Circuit Court for Baltimore City
Case No. T20339005

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 59

September Term, 2022

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IN RE S.B.

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Berger,
Friedman,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Berger, J.

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Filed: October 18, 2022

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

This case is before us on appeal from an order of the Circuit Court for Baltimore City, sitting as a juvenile court, granting a petition to terminate the parental rights ("TPR") of T.B. ("Mother"), appellant, to her daughter, S.B, the respondent child.[1] Mother contends that the juvenile court erred in granting the TPR petition and presents three questions for our review on appeal, which we have consolidated and rephrased as two questions as follows:[2]

I. Whether the juvenile court erred and/or abused its discretion by terminating Mother's parental rights to S.B.

II. Whether the juvenile court violated Mother's due process rights when it required her to testify during the TPR hearing over objection.

We shall affirm.

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[1] Mother reported that S.B.'s father was deceased.

[2] Mother presented the following three questions for our consideration:

1. Did the juvenile court err when it terminated Ms. B.'s parental rights to S.B. after properly concluding that the Department failed to provide her with adequate reunification services tailored to her cognitive limitations but erroneously finding that the provision of tailored services would have been futile?

2. Did the court's erroneous findings under Md. Code, Fam. Law (FL) § 5-323(d)(1) infect its remaining conclusions under the applicable statutory factors, further rendering it an abuse of discretion to terminate mother's parental rights?

3. Did the court violate mother's due process rights when it compelled her to testify during the termination hearing over her objection at the request of child's counsel?

## FACTS AND PROCEEDINGS

*S.B.'s Early Years in Mother's Care*

S.B. was born on November 15, 2012. S.B. was medically fragile and remained hospitalized for over a year after her birth. Upon discharge from the hospital, S.B. resided with Mother and S.B.'s maternal great-grandmother, L.N. ("GGM").[3] S.B. continued to have medical problems, including chronic kidney disease, seizures, asthma, and other medical, psychological, and developmental concerns, and was eventually diagnosed with a moderate intellectual disability, ADHD, a language disorder, and autism. She is fed via a gastrostomy tube ("G-tube") and can ingest very limited food by mouth, such as applesauce and vanilla ice cream. Throughout S.B.'s hospitalization and early years, Mother deferred to GGM for medical decision-making for S.B. and did not take an active role in communicating with S.B.'s medical providers and social workers.

Beginning in 2014, S.B. regularly saw pediatric nephrologist Dr. Jeffrey Fadrowski at Johns Hopkins Hospital to manage her advanced chronic kidney disease. She had been on dialysis as an infant but had been able to come off dialysis for a period of time. The initial treatment plan was for S.B. to receive peritoneal dialysis at home in the care of Mother and GGM, but that plan was not successful. Mother and GGM did not complete

[3] Mother was raised by her grandmother and grandfather because her own mother had a substance abuse disorder.

peritoneal dialysis training, and their home was not approved for peritoneal dialysis.[4] S.B.'s kidney failure was medically managed.

When Dr. Fadrowski began seeing S.B. in 2014, her kidney function was approximately twenty percent of normal, which is within the range at which dialysis is considered. Dr. Fadrowski explained that Mother was often present during S.B.'s clinic visits and hospitalizations, but she "did not participate in any of the conversations." Instead, "all decisions and conversations were led by" GGM, and GGM had signed a health affidavit to make medical decisions for S.B. Dr. Fadrowski had concerns about Mother's ability to comprehend their discussions about S.B.'s medical issues.

Dr. Fadrowski viewed GGM as the primary medical decision maker for S.B. Dr. Fadrowski explained that GGM "had a lot of skepticism [about] our treatment recommendation and plans, and often would temporarily refuse any recommendations." Her refusals involved a "wide range of things . . . from a blood draw to bigger things, such as timing of initiation of dialysis, addressing non-functioning hemodialysis catheters, and then the ultimate one was [the] delay in kidney transplantation."

[4] Johns Hopkins Hospital requires that a home be approved for peritoneal dialysis due to requirements for appropriate sanitation standards and space requirements. A patient receiving peritoneal dialysis must have their own bed, a sterile environment, and space for the dialysis machine and supplies. Peritoneal dialysis is performed overnight over an eight-to-ten-hour period. The caregiver administering dialysis must make multiple decisions about which of three solutions to use based upon the patient's weight and blood pressure. Caregivers who provide peritoneal dialysis at home must complete at least thirty hours of specialized training.

S.B. was placed on the kidney transplant list in March 2015. A kidney transplant is the "gold standard" for kidney failure because it leads to "far superior" outcomes for patients when compared to dialysis. Patients who receive kidney transplants live longer than those on dialysis and have fewer complications. When S.B. was getting close to requiring dialysis, Dr. Fadrowski recommended that S.B. receive a kidney transplant. Dr. Fadrowski would screen potential kidneys for S.B. and contact GGM when a suitable kidney was identified; he would only recommend a kidney for S.B. when it was "excellent."[5] By December of 2017, S.B. had been offered five or more kidneys, but GGM and Mother refused to consent to a transplant.

S.B.'s kidney function continued to deteriorate. By late 2017, Dr. Fadrowski and the medical team were involved in "dialysis planning" for S.B. because she was "not growing, gaining any weight, and then ultimately having seizures." In December 2017, S.B. began receiving hemodialysis three times per week at an outpatient dialysis center at Johns Hopkins Hospital. Dr. Fadrowski explained that "[t]he goal was still kidney transplantation, even more so [after beginning dialysis], because of the challenges of dialysis in small children." "Multiple complications related to hemodialysis" made it "more challenging to proceed with kidney transplantation." S.B. frequently "had catheter infections that required removal of the catheter, 7 to 14 days of IV antibiotics, [and]

[5] Dr. Fadrowski explained that kidneys are classified and given a rating based on their quality. For "an 80-year-old with end-stage kidney disease, you may not be as concerned about getting a kidney with a bad score, because you don't need it to last 40 years," but only the highest rated kidneys were offered to S.B.

replacement of the catheter." A patient cannot receive a kidney transplant when they have an active infection, "so the windows in which [Dr. Fadrowski and his team] could perform transplantation became much narrower" due to S.B.'s frequent infections.

Johns Hopkins medical staff instructed Mother and GGM on the proper procedure for replacing S.B.'s catheter dressing and provided required supplies, but S.B. would often come to clinic appointments with her hemodialysis catheter not intact, which increased her "risk for infection." If there was a delay in removing the catheter or receiving dialysis due to an infected catheter, the risk for more severe infection increased. Hemodialysis catheters typically last approximately six months, but S.B. required more than seven catheter replacements in 2018.

S.B. also had complications related to blood transfusions she received in connection with her infections. When she received blood transfusions, S.B.'s "immune system became sensitized to proteins that were not her own," which were "the same proteins that can be present on many kidney transplants." S.B. "developed antibod[ies] against these foreign proteins, which then precluded her from receiving some of the kidney offers that [Dr. Fadrowski and his team] had available."

Dr. Fadrowski reported "there was frustration, and kind of [an] unwillingness to discuss parts of [S.B.'s] medical care" with Mother and GGM. Mother and GGM's "relationship with the medical team was not collegial, and there was a real lack of[] trust by [GGM]" that was "getting in the way of appropriate care for [S.B.]" The medical team's

communication difficulties with Mother and GGM led to delays in catheter replacements and other medical decision-making.

*The Department Becomes Involved with S.B. and her Family*

In August of 2018, S.B. was hospitalized due to a catheter infection. The catheter was removed on August 8, 2018, after which S.B. was treated with antibiotics. She was discharged from the hospital on August 23, 2018, with the expectation that the catheter would be replaced, but Mother and GGM were not in favor of the replacement. S.B. was admitted to Johns Hopkins Hospital on August 27, 2018 to have the catheter replaced. Mother and GGM would not consent to the surgery, even though medical representatives emphasized that replacing S.B.'s catheter was necessary for S.B.'s best chance of survival.

On September 5, 2018, the Department received a report of potential medical neglect of S.B. and commenced an investigation. The Department made an indicated finding of neglect against GGM, who the Department determined had "signed a health affidavit to make medical decisions for [S.B.]"[6] The indicated finding was based upon GGM's "failure to provide proper care including making timely and appropriate medical decisions" and "not responding in an appropriate timeframe and declining several kidney transplants," which "aided in [S.B.'s] health declining." The Department determined that "[t]he lack of appropriate medical attention exacerbated [S.B.'s] medical condition" when GGM "declined kidney transplants, refused to work with hospital staff, or comply with

[6] An "indicated" finding means "that there is credible evidence, which has not been satisfactorily refuted, that . . . neglect . . . did occur." Md. Code (1984, 2019 Repl. Vol.), § 5-701(m) of the Family Law Article ("FL").

medical recommendations."[7] During the investigation, GGM participated in a Family Involvement Meeting, and, after it was repeatedly explained that S.B.'s health and possibly life were in danger if she did not have her catheter replaced, GGM "waited until the last minutes of the" meeting "to agree to the procedure, then delayed signing for it."

On October 18, 2018, when S.B. remained hospitalized, the parties agreed to an order of shelter care[8] with the understanding that a hearing would be held before the juvenile court when S.B. was determined to be medically ready for discharge. The Department was granted limited guardianship of S.B. if Mother or GGM were unavailable or refused to consent to recommended medical care. The juvenile court placed Mother and GGM under orders controlling conduct that required them to, *inter alia*, cooperate with S.B.'s medical providers, fully participate in all recommended training sessions at Johns Hopkins Hospital, and follow all recommendations at Johns Hopkins related to S.B.'s ongoing medical care.

Mother and GGM spent time with S.B. during her hospitalization. Medical staff continued to have concerns about Mother's and GGM's ability and/or willingness to follow medical advice. On one occasion, Mother turned off S.B.'s heparin pump, which was providing medication to prevent blood clots, and Johns Hopkins staff believed that GGM

[7] During the Department's investigation, GGM frequently refused telephone calls from the Department and Johns Hopkins medical staff. GGM also refused to allow representatives from the Department to enter her home.

[8] "Shelter care" is "a temporary placement of a child outside of the home at any time before disposition" as a Child in Need of Assistance. Md. Code (1974, 2020 Repl. Vol.), § 3-801(bb) of the Courts and Judicial Proceedings Article ("CJP").

put prune juice in S.B.'s G-tube, which could have led to problems with S.B.'s electrolytes. During S.B.'s hospitalization, the Department was ultimately able to conduct a home assessment of GGM and Mother's home. The home did not meet the Department's basic home health and sanitation standards or Johns Hopkins' peritoneal dialysis standards.

On October 30, 2018, S.B. was cleared for discharge from the hospital. The next day, a contested hearing was conducted before the juvenile court on the Department's amended Child in Need of Assistance ("CINA") petition.[9] The juvenile court continued the order of shelter care to the Department and, upon discharge, S.B. was placed in the therapeutic foster home of Ms. J., where she has remained. Ms. J. completed the required peritoneal dialysis training before S.B. was placed with her, and Ms. J. provided peritoneal dialysis to S.B. beginning on the first day of S.B.'s placement in her home. Ms. J. also completed G-tube training. After being placed in Ms. J.'s home, S.B. had no hospitalizations until her kidney transplant in March of 2020.

[9] Pursuant to CJP § 3-801(f), "'[c]hild in need of assistance' means a child who requires court intervention because:

> (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and
>
> (2) The child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs.

"'CINA' means a child in need of assistance." CJP § 3-801(g).

*S.B.'s Progress in Foster Care and the Department's Efforts Toward Reunification*

On November 16, 2018, Mother entered into a service plan with the Department, pursuant to which she agreed to maintain contact with S.B. and the Department, participate in S.B.'s medical care and educational planning, provide legal and financial information about the family, identify relative resources, keep the Department informed about her whereabouts and employment, attend court hearings, make adequate space in the home for dialysis supplies and equipment, complete dialysis training, attempt to attend all medical appointments, and maintain weekly visits with S.B. The Department agreed to meet with Mother to facilitate and assess her progress toward achieving goals, arrange regular visits between Mother and S.B., and monitor S.B.'s school progress, health care, and emotional well-being, among other responsibilities.

The Department enrolled S.B. in school in the spring of 2019, although the record is not clear as to precisely when S.B. began attending school. A case note dated February 27, 2019 indicates that Johns Hopkins Hospital had completed paperwork that was required for S.B.'s school enrollment. By May of 2019, S.B. was attending school in person, and visits were offered to Mother at S.B.'s school. S.B. had an Individualized Education Plan and received supportive services from a nurse and a one-on-one aide. She completed first grade at the end of the 2019 school year. During the 2018-19 school year, S.B. was enrolled at a school near Mother's home, but after neither Mother nor GGM participated in school meetings during the 2018-19 school year, S.B.'s school placement was changed to a school closer to her foster parent's home for the 2019-20 school year.

The Department arranged for Mother and GGM to visit with S.B. weekly at a visitation center known as the Banja Center. The Department transported S.B. to the visits, but Mother did not regularly participate in the visits. For example, Mother attended a visit once in December 2018 but did not attend visits in January or February 2019. The Department arranged for visits at S.B.'s school, which was within walking distance from Mother's home, in order to make it easier for Mother to attend, but Mother did not attend any school-based visits. Mother and GGM were also advised of S.B.'s medical appointments, but neither Mother nor GGM attended them.

When S.B. was first placed with Ms. J., Mother communicated with S.B. via telephone daily, often for as long as an hour. At some point in 2019, Ms. J. began to limit the telephone calls because they were interfering with her ability to care for S.B. and another child in the home.

The Department continued to work with Mother and GGM towards reunification. For example, the Department attempted to arrange dialysis training for Mother so that she could learn to perform S.B.'s peritoneal dialysis at home, but Mother declined to participate in training at Children's Hospital in Washington, D.C. even though the Department offered to provide transportation. The Department was unable to identify an appropriate training program closer to Mother's home in Baltimore.

In April 2019, Mother stopped cooperating with the Department. By April 2019, Mother no longer had a working telephone number. In May of 2019, following a hearing

that Mother did not attend, the juvenile court found S.B. to be a CINA. The initial permanency plan was reunification.

At some point in the spring of 2019, Mother left GGM's home to move into an abandoned home with her new boyfriend, Mr. S.[10] Mother informed the Department's caseworker, Isaiah Rigsby, that she was no longer authorizing GGM to make medical decisions for S.B. Mr. Rigsby reminded Mother that she needed to be reachable by telephone, but Mother failed to provide the Department with her address or telephone number. For several weeks in the summer of 2019, the Department had no working telephone number for Mother. Mother provided a telephone number in August 2019. Mother also provided an address for a homeless shelter. Mother did not attend any visits with S.B. in May, June, or July of 2019. She attended one visit in August 2019.

The August 2019 visit, however, did not go smoothly. Mother brought her boyfriend, Mr. S., and a second man to the visit. After Mr. Rigsby advised Mother that the visits were for immediate family, Mother identified Mr. S. as S.B.'s father and the other man as S.B.'s uncle.[11] Mr. Rigsby asked them for identification, but Mr. S. "became aggressive" and reported that he had his identification but did not see why Mr. Rigsby needed to see it. The other man did not have identification.

[10] The record is not clear as to precisely when Mother moved out of GGM's home. Two court orders state that she left in June 2019, but Mother's testimony suggested that she might have left in May. The Department's social worker learned about Mother's move in August.

[11] Mother later admitted to the juvenile court that Mr. S. is not S.B.'s father.

Mr. Rigsby observed several concerning things during the visit. S.B. attempted to roll over when Mother attempted to change S.B. on her lap, and Mr. Rigsby intervened and asked Mother to use the changing table instead. Mother and Mr. S. both used vulgar language during the visit and needed to be redirected. Perhaps most concerning during the visit, Mother and Mr. S. provided S.B. with two handfuls of gummy bears. Mr. Rigsby entered the room and informed Mother that S.B. is G-tube fed and does not consume solid food other than applesauce and vanilla ice cream. Both Mother and Mr. S. became argumentative and yelled at Mr. Rigsby in front of S.B. While this occurred, S.B. sat on the couch and put her head down. After the visit, Mr. S. requested to ask questions of Mr. Rigsby, and Mr. Rigsby suggested that the conversation be held in a conference room while other staff watched over S.B. Mr. S. stated that Mother should be aware of S.B.'s medical needs, and Mr. Rigsby reported that Mother had a list of S.B.'s medical appointments and was invited to participate in them. Mr. Rigsby advised Mr. S. that court documentation listed S.B.'s father as deceased and explained to Mr. S. that he would need to go to court to have a paternity test completed if he wanted to establish his paternity. Mr. S. again became aggressive and threatened Mr. Rigsby, yelling at him "don't mess with me." Mr. S. was ultimately escorted from the building by security.

Between July 2019 and January 2020, Mother attended two of S.B.'s medical appointments. Mother brought Mr. S. to one of the appointments, and his presence was again disruptive. Mr. S. was escorted from Johns Hopkins Hospital and subsequently banned due to his erratic and threatening behavior. In December of 2019, S.B. needed to

undergo a procedure to clean her port. Mr. Rigsby attempted to contact Mother several times to provide consent for the procedure, but Mother refused to provide consent and instead changed the topic to ask why her boyfriend was banned from the hospital. After Mr. Rigsby explained that Mr. S. had been banned by Johns Hopkins staff after his erratic behavior at a prior appointment, Mr. S. yelled and threatened Mr. Rigsby over the telephone. Mr. Rigsby ended the call due to the threatening behavior. Mr. Rigsby explained that Mr. S. frequently interjected himself during Mother's telephone calls. Ultimately, the Department exercised its limited guardianship authority to consent to the port cleaning procedure.

In addition to failing to attend medical appointments, Mother also did not attend any of her scheduled weekly visits with S.B. after September 2019. In-person visits were suspended when the pandemic began in March of 2020. Mr. Rigsby attempted (pre-pandmic) to remind Mother of the visits when he was able to reach her, but Mother's telephone number frequently changed, and Mother did not provide updated contact information to Mr. Rigsby. Mr. Rigsby attempted to discuss a new service agreement with Mother in October and November of 2019, but Mother did not come to a scheduled appointment or contact Mr. Rigsby to reschedule.

Mother did not appear for S.B.'s CINA review hearing on January 22, 2020. At that time, the Department was working to identify services specific to Mother's special needs. The juvenile court's order from the January 2020 review hearing indicates that Mother's counsel had referred Mother for appropriate assessments, but Mother failed to schedule her

assessments, contact her attorney about the assessments, or participate in any assessments. The Department requested that Mother be referred for an evaluation through the court's medical services division.

On March 24, 2020, a kidney became available for transplant for S.B. Mr. Rigsby contacted Mother to inform her that S.B. had been offered a kidney. Mother responded by questioning the Department's authority to consent to surgery. Mr. Rigsby explained to Mother that the juvenile court's order granted the Department the authority to consent to medical procedures if Mother refused to consent or was not available. Mother continued to yell at Mr. Rigsby, and Mr. S. began yelling over the telephone as well. After explaining that he could not continue the call until Mr. S. was not on the phone, Mr. Rigsby eventually ended the phone call due to Mr. S.'s tone. Mother ultimately gave verbal consent, and the transplant surgery was performed on March 25, 2020.

S.B. was hospitalized for ten days after her surgery. Ms. J. was at S.B.'s bedside during her recovery and engaged well with hospital staff. Johns Hopkins Hospital transplant social worker Elana Horowitz described the interactions she observed between S.B. and Ms. J. as very positive. Ms. J. maintained contact with the medical team after S.B.'s discharge from the hospital. Initially following the transplant, Ms. J. was in contact with the medical team multiple times per week. The frequency decreased as S.B. stabilized and such frequent contact was no longer medically indicated.

Dr. Fadrowski testified regarding S.B.'s medical needs post-transplant. He explained that although a kidney transplant is associated with better outcomes for the

patient, it is also "challenging to manage in terms of medical decision making." S.B. requires three immune-suppressant medications that are required to prevent her body from rejecting the donated kidney. Dr. Fadrowski explained that "[t]he timing of these medications is critical" because it is necessary to "keep a steady level of these medications in your body to avoid the immune system seeing the kidneys." Post-transplant, patients have frequent clinic visits and laboratory studies. Medication doses are determined based on lab tests, and, as a result, dosages change "sometimes weekly, sometimes more frequently, sometimes monthly."

Immuno-suppressed patients are "at increased risk for all infections, and it requires a high level of vigilance of the caretaker to recognize early signs of potential infection." Although for a typical child it might be appropriate to "watch a fever for a day or two, or if they're not feeling well, you might kind of see what happens," Dr. Fadrowski explained that this "absolutely cannot happen with a patient who is on immune-suppression." Caregivers are asked to "call us immediately" if a patient is unwell, and then Dr. Fadrowski and his team "help them triage it, and then often they go to their pediatrician, or come to our clinic, or go to the emergency department, depending on our level of concern." If proper follow-up is not maintained, there is a risk that the body will reject the donated kidney. If the body begins to reject the kidney, the patient requires days in the hospital, increased immuno-suppression, and associated risks. Dr. Fadrowski further explained that if there is rejection, even if the rejection is treated, the amount of time the kidney will last

is decreased.[12] Furthermore, if S.B. rejects a kidney, she will develop antibodies against the foreign proteins, which "will preclude her from getting any kidney in the future that has those same proteins," which "really narrow[s] the list of available donors for S.B. down the road."

S.B. received her kidney transplant in March of 2020, when the Covid-19 pandemic was beginning to affect daily life. Dr. Fadrowski explained that the medical team was very concerned about how Covid-19 might affect people on immuno-suppression medications and they were "extremely vigilant in recommending that [S.B.] avoid crowds" and that "masks be worn." Dr. Fadrowski recommended that S.B.'s contacts be limited to household members in order to minimize the risk of Covid-19 exposure. Mother was not able to visit S.B. in person at the hospital after her transplant surgery due to the pandemic, but she did have a virtual visit with S.B. and communicated with the transplant social worker via telephone during S.B.'s hospitalization.

After S.B. was discharged from the hospital, Mother was not permitted to visit in person with S.B. due to Covid-19, but Mr. Rigsby offered Mother virtual visits. Mother and Mr. Rigsby agreed that the virtual visits would occur on Friday afternoons. Mother was also permitted to telephone S.B. at Ms. J.'s home. On August 29, 2020, Mother and Mr. S. telephoned Ms. J.'s home and became verbally aggressive and threatening to Ms. J. Ms. J. asked Mother to exclude Mr. S. from the call, but Mother did not do so. Ms. J. ended

[12] Dr. Fadrowski explained that a kidney transplant lasts thirteen years on average, although for some people a kidney will last as long as thirty years.

the telephone call, after which she was no longer willing to have Mother telephone her home.

Beginning in September of 2020, Mother was offered weekly, supervised virtual visits with S.B. Mr. Rigsby conducted the virtual visits, which Mother frequently attended, but Mother's behavior was not always appropriate during the visits. Mother sometimes would be lying in bed with Mr. S. during virtual visits, and Mr. S. would frequently use profanity and yell in the background. The virtual visits were later changed from weekly to monthly.

*Mother's Psychological Evaluation*

Mother finally participated in a psychological evaluation on March 5, 2020 with clinical psychologist Dr. LaFaye Marshall. The purpose of the evaluation was to assess Mother's parental capacity. Dr. Marshall explained that she was evaluating Mother to assess her suitability to act as a caregiver for S.B., including her ability to protect S.B., provide a safe environment, care for her, and make changes to serve S.B.'s best interests. In her report. Dr. Marshall explained that "hallmarks of such evaluations include an assessment of the best psychological interests of the child, placement of the child's interests and well-being, and a focus on the fit between the children's needs and the ability of the parent to meet such needs." A parental capacity evaluation involves psychological testing, evaluations of cognitive/intellectual functioning, psychological, neuropsychological, and parental functioning, interviews with the parent and collateral sources, and review of relevant documents.

Based on the results of the psychological testing and other data, Dr. Marshall concluded, "with a reasonable degree of psychological certainty, that [Mother] does not have [p]arental [c]apacity." Mother's general intellectual ability "fell in the 1st percentile, which is three standard deviations below individual[]s her age." She had particular "notable impairments in her verbal knowledge and comprehension, visual spatial skills, non-verbal reasoning, processing speed, fluid reasoning, and working memory." Dr. Marshall further determined that, in addition to Mother's impairments in intellectual functioning, Mother has impairments in adaptive functioning, which are "skills that involve abilities to engage in key areas independently," including skills in the areas of communication, functioning in the community, functional academics (including basic reading, writing, math, and telling time), home living, health and safety, leisure, self-care, self-direction, and social.

Dr. Marshall opined that Mother "has notable impairments in her own adaptive functioning which impact her ability to function[] independently, as well as to parent [S.B.]" Dr. Marshall found that Mother lacked an understanding of key areas "such as [S.B.]'s dialysis, feeding/GI Tube, medical appointments, physical/motor impairments, psychiatric diagnoses/symptoms, and academic disabilities." Mother also had "difficulties conceptualizing time." Dr. Marshall "had to conceptualize time based on season and holiday" when asking Mother when certain things had occurred. She provided an example of asking, "Was it hot or cold when you last saw [S.B.]? Was [it] before Thanksgiving?

Was it before Christmas?" Dr. Marshall opined that "[o]verall, [Mother's] cognitive and functional limitation notably impact her ability to parent [S.B.]."

Dr. Marshall explained that Mother's impairments would affect Mother's ability to care for S.B.'s special medical needs. Dr. Marshall opined that Mother's impairments would affect her ability to "ensure that [S.B.] is taking the correct medication at the correct time, the correct dosage, ability to adhere to medical appointments, the ability to understand a dialysis machine, an NG feeding tube, how to connect those, what happens if there is a blockage in her tube, [and] how to manage all of those things that keep her daughter functioning[.]" Dr. Marshall emphasized that Mother's difficulty with time was relevant to her ability to provide for S.B.'s medical needs, explaining as follows:

> Orientation of time is important. Time is important in regards to medication, so making sure that you're administering medications in a timely manner, but also appointments. So if someone asked, you know, mom, "When was the last time you took your daughter to X appointment? To a cardiologist, pediatrician, whatever the case may be. When was the last time her dialysis machine was serviced or her NG feeding tube was changed?" The difficulties with orientation impact her daughter, given her chronic medical issues.

Dr. Marshall expressly opined that there was nothing Mother could do that would increase her ability to parent. Dr. Marshall explained that Mother's "cognitive functioning is crystallized, which means it's unchangeable." Dr. Marshall acknowledged that Mother "appeared emotionally very invested in her child" and "clearly loves her child," "cares for her child, and wants to be a part of her child's life." Nonetheless, Mother's "cognitive capacity is unchanged, that's crystallized. So there's nothing that she can physically do to

change her brain functioning." Dr. Marshall opined that Mother's limitations were permanent. When asked whether there were any additional services that could be provided to Mother that would change her conclusion regarding Mother's parental capacity, Dr. Marshall explained that there were not.

*S.B.'s Permanency Plan is Changed to Adoption by a Non-Relative*

Following contested hearings on October 26 and November 4, 2020, the juvenile court modified S.B.'s permanency plan by changing it from reunification to adoption by a non-relative. The juvenile court acknowledged Mother's "genuine love for" S.B., but was "convinced that Mother cannot safely care for [S.B.] now or at any time in the future." The juvenile court was persuaded that "a change in Mother's circumstances substantial enough to justify the continuation of reunification as the named permanency plan is extremely unlikely."

In reaching this decision, the juvenile court credited Dr. Marshall's expert opinion regarding Mother's "intellectual disability and lack[ of] parental capacity," as well as Mother's failure to comply with the "bulk of [the] terms" of the service agreements she signed with the Department. The court further emphasized that "Mother's significant unrealistic overstatements of her and [S.B.]'s capabilities and understatement of [S.B.]'s complex medical needs" serve to "raise significant concerns about Mother's ability to ensure [S.B.]'s health and safety." The court observed that Ms. J. is a "loving parental figure who has the requisite knowledge, willingness, and stability to properly attend to [S.B.]'s myriad medical and developmental needs as an adoptive mother," but she "does

not wish to care for [S.B.] under an order of custody and guardianship and instead prefers to adopt [S.B.]." Recognizing S.B.'s significant need for "stability and permanency" and "given the unlikelihood that [Mother]'s circumstances can change to the extent necessary or sufficient for [S.B.] to safely return to Mother's care," the court found that it was in S.B.'s "best interest to change the permanency plan to adoption by a non-relative."

*S.B.'s Progress in Foster Care*

S.B. has thrived in the care of Ms. J. Ms. J. administered peritoneal dialysis to S.B. at home and S.B. S.B. tolerated it well. S.B. did not have any infections, hospitalizations, or concerns for fluid overload. S.B. did not have any seizures while in Ms. J.'s care. Ms. J. consistently provided for S.B.'s medical needs.

Medical professionals, hospital social workers, and the Department's caseworker all observed Ms. J. providing excellent care to S.B. S.B. looks to Ms. J. for comfort and to have her needs met. S.B. smiles when she sees Ms. J. and is happy to see her at the end of the school day. Ms. J. is knowledgeable about S.B.'s special education needs. Ms. J. attempted to facilitate Mother's contact with S.B. and assisted with maintaining telephone contact between Mother and S.B. until Mother's boyfriend's erratic and threatening behavior interfered.

*The Guardianship Action Giving Rise to this Appeal*

In January 2021, the Department filed a petition for guardianship seeking to terminate Mother's parental rights to S.B. The court held several hearings on the Department's guardianship petition between June 2021 and February 2022, where the court

heard and considered testimony from Dr. Fadrowski, Dr. Marshall, Johns Hopkins Hospital transplant social worker Elana Horowitz, the Department's social worker Mr. Rigsby, and Mother, among others.[13]

On March 9, 2022, the juvenile court issued a written order terminating Mother's parental rights. In doing so, the juvenile court addressed each of the statutory factors set forth in Section 5-323(d) of the Family Law Article. Ultimately, the juvenile court found by clear and convincing evidence that Mother was "unfit to remain in a parental relationship with" S.B. and "[e]xceptional [c]ircumstances exist that would make the continuation of the parental relationship detrimental to [S.B.]'s best interest." The juvenile court found that the Department exercised reasonable efforts to effectuate S.B.'s permanency plan of adoption. The juvenile court further found that "while [the Department] failed to provide tailored mental health services to [Mother], it would have been futile for the Department to have offered those services. [Mother] consistently refused to cooperate and maintain contact with the Department. After leaving her grandmother's home, [Mother] deliberately concealed her whereabouts from [the Department]." Accordingly, the juvenile court granted the Department's guardianship petition, rescinded S.B.'s CINA petition, and terminated jurisdiction in S.B.'s CINA case. Mother noted a timely appeal.

[13] Mother was called to testify by S.B. Mother filed a motion arguing that compelling her to testify would be a violation of her due process rights, but the court denied both that motion and a subsequent motion to strike Mother's testimony. We shall discuss this issue *infra*.

Additional facts shall be discussed as necessitated by our consideration of the issues before us on appeal.

## STANDARD OF REVIEW

We apply three interrelated standards of review when reviewing a juvenile court's order terminating parental rights:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard of Rule 8-131(c) applies. Second, if it appears that the court erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the court founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the court's decision should be disturbed only if there has been a clear abuse of discretion.

*In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 100 (2010) (quotation marks, citation and brackets omitted). Our decision is not to determine whether, after viewing the evidence, we would have reached another conclusion, but rather, we decide only "whether there was sufficient evidence -- by a clear and convincing standard -- to support the chancellor's determination that it would be in the best interest of [the child] to terminate the parental rights of the natural [parent]." *In re B.C.*, 234 Md. App. 698, 708 (2017) (internal quotation and citation omitted).

## DISCUSSION

### I.

The first argument raised by Mother on appeal is that the juvenile court erred by terminating Mother's parental rights because the Department failed to provide Mother with

adequate services tailored to her cognitive limitations. Mother asserts that the juvenile court's conclusion that the provision of tailored services would have been futile was clearly erroneous. We disagree. As we shall explain, the evidence amply supports the juvenile court's finding that it would have been futile to provide Mother with more tailored services.[14]

A juvenile court may grant a petition for guardianship if, after considering the applicable statutory factors set forth in FL § 5-323, it finds by clear and convincing evidence that the parent is unfit to have a continued relationship with the child or exceptional circumstances exist that would make a continued parental relationship detrimental to the best interests of the child. *Ta'Niya C.*, *supra*, 417 at 103-04. The FL § 5-323(d) factors

> are divided by topic and include consideration of: (1) the services that the Department has offered to assist in achieving reunification of the child with the parents; (2) the results of the parent's effort to adjust their behaviors so that the child can return home; (3) the existence and severity of aggravating circumstances; (4) the child's emotional ties, feelings, and adjustment to community and placement and the child's general well-being.

[14] In light of our determination that the juvenile court did not err in finding that the provision of any additional services to Mother would have been futile, we do not specifically address the reasonableness of the efforts expended by the Department to facilitate reunification and the juvenile court's specific finding that the Department failed to provide tailored mental health services to Mother. We are, however, mindful that disabled parents may benefit from specialized services, and the State of Maryland has a policy interest in protecting the rights of disabled persons, including disabled parents. An evaluation of the reasonableness of a local department's efforts toward reunification is necessarily fact-specific and should take into consideration the parent's unique needs and circumstances.

*In re Adoption/Guardianship of C.E.*, 464 Md. 26, 51 (2019) (footnote omitted).

The FL § 5-323 factors "seek to assist the juvenile court in determining 'whether the parent is, or within a reasonable time will be, able to care for the child in a way that does not endanger the child's welfare.'" *Id.* at 52 (quoting *In re Rashawn H.*, 402 Md. 477, 499-500 (2007)). "The best interest of the child is the overarching standard in TPR proceedings." *Id.*

"[U]nfitness and exceptional circumstances are two separate inquiries." *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 54 (2019). In this case, the juvenile court granted the Department's guardianship petition and terminated Mother's parental rights on both parental unfitness and exceptional circumstances grounds.

When determining that Mother was unfit to remain in a parental relationship with S.B. and that exceptional circumstances existed that made the continuation of the parental relationship detrimental to S.B.'s best interest, the juvenile court expressly found that "while [the Department] failed to provide tailored mental health services to [Mother] it would have been futile for the Department to have offered those services."

It is settled law that, where "attempts at reunification would obviously be futile, the Department need not go through the motions in offering services doomed to failure." *In re Adoption/Guardianship No. 10941 in the Circuit Court for Montgomery Cnty.* ("*Ivan M.*"), 335 Md. 99, 117 (1994). The Department is required to provide "a reasonable level" of services to facilitate reunification. *Id.* at 500. The Court of Appeals has explained:

> There are some limits, however, to what the State is required to do. The State is not obliged . . . to cure or ameliorate any

> disability that prevents the parent from being able to care for the child. It must provide reasonable assistance in helping the parent to achieve those goals, but its duty to protect the health and safety of the children is not lessened and cannot be cast aside if the parent, despite that assistance, remains unable or unwilling to provide appropriate care.

*Id.* at 500-01. The Department's efforts "need not be perfect, but are judged on a case-by-case basis." *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 234 (2018).

In this case, the juvenile court heard and considered extensive testimony from clinical psychologist Dr. Marshall, who concluded to a reasonable degree of psychological certainty that Mother did not have the capacity to parent S.B. Critically, Dr. Marshall opined that there was nothing Mother could do that would increase her ability to parent, nor were there any services that could have been provided to Mother that would increase her parental capacity. Dr. Marshall determined that Mother's cognitive functioning was "crystallized, which means it's unchangeable" and that Mother's limitations were permanent.

Dr. Marshall specifically addressed Mother's ability to care for S.B.'s special medical needs, finding that Mother lacked an understanding of key areas "such as [S.B.]'s dialysis, feeding/GI Tube, medical appointments, physical/motor impairments, psychiatric diagnoses/symptoms, and academic disabilities." Mother also had "difficulties conceptualizing time," which would hamper her ability to "ensure that [S.B.] is taking the correct medication at the correct time, the correct dosage, ability to adhere to medical appointments, the ability to understand a dialysis machine, an NG feeding tube, how to

connect those, what happens if there is a blockage in her tube, [and] how to manage all of those things that keep her daughter functioning[.]"

Mother contends that the Department should have provided more personalized services for Mother, including exploring potential State-provided assistance through other state agencies, assigning a social worker who specialized in working with people with disabilities, or providing a special education teacher to teach her about S.B.'s medical conditions. When Dr. Marshall was asked whether any additional services would have made any difference in Mother's ability to care for S.B.'s intensive medical needs, however, Dr. Marshall's unequivocal response was that no services would have increased Mother's ability to parent S.B. The Department was not required to provide services that would not have made any difference in Mother's ability to properly care for S.B., a medically fragile child with specialized needs who will always require carefully timed medications and follow-up care.

In support of her assertion that the Department's failure to provide specialized services constitutes reversible error, Mother points to the Court of Appeals's decision in the case of *In re Adoption/Guardianship Nos. J9610436 & J9711031*, 368 Md. 666, 682 (2002) ("*Case 36*"), in which the Court reversed a juvenile court's order terminating the parental rights of a mentally-disabled father because the Department could not show that it had "offered any specialized services designed to be particularly helpful to a parent" with such cognitive limitations. In *Case 36*, however, the Court determined that the testimony of the psychiatric evaluator was "conjectural and speculative" and observed that "[a]

parent's right to parent should rarely, if ever, be terminated based upon conjectures and speculation."[15] *Id.* at 685. In contrast, in this case, Dr. Marshall discussed in detail the basis for her conclusions that Mother lacked the ability to parent her special needs child and testified that her conclusions were to a reasonable degree of psychological certainty.

Furthermore, in *Case 36*, it was "unclear as to whether additional services, specific to petitioner's needs, would bring about lasting parental adjustments facilitating reunification," *id.* at 694. In comparison, in the present case, Dr. Marshall unequivocally opined that no services would result in a meaningful change. Additionally, the Court of Appeals emphasized in *Case 36* that the parent "had made extensive and extraordinary efforts to further reunification with his children" and "had, to the best of his ability, attempted to do almost everything asked of him, and more, in order to become a capable parent." *Id.* In contrast, Mother failed to communicate with healthcare providers and consent to medically necessary and sometimes life-saving procedures, failed to communicate regularly with the Department, failed to attend scheduled visits with S.B., failed to attend or meaningfully participate in S.B.'s medical appointments, and, on rare occasions when she did visit or attend medical appointments, allowed her boyfriend to cause significant disruptions by arguing, using profanity, and threatening others.

[15] When asked if the parent in *Case 36* was "intellectually impaired enough that he couldn't be a fit parent?," the evaluator answered, "I think so." When asked whether he could be wrong about that, the evaluator answered, "That certainly is a possibility." *Id.* at 686.

Mother further contends that even if additional services may not have rendered her able to parent independently, the Department erred by failing to consider that Mother may be able to appropriately parent S.B. with the support of GGM. Mother asserts that GGM was "an able family member," but there is no evidence in the record suggesting that GGM was able or willing to again take on the role of assisting Mother with caring for S.B. Furthermore, GGM was found "indicated" for neglect based upon her failure to provide proper medical care for S.B. when she failed to make timely and appropriate medical decisions and declined five kidney transplants, which contributed to S.B.'s deteriorating health at the time. Moreover, Mother made clear to Dr. Marshall that she did not believe that she needed GGM's assistance when she informed Dr. Marshall that she was not a "vulnerable person" and there was "nothing wrong" with her.

Based upon the evidentiary record, the juvenile court appropriately recognized that efforts to provide any additional services to Mother would have been futile under the circumstances. There was ample evidence, including expert testimony, supporting the juvenile court's conclusion that there were no services that could have rendered Mother a fit parent. Accordingly, we reject Mother's contention that the Department's failure to provide more specialized services tailored to her cognitive deficits constitutes reversible error.

**II.**

Mother further asserts that the juvenile court's remaining FL § 5-323(d) factors do not warrant the termination of her parental rights. Specifically, Mother contends that the

juvenile court failed to appropriately consider Mother's telephone and virtual contact with S.B. Mother asserts that a cognitively limited parent should not be faulted for failing to fully adjust their circumstances when the Department has failed to provide them with properly tailored services. Mother contends that the assessment of the statutory factors overall, when taking into account the weighty presumption favoring the continuation of the parental relationship, did not warrant terminating her relationship with S.B.

The record reflects that the juvenile court considered all the requisite factors when determining whether parental unfitness and exceptional circumstances existed that warranted the termination of Mother's parental rights to S.B. The juvenile court's comprehensive written order included detailed findings as to each factor. Although the juvenile court found that the Department did not provide services tailored to Mother's special needs, the court found that Mother failed to complete other services offered to her, including initially failing to submit to a bonding and fitness evaluation, failing to adhere to the visitation schedule, and failing to actively participate in medical appointments. The juvenile court further found that Mother "frustrated [the Department]'s ability to fulfill and expand service agreements." The record as summarized *supra* supports all of these findings.

Mother takes particular issue with the juvenile court's finding that Mother made no efforts to adjust her circumstances. The juvenile court found as follows regarding Mother's effort to adjust her circumstances:

> [Mother] has made no efforts to adjust her circumstances. The [Johns Hopkins Hospital] attempted to involve [Mother] in

> medical appointments, but she repeatedly deferred to [GGM]. Although Mr. Rigsby attempted to get [Mother] to attend her visits with her daughter, she frequently missed the visits for unknown reasons. On one occasion, [Mother] said that she would see her daughter the next time.
>
> Even though [GGM] was making life-threatening medical decisions against the doctors' advice, [Mother] never sought to take responsibility and ask [the Department] to help her become more assertive regarding her daughter. Then she left home and placed herself in an environment that would have been extremely unsafe for [S.B.].
>
> Lastly, [Mother] deliberately absented herself from [the Department] and Mr. Rigsby, preventing them from offering additional help. She did not want [the Department] to know that she was living in a vacant building at one point.

Mother asserts that the juvenile court failed to consider that she had telephone and virtual contact with S.B., but we see no indication as such. Rather, the telephone and virtual contact Mother had with S.B. was not notable to the juvenile court in light of the other ways in which Mother had absented herself from S.B.'s life by failing to attend S.B.'s visits, which the juvenile court found "disappointed [S.B.]." Furthermore, Mother frequently included Mr. S. in virtual visits, and the juvenile court found that "expos[ing S.B]. to the volatile nature of Mr. [S. was] to the determent of [S.B.]." The juvenile court did not ignore the fact that Mother had communicated with S.B., but this factor was simply not given significant weight in light of the other factors the juvenile court took into consideration.

In particular, when considering whether the existence of a parental disability made Mother unable to care for S.B.'s immediate and ongoing needs pursuant to FL § 5-323(d)(2)(iii), the juvenile court emphasized that Mother's "impairments related to

cognition, time, and memory prevents her from protecting, caring for, and providing for" S.B. The juvenile court noted that "[t]his concern is grave for several reasons," observing that Mother lived in an abandoned building and concealed that information from the Department, which would have been an unsafe environment for S.B., Mother was unable "to maintain a regimen[] that would ensure that [S.B.] received her nourishment and medication on time," which "could critically injure [S.B.], and "[i]f [S.B.] suffered an emergent medical event, [Mother] appears not to have the ability to recognize that event and adequately respond."

Other factors also supported the juvenile court's conclusion, including the "life-threatening medical neglect" S.B. suffered during the first four years of her life, including the "declining [of] five medically approved kidneys." The juvenile court observed that "[t]his abuse could have killed [S.B.]," but instead "delayed [S.B.]'s surgery." The juvenile court found that the medical neglect in this case constituted "clear chronic abuse."

Ultimately, the juvenile court determined that Mother was unfit to remain in a parental relationship with S.B. and exceptional circumstances exist that made the continuation of the parental relationship detrimental to S.B.'s best interest. The court explained in detail its reasoning regarding exceptional circumstances:

> Exceptional [c]ircumstances exist to warrant the termination of [Mother's] parental rights. [S.B.] requires a parent who will serve as her guardian. In this instance, [Mother] has made decisions that were detrimental to the life and safety of [S.B.], or she has deferred to others who made life-endangering decisions [for S.B.]'s health and safety.

[Mother] is overwhelmed by her medical, mental health, and daily needs that prevent her from giving [S.B.] the attention and care that she deserves and requires. [S.B.] needs a safe home, and [Mother] has no home. [S.B.] needs a parent to care for her at home. Also, she needs a parent who can support her needs for appropriate medical attention both at home and in this hospital. [Mother] relied on [GGM] to do just that, and [GGM] made decisions against [S.B.]'s best interest. Now, [GGM] is not in the picture. Never has [Mother] been alone with [S.B.].

[S.B.] is now a thriving child with a transplanted kidney. However, the transplanted kidney created special needs for [S.B.]'s continued vitality. Unfortunately, [Mother] is unable to meet those needs. In addition, it would be dangerous for [Mother] to spend unsupervised time with [S.B.]. [Mother] proved this point when she failed to understand that [S.B.] could suffer severe adverse effects if she ate chicken tenders, other solid food products, and gummy bears while she was on a feeding tube.

[S.B.] needs a parent who understands her mental health and educational and emotional needs. However, [Mother] is overwhelmed with her own needs.

Inasmuch, this [c]ourt finds exceptional circumstances to grant the [p]etition to terminate the [p]arental rights of [Mother].

* * *

For the listed reasons, pursuant to Family Law Article § 5-323, this [c]ourt FINDS by clear and convincing evidence that:

[Mother] is unfit to remain in a parental relationship with the child – [S.B.]. This court further finds that

* * *

Exceptional circumstances exist that would make the continuation of the parental relationship detrimental to [S.B.]'s best interest.

The juvenile court appropriately gave primary consideration to S.B.'s health, safety, and well-being when assessing whether the termination of Mother's parental rights would serve S.B.'s best interest. The juvenile court's factual findings were supported by both lay and expert testimony from social workers, medical staff, and Dr. Marshall. The court was not required to allow S.B. to "grow up in permanent chaos and instability." *Rashawn H.*, *supra*, 402 Md. at 501. Viewed as a whole, the record provides ample evidentiary support for the juvenile court's conclusion that the continuation of the parental relationship with Mother would be detrimental to S.B. Mother has failed to establish any error or abuse of discretion. Accordingly, we reject Mother's assertion that the juvenile court erred in granting the Department's guardianship petition.

**III.**

Mother's final appellate argument is that the juvenile court deprived her of due process when it compelled her to testify in the guardianship case. Mother cites several out-of-state cases analogizing termination of parental rights cases to death penalty cases, arguing that termination of parental rights is the civil equivalent of the death penalty in a criminal case. Mother asserts that because TPR proceedings are not typical civil cases but are akin to criminal or quasi-criminal matters in light of the monumental liberty interests at stake, we should determine that a heightened level of due process protection is warranted and that the same protections against self-incrimination implicated in criminal cases apply.

First, we observe that, although Mother cites out-of-state cases that speak generally regarding the seriousness of TPR cases, Mother does not identify any case holding that a

parent has a right to not testify in a TPR case when there is no risk of criminal prosecution. The Fifth Amendment has "never been interpreted as protecting a witness from disclosures that establish civil, rather than criminal liability." *Robinson v. Robinson*, 328 Md. 507, 515 (1992). The plain language of the Fifth Amendment limits its application to criminal matters: "No person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. The Fifth Amendment "does not preclude from disclosure facts which would tend to establish civil liability, but rather protects a witness from being required to make disclosure, otherwise compellable in the trial court's contempt power, which could incriminate him in a later prosecution." *Whitaker v. Prince George's Cnty.*, 307 Md. 368, 385 (1986). Mother does not assert that she was compelled to testify about matters that could subject her to subsequent criminal prosecution.[16] We, therefore, decline Mother's invitation to extend Fifth Amendment protections to TPR proceedings on due process grounds.

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY, SITTING AS A JUVENILE COURT, AFFIRMED. COSTS TO BE PAID BY APPELLANT.**

[16] We decline to address the assertion raised in appellee S.B.'s brief that a court may draw a negative inference if a parent invokes the Fifth Amendment in TPR cases. This issue is not properly before this court in light of the fact that the juvenile court denied Mother's motion to preclude her testimony and Mother did not refuse to answer any questions posed to her on Fifth Amendment grounds.