister, with whom he now resides, and “would be subject to potential emotional, developmental and educational harm if he were to be removed” from his foster home. Based on J.M.’s interest in “real permanency” and Father’s “unacceptable risk to [J.M.]’s future safety,” the court concluded that: (1) “Father is not a fit parent for J[.M.] and likely will not take the steps to become a fit parent in the foreseeable future”; and (2) “it is in J[.M.]’s best interest that the parental rights of [Father] be terminated.”

We now turn to Father’s specific contentions. First, the juvenile court did not err in relying on the Department’s psychological evaluation. As an initial matter, Father waived any objection to this evidence by not objecting when it was introduced. And it was Father’s own refusal to attend the second day of the examination that precluded a more complete evaluation. Moreover, the psychologist determined that there were sufficient data to make the assessment and diagnosis at issue even without the second examination day. The juvenile court thus did not abuse its discretion either in admitting the evaluation or in the weight it chose to afford it. *See Walker v. Grow*, 170 Md. App. 255, 275 (2006) (“The weight to be given the expert’s testimony is a question for the fact finder.”).

Second, the court did not err in declining to give greater weight to Father’s uncorroborated, self-serving testimony than to other evidence of his noncompliance with court-ordered services and services offered by the Department. Father testified that while incarcerated he had taken a parenting class, had tested clean for drugs, and that prison officials determined he did not need domestic violence counseling. Having had the opportunity to observe Father’s testimonial demeanor, and with substantial evidence of Father’s noncompliance, the juvenile court did not commit clear error in finding that Father had shown “no interest in engaging in the services . . . necessary to the resumption of his role as a father.” *See In re Joseph G.*, 94 Md. App. 343, 349 (1993) (“The trial court has discretion as to the credibility of witnesses.”).

Third, the juvenile court did not improperly penalize Father for his criminal history. This case is unlike *In re Adoption/Guardianship Nos. CAA92-10852 & CAA92-10853*, 103 Md. App. 1 (1994), on which Father relies. There, we determined that the juvenile court

incorrectly treated the father’s relatively short-term period of incarceration as a disability that acted as *per se* justification for termination of his parental rights. *Id.* at 29-30. Here, by contrast, the juvenile court did not abuse its discretion in considering Father’s long-term incarceration for human trafficking by force—which began one month after J.M.’s birth and may continue past his 18th birthday—as one factor among many contributing to its conclusion that it was in J.M.’s best interest to terminate Father’s parental rights. Long-term incarceration can “be a critical factor in permitting the termination of parental rights, because the incarcerated parent cannot provide for the long-term care of the child.” *In re Adoption/Guardianship No. J970013*, 128 Md. App. 242, 252 (1999). Otherwise, the best interest of children would be “placed in suspended animation” and subordinated to the hopes of a parent for a successful appeal, parole, or pardon. *Id.* at 253.

The juvenile court considered Father’s long-term incarceration as one factor among many demonstrating his unfitness. It recognized that Father’s “involvement with the criminal system does not disqualify him as a parent.” But the court also found that Father’s recent criminal history had “severely limited” his availability to engage with the Department and J.M., and noted that his repeated run-ins with the law were indicative of an “inability to provide a safe and stable home for J[.M.]” The court also concluded that Father’s conviction for human trafficking by force is inconsistent with the “judgment requisite of a parent.” *See* Md. Code Ann., Crim. Law § 11-303(b)(2) (prohibiting “knowingly tak[ing] or detain[ing] another with the intent to use force, threat, coercion, or fraud to compel the other to . . . perform a sexual act, sexual contact, or vaginal

intercourse”). Given the long-term nature of Father’s current incarceration, it was not improper for the juvenile court to weigh it within the context of all of the facts in the record.

Fourth, the juvenile court did not err by considering J.M.’s emotional attachment to, and future prospects with, his foster family. *See In re Ashley S.*, 431 Md. 678, 711 (2013) (stating that “the court is to assess the reality of the children’s circumstances and make findings accordingly”). Although parental rights may not be terminated solely because a child might be better off with other parents, *In re Yve S.*, 373 Md. at 593-94, that is not what the juvenile court did. Rather, the juvenile court properly considered J.M.’s “adjustment to . . . community[,], home[, and] placement,” as required by Family Law § 5-323(d)(4)(ii). Among the factors a court is allowed to consider in determining a child’s best interest are “the possible emotional effect on the child of a change of custody” and “the nature and strength of the ties between the child and the third party custodian.” *In re Ta’Niya C.*, 417 Md. at 106 (internal citation omitted). The critical goals of permanency and stability can be pursued through adoption when they are not reasonably available through biological parents. *In re Jayden G.*, 433 Md. at 82-86, 92-93. Here, Father’s parental rights were terminated not because T.D. was a “better” parent, but because Father had demonstrably failed to be a stable parent for his son.

The juvenile court considered the enumerated statutory factors and record evidence. Its findings of fact are supported by evidence and not clearly erroneous. Its conclusions regarding Father’s unfitness and J.M.’s best interest were well within its permissible discretion. We affirm the termination of Father’s parental rights.

II. FATHER LACKS STANDING TO CHALLENGE THE JUVENILE COURT’S GUARDIANSHIP DETERMINATION.

Father argues, in the alternative, that the juvenile court erred in granting guardianship of J.M. to the Department, rather than to Father’s aunt, T.L. However, “[o]nce an order terminating parental rights becomes final, the parent has no standing to challenge future matters regarding the child.” *In re Adoption/Guardianship of L.B. and L.L.*, 229 Md. App. 566, 599 (2016). To account for the possibility that such an order might be reversed on appeal, we allow a parent whose parental rights have been terminated in a proceeding that also determined guardianship to challenge both decisions on appeal. *Id.* But once this Court determines to affirm the termination of parental rights, “the parent no longer has standing to challenge decisions relating to the child, including the circuit court’s order regarding placement of the child.” *Id.* Father thus lacks standing to contest the juvenile court’s guardianship decision.

Even if Father had standing, we would affirm. Although Maryland’s statutory scheme generally provides a preference for placement with a relative, the child’s best interest “trumps all other considerations.” *In re Ta’Niya C.*, 417 Md. at 111, 116; *see also*, *e.g.*, Cts. & Jud. Proc. § 3-819(b)(3) (requiring court to prefer placement with a relative “[u]nless good cause is shown”); *id.* § 3-823(e)(1)(i) (prioritizing placement with a relative only “to the extent consistent with the best interests of the child”); Fam. Law § 5-525(f)(2) (same).

The juvenile court did not abuse its discretion in determining that placement with T.L. was not in J.M.’s best interests. T.L. had never met J.M. or K.L., she was reluctant to

raise children again, and she did not appear in the proceedings until after the court had already changed J.M.'s permanency plan to placement with a non-relative. Exploring whether she could become a proper guardianship option would have required delay. In addition, J.M. has a strong bond with his foster family and sister, who resides in the same household, and he was thriving in that environment. Under these circumstances, and in light of the importance of establishing permanency for J.M., *see In re Jayden G.*, 433 Md. at 82-86, the juvenile court did not abuse its discretion in determining that J.M.'s best interest would be served by granting guardianship to the Department.

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