Circuit Court for Baltimore City
Case No. T21077003

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0108

September Term, 2023

IN RE: I.Q.

Friedman,
Zic,
Curtin, Yolanda L.
(Circuit Court Judge, Specially Assigned),

JJ.

Opinion by Zic, J.
Concurring Opinion by Friedman, J.

Filed: November 9, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

I.Q. was born in October 2018 to Ms. H. ("Mother"), appellee, and Mr. Q. ("Father"). I.Q. first entered the care of the Department of Social Services for Baltimore City (the "Department") on January 10, 2019. He was placed in a therapeutic foster home with his foster parents, the M.s, where he has remained since January 2019. I.Q. is legally blind and attends the Maryland School for the Blind. In 2021, the Department filed a Petition for Guardianship with the Right to Consent to Adoption or Long-Term Care Short of Adoption.

Following a hearing for this petition, held on various days in October and November 2022, the Circuit Court for Baltimore City, sitting as the juvenile court, concluded that the Department had not "established by clear and convincing evidence that [Mother] is unfit to remain in a parental relationship with [I.Q.]." The juvenile court further concluded that the Department had not established "the existence of any exceptional circumstances" such that "continuation of the parental relationship between [Mother] and [I.Q. would be] detrimental to [I.Q.]'s best interest." Accordingly, on December 30, 2022, the juvenile court denied the Department's petition to terminate Mother's parental rights and granted Mother's request for supervised visits with I.Q. in the subsequent 14 days. The Department and the attorney for I.Q. filed timely appeals.

QUESTIONS PRESENTED

The Department and attorney for I.Q. present two questions for our review, which we have rephrased as follows:[1]

1. Whether the juvenile court abused its discretion in concluding that Mother was not unfit to parent I.Q. because its findings as to Family Law § 5-323(d)(3) were clearly erroneous and did not focus on the best interests of I.Q.

2. Whether the juvenile court's findings regarding Mother's future ability to care for I.Q. were clearly erroneous.

[1] The Department phrases the questions as follows:

1. Did the juvenile court err when it found Mother fit to parent I.Q. even though the record illustrates that she previously subjected him to life-threatening neglect, she has not since been trusted to care for him on an unsupervised basis, and I.Q. has been in foster care for over four years with no clear path to permanence?

2. Did the juvenile court err when it failed to make a specific finding regarding whether reunification with Mother would pose an unacceptable risk to I.Q.'s future safety under Family Law § 5-323(f), even though it found that Mother committed life-threatening neglect under Family Law § 5-323(d)(3)(iii)(2)?

The attorney for I.Q. phrases the questions as follows:

1. Did the juvenile court err by considering Mother's circumstances rather than I.Q.'s best interests in deciding whether exceptional circumstances existed?

2. Were the juvenile court's findings that Mother "has demonstrated the ability to" and "would be able to continue to" parent I.Q. and "provide him with the services he needs" clearly erroneous when the record contained no evidence that Mother has ever cared for I.Q., except during the three months in which she was found to have subjected him to life-threatening medical neglect, or ever provided him with the services he needs?

For the reasons that follow, we answer both questions in the affirmative, vacate the decision of the juvenile court, and remand for a new trial on the termination of Mother's parental rights not inconsistent with this opinion.

BACKGROUND

Custodial Relationship Following I.Q.'s Birth

I.Q. was born on October 3, 2018, to Mother and Father, who had been in a relationship since 2016. They fought often, and at times engaged in intimate partner violence in I.Q.'s presence. Mother served as I.Q.'s primary caretaker, and lived with her own mother, I.Q.'s maternal grandmother. Father lived in a separate residence, which he shared with at least one roommate. Although Mother and Father shared custody of I.Q., I.Q. was typically alone in Mother's care, as Father worked often during the first few months following I.Q.'s birth. During this time, Mother and Father often stayed together with I.Q. at Father's residence.

At the end of December 2018, Father lost one of his jobs and asked for greater responsibility with I.Q. From December 24, 2018 to December 26, 2018, Mother allowed Father to take care of I.Q. while Father's family was visiting. However, Mother also testified that on December 25, 2018, she took I.Q. on a day trip to Pennsylvania, returning late that evening. On December 26, 2018, Mother and I.Q. stayed at Father's residence until early January.

I.Q.'s Medical Appointments Prior to Shelter Care

From October 2018 through early December 2018, I.Q. attended all of his pediatric wellness checkups without incident. During this time, there were no significant

concerns, and I.Q. was a "happy and bubbly baby." In November 2018, Mother brought I.Q. to the pediatrician after noticing that his eyes were crossing, and I.Q.'s pediatrician informed her that this was no cause for concern, as this was normal for newborn infants. Later that November, Mother again brought I.Q. to the pediatrician, as he was experiencing issues with constipation. The pediatrician informed Mother to switch to a formula designed for sensitive stomachs and to press gently on I.Q.'s stomach if he continued to have difficulty with bowel movements.

On December 17, Mother and Father brought I.Q. to the pediatrician again, as I.Q. continued experiencing issues with constipation and had a fever. Father reported that I.Q. was "uncomfortable when [getting] dressed or placed in [a] car seat. He started to wail [e]very time he was in [the] car seat." I.Q.'s bowel movements were unusually hard, he cried so much that he burst a blood vessel in his eye, and he was irritable and upset when awakened. I.Q. had a decrease in activity, was eating poorly, and was sleeping more during the day. When the pediatrician touched his abdomen, I.Q. appeared to be in pain; however, he had a full range of motion in his joints and muscles, and his musculoskeletal exam was normal. The pediatrician sent I.Q. to the emergency room at Mount Sinai for further exams. X-rays were taken of I.Q.'s chest at the emergency room, and nothing abnormal was noted.[2] I.Q. was discharged, and Mother and Father were advised to

[2] When I.Q. was taken to the hospital on January 9, 2019, the examining physician had a radiologist review the x-ray images taken on December 17, 2018. Upon re-analyzation, the x-rays revealed a "[h]ealing fracture lateral left seventh rib and possibly adjacent lateral left sixth rib. Question healing fracture at junction posterolateral right (continued)

follow up with I.Q.'s pediatrician. Mother spoke with the pediatrician the following morning, stating that I.Q. was fussy after waking up but consolable, and he was spitting up, but it was not forceful vomiting. The pediatrician informed Mother to contact her if I.Q.'s symptoms worsened.

I.Q.'s Worsening Condition and Removal from Parents' Care

From January 3, 2019 through January 8, 2019, I.Q. was in the care of Mother and Father. During this time, I.Q. was also briefly watched by two other individuals. On January 4, 2019, I.Q. was with his maternal grandmother in the evening while Mother and Father attended a holiday party. While at the party, Mother was informed by I.Q.'s grandmother that I.Q. had vomited, and she suggested that Mother take I.Q. to the hospital. Mother did not bring I.Q. to the hospital; instead, after the party, Mother and I.Q. stayed with Father at his residence. On January 6, 2019, Father drove Mother to work, and briefly left I.Q. in the care of his roommate for approximately 15 minutes. Other than these two instances, I.Q. was in Mother and Father's care. Mother stated that Father typically watched I.Q. while she worked, but in the mornings and evenings I.Q. was usually in the care of both parents.[3]

From January 3, 2019 to January 8, 2019, I.Q. was exhibiting symptoms of distress. I.Q. was projectile vomiting for several days, beginning on January 3, and

seventh and anterior right sixth ribs." The emergency room report from December 17, 2018 was amended to include these findings.

[3] Mother provided conflicting testimony regarding the period from January 5-7, 2019. Ultimately, there were periods that I.Q. was with both parents, periods where I.Q. was alone with Mother, and periods where I.Q. was alone with Father.

appeared cross-eyed. He was extremely irritable and lethargic, was abnormally "screeching," decreasing his milk consumption, and screamed every time he was moved. Although I.Q. was vomiting after feedings, eating less, sleeping more, and was unusually irritable, neither parent found I.Q.'s symptoms to be concerning and therefore did not call a doctor.

On January 8, 2019, I.Q.'s symptoms became severe. I.Q.'s eyes appeared "blank" and "not moving," and he continued vomiting and exhibiting irritability. Still, Mother brought I.Q. to her residence so that I.Q.'s grandmother could watch him while Mother went to work. The grandmother called Mother at work and told her to take I.Q. to the doctor. Mother called I.Q.'s pediatrician, scheduling an appointment for later that day after noting that she was concerned about I.Q.'s screaming, his irritability, he was not eating much, and he was starting to appear cross-eyed. This was the first time during the six-day period, throughout which I.Q. was expressing severe symptoms of distress, that Mother contacted a medical professional.

Mother and Father attended I.Q.'s appointment with the pediatrician on January 8. At the appointment, the pediatrician noted that I.Q. had "2-3 days of fussiness/irritability, 'screaming, screeching,' not normal behavior for him; [Mother] says that as soon as he is moved, he starts screaming. Sleepy today but wakes when moved. Cross-eyed for last 3 days only, worsening – initially one eye, now both. Now seems like he doesn't follow light or anything – starting today." She continued that I.Q. "[a]lso had vomiting – 'Projectile' vomited 1x a day for 3 days . . . not as much over the last 2 days. Seemed like he threw up the whole bottle each of those times." The pediatrician also noted that

I.Q.'s head was swollen, and that when I.Q. was touched, especially on the abdomen, he would become irritable and made a "shrill high-pitched neuro-sounding cry." The pediatrician repeatedly asked if I.Q. had experienced any trauma, which both parents denied, although Father offered that I.Q. would "sometimes lift his head forward in his carseat and it would fall back." The pediatrician instructed Mother and Father to "immediately take [I.Q.] to the emergency department."

The parents took I.Q. to the University of Maryland Medical Center, where I.Q. was diagnosed with "subdural hematomas and abusive head trauma" and multiple extremity and rib fractures. I.Q.'s injuries were found to be "diagnostic of physical abuse" and I.Q. was transferred to Johns Hopkins Hospital ("Hopkins") for further testing and treatment.

Upon arriving at Hopkins, I.Q. was "critically ill" and required care to "prevent cardiovascular collapse due to abusive head trauma." I.Q. was admitted to the Pediatric Intensive Care Unit, where he was diagnosed with multiple intracranial hemorrhages, multiple fractures to the ribs, legs, and arms, and "extensive multilayered retinal hemorrhages in both eyes." I.Q. had fractures to ribs 5, 6, and 7 on his right side, and ribs 5, 6, 7, 9, 10, 11, and 12 on his left side. The fractures were in various stages of healing, indicating that "some of them had happened earlier than others." I.Q. also had fractures in his right arm and both legs, including metaphyseal fractures to the left leg.[4]

[4] Dr. Mitchell Goldstein, the medical director of the Child Protection Team at Hopkins, testified as an expert witness for the Department in pediatric and emergency medicine and child maltreatment. Dr. Goldstein consulted on I.Q.'s case when I.Q. was (continued)

I.Q. underwent emergency surgery where he was placed under anesthesia and a subdural drain was inserted into his skull to extract fluid buildup. Following the procedure, I.Q. experienced seizures and a stroke. I.Q.'s injuries have rendered him "legally and permanently blind," he suffers from a seizure disorder, and he is at risk for developmental delays.

While I.Q. was being treated at Hopkins, Mother and Father were asked repeatedly by Hopkins staff, the Department, and police to offer an explanation for I.Q.'s injuries. Both repeatedly denied harming I.Q. or knowing how he sustained his injuries. Although she recognized that I.Q.'s symptoms were not normal, Mother claimed that she did not think I.Q.'s medical issues were serious. Mother, however, did not provide an explanation for failing to seek medical attention for I.Q. when he continued projectile vomiting for several days. Father admitted that he dropped I.Q. into his bassinet and to potentially causing the fractures in I.Q.'s legs by "rotating the child's legs like a bicycle." Father also admitted that he was dissatisfied with I.Q.'s head size and attempted to "reshape" I.Q.'s head by pressing on it "[t]en to [t]wenty times," although he did not believe he had hurt I.Q. In an interview with Detective Angelo Brooks, Father's roommate stated that Mother becomes "easily frustrated when [I.Q.] is agitated." Hopkins staff noted that Mother and Father's affect was "relatively flat and restricted . . .

in the Pediatric Intensive Care Unit. Dr. Goldstein testified that metaphyseal fractures are caused by "she[e]r forces" or "anything which gives sort of a quick almost jerk to [the] long bone" including being "grabbed by the leg or the arm . . . in a[n] almost whiplash sort of sense."

even when [medical staff outlined I.Q.'s] significant injury pattern." When interviewed by police, Mother and Father appeared "overly calm and without emotion despite the severity of [I.Q.'s] injuries."

The child abuse experts at Hopkins determined that I.Q.'s injuries were due to "classic multi-symptom abuse . . . that could only have been caused by abusive nonaccidental traumas." One social worker involved made a note that "[w]ithout a clear history of how [I.Q.] sustained such extensive injury, [she was] concerned for [I.Q.'s] safety in the care of either parent."

On January 9, 2019, I.Q. was removed from Mother and Father's custody, and on January 10, 2019, the Department filed a CINA petition with a request for shelter care, which was granted by the juvenile court. At the end of January 2019, I.Q. was discharged from the hospital and placed with the M. family, who run a therapeutic foster home for medically fragile children.

Findings of Indicated Abuse and Neglect

At the conclusion of the CPS investigation, the Department found both Mother and Father responsible for indicated child abuse. Mother appealed this decision to the Office of Administrative Hearings,[5] and following hearings on July 8 and October 30, 2020, an Administrative Law Judge ("ALJ") modified Mother's finding to one of

[5] Pursuant to Family Law § 5-706.1, when there has been a finding of indicated abuse or neglect, the individual alleged to have abused or neglected the child "may request a contested case hearing to appeal the finding in accordance with Title 10, Subtitle 2 of the State Government Article by responding to the notice of the local department in writing within 60 days." FL § 5-706.1(b)(1).

indicated child neglect. The ALJ noted that when testifying, Mother and I.Q.'s grandmother contradicted prior statements they had made during the CPS investigation, claiming that Mother scheduled a pediatrician appointment before I.Q.'s grandmother instructed her to do so. The ALJ gave these statements and Mother's testimony that she had previous conversations with the pediatrician concerning I.Q.'s vomiting and eye-crossing little weight, as they did not excuse Mother's failure to bring I.Q. to the emergency room for several days. Noting that "[i]t would make no sense to excuse a failure to provide proper care and attention on the grounds that [Mother], the primary caretaker for [I.Q.], failed to [notice I.Q.'s] symptoms," the ALJ found Mother's failure to seek medical attention for I.Q. for five days after he began projectile vomiting on January 3 supported a finding of indicated child neglect.

I.Q.'s Foster Care Placement and Complex Medical and Developmental Needs

I.Q. is currently in the care of the M.s, licensed foster parents for medically fragile children. I.Q. was placed with the M.s in January 2019, and he has been continuously in their care for over four and a half years. I.Q has a strong bond with both foster parents, particularly his foster mother Mrs. M., and refers to them as "mom" and "daddy." I.Q. has difficulty separating from his foster parents and is particularly anxious when Mrs. M. leaves.

As a result of his injuries and blindness, I.Q. has specialized needs. I.Q. has speech delays, anxiety, sensory issues, autism, behavioral problems, and he is permanently blind. He was on seizure medications until approximately age two and

remains at high risk for seizure activity. I.Q. has severe sleep issues, including night terrors, and wakes up 12 to 14 times per night. As I.Q. struggles to communicate his needs, he often attacks Mrs. M., and can be difficult to control when he is upset.

Despite these issues, I.Q. has "progressed safely and significantly," and has established a daily routine with the M.s who ensure that all of his needs are met. Mrs. M. arranges and attends all appointments, and before I.Q. was enrolled in school, the M.s provided daily, full-time care for I.Q. in their home. I.Q. is currently enrolled at the Maryland School for the Blind. He receives psychiatry services, ongoing neurology care, and specialized eye treatment at Hopkins. I.Q. also participates in speech therapy, occupational therapy, psychological services, behavioral therapy, and physical therapy. These services are critical for I.Q.'s development. The M.s hold themselves out as an adoptive resource should Mother's parental rights be terminated.

Father and Mother's Reunification Efforts with I.Q.

Mother ended her relationship with Father around the time I.Q. was hospitalized after concluding that Father must have been responsible for I.Q.'s injuries; although, she maintains that she never observed Father harm I.Q. Father is in active military service, and although he initially made some efforts to reunify with I.Q., those efforts were inconsistent and have since ceased. Father has not had recent contact with I.Q. and did not participate in the proceedings regarding the termination of parental rights.[6]

[6] Father also filed a brief as an appellee, agreeing with the Department and I.Q.'s attorney that the juvenile court erred in refusing to terminate Mother's parental rights. We, however, decline to consider Father's brief, as he has not properly preserved any (continued)

Conversely, Mother has consistently made attempts to reunify with I.Q. and has "largely complied" with the service agreements presented by the Department, which outline the duties and responsibilities for Mother and the Department to follow in order to attain reunification. The Department has presented Mother with two service agreements.[7] Pursuant to the service agreements, Mother has received mental health treatment, intimate partner violence treatment, and completed a substance abuse assessment.

issues for appellate review. As noted, Father was not present at trial during the Department's Petition for Guardianship beginning on October 11, 2022. Father initially objected to the termination of his parental rights, but through counsel, voluntarily withdrew this objection on October 11, 2022 and "asked not to participate in [the] proceedings." Mother objected to this action, as it was not the same as affirmatively consenting to the Department's Petition for Guardianship, and Father argued that "by withdrawing [his objection to termination], it acts as a consent." The juvenile court granted Father's request to withdraw his objection and excused Father from the proceedings.

Pursuant to Md. Rule 8-131(a), an appellate court ordinarily "will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court." Father withdrew from the proceedings, and as a result, he was not an adverse party, did not present his position or arguments for the juvenile court to rule upon, and did not provide Mother, the Department, or the attorney for I.Q. with a fair opportunity to counter his position. As one purpose of Md. Rule 8-131 is to ensure fairness for the parties, it is fundamentally unfair for Father to now join as an appellee, adverse to Mother, when Mother did not have the opportunity below to defend against Father's claims. We therefore disregard Father's brief and do not consider his arguments on appeal.

[7] Only the first service agreement was signed and executed by Mother. This agreement required Mother to (l) participate in weekly supervised visitation, (2) enroll in parenting classes, (3) enroll and participate in mental health treatment, (4) participate in I.Q.'s medical appointments, (5) sign consent forms, (6) enroll and participate in anger management classes, (7) enroll and participate in an intimate partner violence program; and (8) complete a substance abuse assessment. The second service agreement was substantially similar, with the additional requirement that Mother "provide [the Department] with information surrounding [I.Q.'s] removal and [I.Q.'s] medical conditions." Mother did not sign this agreement.

Mother has completed parenting classes, undergone two favorable home health assessments, and consistently attended I.Q.'s medical appointments and supervised visitation. Mother is employed and has stable housing. The only service agreement requirement Mother did not comply with was informing the Department how I.Q.'s injuries were caused. Mother maintains that she has cooperated with the Department but is "unable to provide any information about the cause or causes of [I.Q.'s] injuries because she has none," as I.Q. was in Father's care during the relevant period. The appearance that Mother "represses, minimizes, or misremembers (whether deliberately or not) the events surrounding [I.Q.'s] removal" led the juvenile court in the CINA proceeding to determine that I.Q. "cannot be safely maintained in Mother's care, now and in the foreseeable future."

As noted, Mother has supervised visitation with I.Q. Mother is involved in I.Q.'s care and consistently attends the supervised visits; however, rather than a secure parent-child relationship, Mother and I.Q. have developed a "friend[-like] relationship." Visits initially occurred at the Department, many of which ended early because I.Q. became "inconsolable" and would only stop crying when returned to his foster mother, Mrs. M. At Mrs. M.'s suggestion, future visits were moved to a community setting and were supervised by Mrs. M. Subsequent visits have lasted their full duration. At times, Mother visited with I.Q. two to three times a week, although more recently, Mother's visits have decreased to one time per month. Mrs. M. has allowed Mother to have additional visitation with I.Q., in-person or virtually at Mother's request; however, Mother rarely asks for additional time with I.Q. or virtual contact.

During visits with I.Q., Mother has had the opportunity to parent him, changing his diapers and clothes, assisting with grooming, and feeding I.Q. Although I.Q. seems to enjoy being around Mother during visits, and Mother is often "present, engaged, and connected to [I.Q.]," the Department has observed Mother grow impatient and frustrated with I.Q., who requires extensive attention, redirecting, and specialized intervention. Mrs. M. has attempted to instruct Mother on how to assist I.Q. with "tailing," which teaches a blind child to walk more independently by holding onto an adult's shirt. When I.Q. would not "tail" Mother or would stay close to Mrs. M., Mother grew upset and would walk ahead of I.Q. and Mrs. M. On other occasions, Mother has become frustrated or upset with I.Q. and she walked away from him, which concerned Mrs. M., as I.Q. is "always in danger. Anything could happen to him in a matter of [seconds] because he is blind." Mrs. M. has expressed concern over Mother's difficulty anticipating I.Q.'s needs, particularly as a blind child, noting that Mother sometimes failed to properly advise I.Q. where to walk. Mrs. M. has observed I.Q. fall on two occasions while walking with Mother, which is particularly worrisome because I.Q. "could walk right into traffic, or he could fall down and hurt himself."

I.Q.'s Permanency Plan Changed to Adoption

In February 2020, the Department met with Mother to discuss I.Q.'s permanency plan, to again request information regarding I.Q.'s injuries, and to ask Mother to explain why she did not seek medical care for I.Q. for several days. Mother again failed to provide any information, and could not provide an explanation for her delay in seeking medical care for I.Q. As a result, the Department requested I.Q.'s permanency plan be

modified to adoption, as "there was no way to try and remedy the situation" by providing Mother with appropriate services. In February 2021, a magistrate recommended that the court change I.Q.'s permanency plan to adoption. Mother filed exceptions, and a hearing followed in June 2021.

At the June 2021 exceptions hearing, the juvenile court changed I.Q.'s permanency plan to adoption by a non-relative. The juvenile court found that due to the "inconsistency of the interactions between Mother and [I.Q.]," Mother and I.Q. did not have a "particularly strong attachment or deep emotional ties." Mother has never been permitted unsupervised or overnight visitation with I.Q., as the juvenile court did not find them safe. This was in part due to Mother's "inability and/or unwillingness . . . to recall and say those critical facts necessary for [I.Q.'s] safety." The juvenile court continued:

> The evolving and inconsistent story of causation appears most likely to be, at least in part, a strategy to hide, deflect or pass off responsibility in exchange for Mother's and/or Father's protection. It leaves [I.Q.] wholly without a safe birth parent, now and in the foreseeable future. While, in other respects, Mother has satisfied the requests of [the Department] in an effort to progress towards reunification, this Court's focus must be on the safety and welfare of [I.Q.]. . . . [I.Q.] cannot safely return to Mother's care.

Conversely, the juvenile court found that the M.s provide a "physically and emotionally safe environment" for I.Q. and consistently meet his special medical needs that have resulted from the injuries he sustained in Mother's and Father's care. I.Q. is anxious when he is outside the presence of a foster parent, and the M.s are able to soothe

I.Q. when he is upset following visits with Mother or Father.[8] The M.s provide I.Q. with a "good deal of comfort and a sense of safety," and the anxiety I.Q. feels when away from the M.s presents a "real possibility that [I.Q.] could suffer emotional harm" if he were moved away from the M.s. The juvenile court found that removing I.Q. from the M.s care would cause a "stressful disruption," particularly considering the possibility that "Mother's capacity to support [I.Q.'s] healthy emotional development may be limited." Furthermore, the juvenile court continued:

> The risk of harm that [I.Q.] may face in the care of Mother or Father who, at the least, failed to protect him from sustaining severe, acute, chronic and complex traumatic permanent injuries throughout the first three months of his life that they cannot or will not explain, outweighs whatever risk of harm his time in shelter and foster care – where his safety has been unquestionably maintained for over two years – might pose.

Consequently, the juvenile court stated in its order that it was "not able to make a Family Law Article § 9-101[9] finding that there is no likelihood of further abuse or

[8] Father made inconsistent attempts to reunify with I.Q. He attended some supervised visits with I.Q.; however, I.Q. was "skeptical" of Father, and grew upset during visits which resulted in "tantrum outbursts." Father began but failed to complete parenting classes, stopped mental health treatment when he relocated in October 2019, did not attend any of I.Q.'s medical appointments, and did not participate in a domestic violence program. At the time of the CINA proceedings, Father was "not holding himself out as a resource for [I.Q.]."

[9] Family Law § 9-101 states:

> (a) In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.

(continued)

neglect of [I.Q.] in Mother's care or Father's care." The juvenile court did not award Mother unsupervised visitation with I.Q.

The Guardianship Proceedings and Ruling

The Department filed a guardianship petition with the right to consent to adoption, and the juvenile court held an evidentiary hearing on the Department's petition over several days in October and November 2022. Mother objected to the petition, and Father initially objected but later withdrew his objection through counsel and did not participate in the termination of parental rights ("TPR") proceedings.

Joyce Jukes, a Unit Manager at the Department who is responsible for assisting parents in remedying issues that caused a child's removal, testified at the guardianship hearing that Mother's significant neglect of I.Q. and refusal to provide the Department with information regarding the cause of I.Q.'s injuries led to the Department's recommendation to change I.Q.'s permanency plan to adoption. Although Mother complied with other elements of the service agreement, Ms. Jukes emphasized that of fundamental importance is the child's safety. Ms. Jukes continued:

> [I]t's not about finishing every part of the service agreement, it's about being forthright, and it's about not being neglectful. . . . [I.Q.] la[id] there for six days without help, without assistance. . . . that's not what you do to . . . a child, you care

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> (b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

> for your child. If you see something's wrong like projectile vomiting, then you take the child to the doctor.

Mrs. M. testified as to her observations of Mother's interactions with I.Q., noting that Mother often grew frustrated with I.Q. and failed to anticipate his needs. The foster care social worker assigned to I.Q.'s case, Chatara Mines, and the former CPS caseworker assigned to I.Q.'s case in 2019, Dorothy Azike, both echoed Ms. Jukes' testimony. Ms. Mines expressed that Mother's failure to explain the delay in seeking medical treatment was an obstacle to reunification, and Ms. Azike stated that although Mother knew I.Q. was unwell, she sought no medical attention and "did not have any good response as to why." The Department expressed concern for Mother's minimization of I.Q.'s symptoms and continued failure to adequately explain her delay in seeking medical attention for I.Q. and asked the juvenile court to terminate Mother's parental rights.

Mother offered testimony contradicting some of her prior statements. She believed I.Q.'s symptoms were not concerning, that I.Q. was spitting up due to overfeeding and was not projectile vomiting, and the pediatrician had previously informed her that his symptoms were typical. Mother further testified that she called the pediatrician during the period in question regarding I.Q.'s crossed eyes, and the pediatrician informed her that there was no cause for concern. She reiterated that Father was the abuser and is no longer involved in I.Q.'s life, and claimed that she has learned from her mistakes and will proactively seek medical attention if anything seems wrong with I.Q. Mother further acknowledged that she understands parenting I.Q. is difficult

and that it takes particular skills to attend to his needs, and she is learning techniques to handle these issues and ensure he receives all necessary services. Mother also requested unsupervised visits with I.Q. to start immediately.

On December 30, 2022, the juvenile court denied the Department's guardianship petition after weighing the Family Law § 5-323(d) factors. The juvenile court determined that despite the fact that Mother "subject[ed] [I.Q.] to life-threatening neglect by failing to seek timely medical treatment," she has made "significant efforts to adjust her circumstances to accommodate reunification with [I.Q.]." The juvenile court found that Mother complied with all elements of the service agreements, including that she inform the Department regarding the causes of I.Q.'s injuries, stating that her belief that Father caused the injuries as I.Q. was in his care two to three times per week and Father acknowledged that he sometimes dropped I.Q. into his bassinet was sufficient to satisfy the Department's "vague condition."

The juvenile court acknowledged that even with the M.'s encouragement of more frequent communication, due to I.Q.'s school and Mother's work schedule, Mother only visited or communicated with I.Q. once or twice per month. The juvenile court further noted that "[t]estimony about both positive and negative visits was presented, and [I.Q.'s] age and disability makes it difficult to determine conclusively evidence of emotional ties with [Mother]." Additionally, "[Mother] has not been permitted to have unsupervised visitation or overnight visitation with [I.Q.]." Despite this, the juvenile court determined that Mother has "demonstrated the ability to parent [I.Q.]" because she attends his medical appointments and visitation, and has made efforts to "learn how to care for a

child with special needs." Accordingly, the juvenile court determined that Mother was not unfit to parent I.Q., and that the Department did not establish exceptional circumstances to justify terminating Mother's parental rights. Although the juvenile court stated that "[Mother's] fitness is not at issue," it once again did not order unsupervised visitation.

Following the juvenile court's decision, the attorney for I.Q. filed a motion to alter or amend the decision to deny the Department's guardianship petition due to issues that are not before us on appeal. The motion was denied on February 17, 2023. This appeal followed.

STANDARD OF REVIEW

When we review a juvenile court's guardianship decision, we apply three interrelated standards of review. *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 47 (2019) (citation and quotation marks omitted). We review factual findings for clear error, legal conclusions *de novo*, and the court's "ultimate conclusion" for an abuse of discretion. *In re Adoption of Ta'Niya C.*, 417 Md. 90, 100 (2010) (citation omitted).

Factual findings are clearly erroneous if no "competent material evidence exists in support of the trial court's factual findings." *In re Ryan W.*, 434 Md. 577, 593-94 (2013) (citation and quotation marks omitted). "[I]f there is any competent and material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous." *Carroll Indep. Fuel Co. v. Wash. Real Estate Inv. Trust*, 202 Md. App. 206, 224 (2011) (citation and quotation marks omitted).

If, after a *de novo* review of the court's legal conclusions, we find that the court has "erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless." *In re Yve S.*, 373 Md. 551, 586 (2003) (citations omitted).

Finally, juvenile courts have broad discretion to "determine the correct means of fulfilling a child's best interest." *In re Mark M.*,365 Md. 687, 707 (2001). When the trial court's decision is "founded upon sound legal principles and based upon factual findings that are not clearly erroneous," we will only disturb that decision if "there has been a clear abuse of discretion." *In re Yve S.*, 373 Md. at 586. An abuse of discretion occurs when the trial court's conclusion is "clearly against the logic and effect of facts and inferences before the court" or when the ruling is "violative of fact and logic." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (citations and quotation marks omitted).

DISCUSSION

I. THE JUVENILE COURT ABUSED ITS DISCRETION IN CONCLUDING THAT MOTHER WAS FIT TO PARENT I.Q. BECAUSE ITS FINDING THAT AGGRAVATING CIRCUMSTANCES DID NOT EXIST WAS CLEARLY ERRONEOUS AND IMPROPERLY PRIORITIZED MOTHER'S PARENTAL RIGHTS OVER I.Q.'S BEST INTERESTS.

A. The Best Interest of the Child Standard

Cases involving children present a unique challenge to the courts, as they require the court weigh the, at times, competing rights of the child versus the parent. Maryland courts acknowledge that parents have a fundamental right to raise their children and note that there is "a presumption of law and fact [] that it is in the best interest of children to

remain in the care and custody of their parents." *See, e.g.*, *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 495 (2007). These rights, however, are "not absolute," and the State may intervene "[w]hen it is determined that a parent cannot adequately care for a child," petition for guardianship of the child and, ideally, later transfer parental rights to an adoptive family. *Id.* at 495; *In re C.E.*, 464 Md. at 48. When determining adoption, third-party custody, and TPR proceedings, the paramount consideration of the juvenile court is always the best interest of the child. *See, e.g.*, *In re Ta'Niya C.*, 417 Md. at 111.

Juvenile courts are empowered to terminate parental rights if, after considering the factors enumerated in Family Law § 5-323(d), clear and convincing evidence shows that either a parent is unfit to care for the child or exceptional circumstances exist that would make a continued parental relationship between the child and parent detrimental to the child's best interests. FL § 5-323(b). The juvenile court must determine 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." *In re Rashawn H.*, 402 Md. at 500 (emphasis added). In making this determination, the court must balance the child's best interests against the parent's right to raise the child, but the primary concern will always be the "health and safety of the child." *In re Adoption/Guardianship of H.W.*, 460 Md. 201 (2018); FL § 5-323(d). When considering what placement would be in the best interest of the child, the court looks to the history of the parent's behavior. *McCabe v. McCabe*, 218 Md. 378, 383 (1958) (a court can "only judge the [child's] future [welfare] by the [parent's] past [conduct]").

Family Law § 5-323(d) factors must be considered together with no specific factor having any particular weight. *In re Adoption/Guardianship No. 94339058*, 120 Md. App. 88, 105 (1998). Although the court must consider each factor in § 5-323(d), "it is not necessary that every factor apply, or even be found, in every case." *In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 737 (2014).

Family Law § 5-323(d) factors may be divided into four categories:

> (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.

In re C.E., 464 Md. at 51. Of particular interest here is the issue of aggravating circumstances. The juvenile court may waive the Department's obligation to provide reunification services to the parent if the court finds the presence of aggravating circumstances outlined in Family Law § 5-323(d)(3). FL § 5-323(e). Additionally, if the juvenile court finds that an aggravating circumstance under Family Law § 5-323(d)(3)(iii), (iv), or (v) exists, the court must "make a specific finding, based on facts in the record, whether return of the child to a parent's custody poses an unacceptable risk to the child's future safety." FL § 5-323(f).

One such aggravating circumstance is whether the parent subjected the child to "chronic and life-threatening neglect." FL § 5-323(d)(3)(iii)(2). As the statute does not define these terms, they take on their "plain and ordinary meaning," and the definition is considered "in context with the purpose or object of the statute" to avoid any nonsensical

interpretation. *Schreyer v. Chaplain*, 416 Md. 94, 108 (2010). One meaning of "chronic" is "always present or encountered." "Chronic," *Merriam-Webster Dictionary*, https://www.merriam-webster.com/dictionary/chronic (last visited October 17, 2023). "Life-threatening" means "capable of causing death: potentially fatal." "Life-threatening," *Merriam-Webster Dictionary*, https://www.merriam-webster.com/dictionary/life-threatening (last visited October 17, 2023). And "neglect" is the "failure to give proper care and attention to a child by any parent . . . under circumstances that indicate . . . that the child's health or welfare is harmed or placed at substantial risk of harm." FL § 5-701(s)(1). Thus, "chronic and life-threatening neglect" is an "aggravating circumstance" when a parent has failed to care for a child in a way that is "potentially fatal," and the parent's failure to properly care for the child has resulted in harm that is "always present." When a child is subjected to this "always present" "potentially fatal" harm, the court must make a finding whether returning the child to the parent poses an "unacceptable risk to the child's future safety." FL § 5-323(f).

As discussed below, it was legal error for the juvenile court to not make a finding on whether Mother engaged in chronic and life-threatening neglect of I.Q., which is an aggravating circumstance that would make a continued parental relationship between Mother and I.Q. detrimental to I.Q.'s best interest.

B. The Juvenile Court Erred Because It Failed to Give Primary Consideration to I.Q.'s Best Interests When Weighing the Family Law § 5-323(d) Factors.

As noted, the juvenile court must weigh all of the Family Law § 5-323 factors while prioritizing the best interest of the child in determining whether a parent is unfit or

if exceptional circumstances exist such that a continued parental relationship would be detrimental to the child. FL § 5-323(b). In its December 30, 2022 order, the juvenile court outlined each Family Law § 5-323(d) factor and concluded that due to Mother's efforts to comply with the Department's service agreements and willingness to develop the skills she will need to care for I.Q.'s complex needs properly, termination of Mother's parental rights was not warranted. The juvenile court committed legal error in its analysis of the Family Law § 5-323(d) factors and abused its discretion in its conclusion that it was not in I.Q.'s best interest to terminate Mother's parental rights. We will discuss each factor considered by the juvenile court below.

i. § 5-323(d)(1)(i): Services offered to parents before child's placement

I.Q. was removed from Mother's care as the result of an emergency shelter care petition due to the severe injuries observed by the medical team at Hopkins. Therefore, the Department did not present any evidence regarding services offered to Mother prior to I.Q.'s placement with the Department. The record supports this finding by the juvenile court.

ii. § 5-323(d)(1)(ii): Extent and nature of services to facilitate reunion of child and parent

The juvenile court found that the Department made reasonable efforts to reunite I.Q. and Mother. Mother was offered ample opportunities to attend supervised in-person visits at the Department and multiple community locations, as well as virtual visits during the pandemic. Mother was also permitted to participate in I.Q.'s medical appointments, access his electronic medical records, and make all of his healthcare decisions.

The juvenile court, however, took issue with the Department's argument that because Mother has never been granted unsupervised or overnight visits with I.Q., this supported termination of her parental rights. The juvenile court found that because the Department never offered Mother the opportunity to have unsupervised or overnight visits with I.Q., the lack of visits cannot be outcome determinative. Mother requested unsupervised visitation twice: first at the exceptions *de novo* hearing held on June 3, 2021, and then again 18 months later at the December 2022 guardianship hearing. At the June 2021 proceedings, the juvenile court explicitly stated that it was "not able to make a Family Law Article § 9-101 finding that there is no likelihood of further abuse or neglect of [I.Q] in Mother's care."

Thus, given the lack of a finding that there was no likelihood of further child abuse or neglect by Mother, as determined by the juvenile court at the June 2021 exceptions proceedings, the Department had no control over Mother's visitation structure. *See Baldwin v. Baynard*, 215 Md. App. 82, 106 (2013) (unsupervised visitation is prohibited for a party who neglected a child unless there is a specific finding that there is no likelihood of future neglect). It was Mother's burden to convince the juvenile court that there was no likelihood of future neglect of I.Q. *Id*. Mother failed to satisfy this burden at the exceptions proceedings.

Mother did not request unsupervised visitation again until the conclusion of the guardianship hearing in December 2022. Although the juvenile court did not terminate Mother's parental rights, it ordered a supervised visit between Mother and I.Q. within fourteen days, again declining to provide Mother with unsupervised visitation. The

juvenile court failed to consider the June 2021 exceptions hearing and the conclusions made at that time that there were significant concerns in allowing unsupervised visitation between I.Q. and Mother. The juvenile court's failure to consider the prior findings resulted in its incorrect conclusion that the Department failed to offer unsupervised visitation. This finding is not supported by the record and is clearly erroneous. Furthermore, the juvenile court's failure to make a Family Law § 9-101 finding after declining to terminate Mother's parental rights was legal error. FL § 9-101(a) ("In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.").

iii. § 5-323(d)(1)(iii): Extent DSS and parent fulfilled obligations under the social services agreement

The juvenile court found that the Department presented Mother with two service agreements. Mother only signed and executed the first agreement. Under both agreements, Mother was required to participate in weekly visitation, complete parenting classes, have mental health therapy, participate in medical appointments, sign consent forms, enroll and participate in anger management classes, participate in a domestic violence program, and complete a substance abuse assessment. The Department was required to facilitate Mother's participation in the programs by providing referrals and information on specific programs. The Department was further required to provide

information regarding I.Q.'s medical appointments and medical providers. Both the Department and Mother complied with these service agreement conditions.

The second agreement was not signed by Mother. This agreement was substantially the same as the first, but with the added requirement that Mother provide the Department with information regarding the incidents that led to I.Q.'s removal and medical conditions.[10] It is clear from the Department's arguments at the hearing and on appeal that a significant barrier to her reunification with I.Q. was the lack of explanation for I.Q.'s injuries. Mother's own statements to the Department and investigating detective, as well as testimony at the hearing, was that in the six-day period during which I.Q. sustained his severe and life-threatening injuries, only Mother, Father, I.Q.'s maternal grandmother, and Father's roommate had contact with I.Q.

The juvenile court found that Mother met all requirements of the first service agreement, and additionally found that Mother met the Department's "vague condition" that Mother "provide [the Department] with information surrounding the removal and [I.Q.'s] medical conditions" "to the best of her ability." This finding, however, is clearly erroneous, as it is not supported by the record.

Mother testified that she believed "[Father] was responsible for [I.Q.'s] injuries, because [I.Q.] was in his care for 2-3 days per week," and that Father "acknowledged that

[10] We recognize that by imposing this condition the Department may be placing a parent in the difficult position of potentially admitting that the parent abused or neglected the child and risk termination of parental rights or criminal prosecution. In this circumstance, however, the issue is the best interest of the child. The potential conflict that this may raise is not before us.

he caused [I.Q.] to have 'hard landings' into his bassinet." Further, Mother testified that she did not believe I.Q.'s projectile vomiting and crossed eyes were problematic and indicative of serious injury. This testimony, however, does not explain I.Q.'s injuries, Mother's failure to recognize that I.Q. had been significantly injured, or Mother's inaction in seeking medical care for I.Q for a period of six days. The juvenile court's finding that Mother's statements satisfied the service agreement condition that she inform the Department about what happened to I.Q. lacked a factual basis and was, therefore, clearly erroneous.

iv. § 5-323(d)(2)(i): Result of parent's effort to adjust parent's circumstances, condition, or conduct to safely allow child's return home

The juvenile court found that Mother made "significant efforts to adjust her circumstances to accommodate reunification with [I.Q.]," and as support pointed to Mother's completion of most service agreement requirements, attendance at I.Q.'s medical appointments, and in-person and virtual visitation. The juvenile court noted that although the M.s do not impose any restrictions on virtual communication, Mother and I.Q. only communicate every two weeks due to Mother's work and I.Q.'s school schedule. The juvenile court also stated that although the current permanency plan only allows for one visit per month, Mother makes an effort to attend these visits and spend time with I.Q. on holidays and special occasions. The juvenile court continued that Mother has stable housing that has met basic health and sanitation needs.

Although Mother testified that she ended her relationship with Father, as she believed he was the one who caused I.Q.'s injuries, this is the only fundamental change

Mother has made since I.Q. was injured. Mother testified that she remains in the same home as she did when I.Q. was subjected to the abuse that left him permanently blind and developmentally disabled. The Department and Mrs. M. expressed some concern about the suitability of Mother's home for I.Q. Mrs. M. testified that there is no railing on the front porch steps, there is a large wooden staircase, a fireplace with cement, and kitchen doors that "swing back-and-forth." The Department argued that the home presents opportunities for I.Q. to injure himself. I.Q. needs to be supervised at all times, with which Mother has struggled during supervised visitations. The juvenile court did not address any of these concerns raised by Mrs. M. and the Department and concluded that were Mother "permitted to have custody of [I.Q.], he would be in a safe physical environment" simply because Mother's home "met basic health and sanitation needs."

The juvenile court further failed to make any specific findings regarding the parenting skills Mother has gained to address I.Q.'s special needs and those that she still needs to develop. The juvenile court did not consider Mrs. M's testimony regarding Mother's difficulties practicing "tailing" with I.Q., or testimony from Mrs. M. and the Department describing how Mother walks away from I.Q. when she grows frustrated or upset.

v. § 5-323(d)(2)(ii): Parent's contribution to child's support, if able

The juvenile court found that Mother is "under no obligation to provide regular financial support" for I.Q., as she has done so on only six to nine occasions since January

2019. There was no discussion by the juvenile court, however, about how Mother's lack of financial support affected I.Q.'s best interest.

Mother has a "natural law" duty to support I.Q., *see In re Katherine C.*, 390 Md. 554, 570-71 (2006) (holding that the obligation of a parent to support a child "does not disappear when a child is adjudicated CINA and removed from parental custody and care" and that parents "have a responsibility and obligation to provide child support if they are capable of doing so."). Mother is employed full-time and has an annual salary of approximately $45,000 per year. She hosted a birthday party in October 2022 and has provided I.Q. with birthday and Christmas presents in the past. In determining that Mother was under no obligation to financially support I.Q. and failing to address how this factor was in I.Q.'s best interest, the juvenile court erroneously concluded that Mother was under no obligation to provide regular financial support to I.Q and failed to determine why this would be in I.Q.'s best interest.

vi. § 5-323(d)(2)(iii): Existence of parental disability that makes parent unable to care for child's immediate and ongoing physical or psychological needs for long periods of time

Mother had significant postpartum depression for which she received therapy and attended meetings at the hospital. The Department noted that in the past, Mother had self-reported symptoms of depression and admitted she was not receiving treatment to manage her symptoms. As noted, Mother has completed several programs as part of her service agreement, including receiving mental health therapy. The juvenile court found that the Department did not present evidence that Mother has a disability that would

prevent her from caring for I.Q., as she has stable employment, a consistent schedule, and I.Q.'s maternal grandmother is available to provide additional support. This finding was supported by the record and, therefore, was not clearly erroneous.

vii. § 5-323(d)(2)(iv): Enhanced potential of reunification through additional services and time

The juvenile court found that Mother has completed all services provided by the Department. It is not in question whether she completed classes and programs required by her service agreements with the Department. The one requirement with which Mother has not complied is informing the department how I.Q. sustained his injuries and why she did not seek medical attention for I.Q. for six days while he was projectile vomiting, cross-eyed, and in obvious distress as evidenced by his "screeching" when he was moved.

Family Law § 5-323(d)(2)(iv) requires the court to determine:

> 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*.

(emphasis added). Mother has received services from the Department for over four years, and yet the juvenile court still found that Mother needed "additional services" to continue "developing" her parenting skills. The juvenile court, however, did not specify what "additional services" Mother still needs, when Mother should be expected to have the fully developed parenting skills to deal with I.Q.'s complex needs, or how continuing to leave I.Q. in foster care for an indefinite period of time would be in his best interest.

I.Q. has been in foster care for over four years. This greatly exceeds the 18-month goal of § 5-323(d)(2)(iv). The juvenile court did not make a specific finding that it would be in I.Q.'s best interest to extend his time in foster care while Mother continued "developing the skills she needs to parent [I.Q.] successfully," and did not specify for how long Mother would have to develop these skills. The juvenile court did not explain how allowing I.Q. to remain in legal limbo indefinitely while Mother is given unspecified additional time to develop parenting skills, which she has not learned over the past four years would be in I.Q.'s best interest. Thus, the juvenile court focused on giving Mother additional unspecified time to develop her parenting skills rather than on whether providing this additional time to Mother was in I.Q.'s best interest. By failing to consider I.Q.'s best interest the juvenile court committed legal error.

viii. § 5-323(d)(3)(i): Whether parent abused or neglected the child, and the seriousness

The Department proved, and the juvenile court affirmed, that Mother committed medical neglect by failing to seek medical attention for I.Q. when he began showing severe symptoms of distress. Mother was indicated for abuse by the Department, which was later modified to indicated child neglect by an ALJ. The juvenile court found that "[a]s a result of [Mother's] delay in seeking medical care, [I.Q.] suffered from a stroke that ultimately led to the serious consequence of his blindness." Yet, aside from making this finding, the juvenile court provided no further explanation. Moreover, the juvenile court did not mention, despite ample evidence, that Mother's neglect also resulted in

I.Q.'s developmental disabilities, complex health care needs, and need for constant supervision.

The Department argues that life-threatening neglect warrants termination when no mitigating factors can assure a child's safety in the offending parent's care. There were no findings made by the juvenile court regarding mitigating factors that ensure I.Q.'s safety in Mother's care despite Mother's neglect. By failing to address the seriousness of Mother's neglect and I.Q.'s best interest, the juvenile court committed legal error.

ix. § 5-323(d)(3)(ii)(1)(A): Mother tested positive for a drug on admission to hospital for child's delivery; (1)(B) child tested positive upon birth for drug; or (2) mother refused drug treatment recommendation

As I.Q. did not come into care at birth, there is no evidence that Mother or I.Q. tested positive for any drug at I.Q.'s birth. Pursuant to the service agreement with the Department, Mother underwent a substance abuse assessment but did not fit the criteria for treatment. The juvenile court found that Mother adequately met this factor and doing so was not clearly erroneous.

x. § 5-323(d)(3)(iii): Parent subjected child to chronic abuse or chronic and life-threatening neglect

The juvenile court found that although the Department presented evidence that I.Q. was abused over a four- to six-week period, as he had multiple fractures in various stages of healing, there was credible evidence that Father, not Mother was the abuser. Despite the fact that I.Q. was vomiting after feeding and appearing cross-eyed, Mother failed to seek medical attention for I.Q. for several days. Mother argued that the juvenile court properly weighed this issue, as the juvenile court "found only that the mother

committed life-threatening neglect, not 'chronic and life-threatening neglect.'" Further, her failure to seek medical attention for I.Q. is "a one-time occurrence," and one instance of neglect cannot be chronic.

Conduct that jeopardizes a child's life may be an aggravating circumstance. Committing life-threatening neglect once can still demonstrate Mother's inability to care for I.Q. *See In re T.K.*, 480 Md. 122, 158 (2022) ("even a single incident of abuse or neglect could, by themselves, be dispositive of a parent's ability to care for a child"). That I.Q. had fractures in various stages of healing is further evidence of Mother's chronic neglect, which was not considered by the juvenile court. Further, because I.Q. was immediately removed from Mother's care once the neglect was discovered, she did not have the opportunity to potentially commit further neglect. As I.Q. was only three months old at this point, and as each day without care constitutes a separate neglect incident, Mother's neglect over a period of six days may be considered chronic neglect in this context. Although the juvenile court found that Father was I.Q.'s abuser, the juvenile court did not address Mother's conduct or failure to explain how the distress of a three-month-old child with multiple fractures could not be recognized by a parent. By failing to determine whether Mother's chronic and life-threatening neglect of I.Q. warranted termination of her parental rights, the juvenile court committed legal error.

xi. § 5-323(d)(3)(iv): Conviction of crime of violence against child or other parent

The Department presented no evidence that Mother had ever been convicted of a crime of violence against I.Q. or Father.

xii. § 5-323(d)(3)(v): Involuntary TPR to a sibling of the child

The Department presented no evidence that Mother has another child. The Department noted that Father has another child who is no longer in his care but did not present evidence that there was an involuntary termination of parental rights to I.Q.'s paternal sibling.

xiii. § 5-323(d)(4)(i): Child's emotional ties with parents, siblings, and others who may affect the child's best interests significantly

Although Mrs. M. testified that I.Q. is "typically happy" during visits with Mother, the juvenile court determined that I.Q.'s age and disability make it "difficult to determine conclusively evidence of emotional ties with [Mother]." The juvenile court then erroneously continued that "Mrs. [M.] testified that she does not support terminating [Mother's] parental rights." This factual conclusion by the juvenile court is not supported by the record and is therefore clearly erroneous. Mrs. M. testified that if Mother's parental rights were terminated, she would continue to ensure that Mother and I.Q. had opportunities to bond with one another, stating that if Mother's parental rights were terminated, "[Mother] would always be in his life. We want her in his life, no matter what happens, either way." It has been noted that Mother and I.Q.'s bond is "friend[-like]," and Mother has not presented evidence that I.Q. views her as a maternal figure.

Conversely, I.Q. has a strong and secure attachment to the M.s. Mrs. M. is I.Q.'s primary caretaker, and often the only one who can console him when he becomes upset. I.Q. becomes anxious and distressed when separated from the M.s, and there is a "real

possibility that he could suffer emotional harm if he were moved from his current placement." The M.s are specifically equipped to care for I.Q.'s needs and have demonstrated this ability over the past four years. I.Q. has a foster brother, although no information was provided regarding their emotional attachment.

I.Q.'s maternal grandmother, with whom Mother lives, has attended many visits between Mother and I.Q. No evidence was provided regarding their emotional attachment. The Department presented evidence that I.Q. has exhibited negative behaviors during visits with Father, who has been infrequently involved in I.Q.'s life. Father withdrew his objection to the termination of parental rights.

In evaluating this factor, the juvenile court did not make a specific finding as to how removing I.Q. from his placement with the M.s would affect I.Q.'s best interest. This was legal error.

xiv. § 5-323(d)(4)(ii): Adjustment to community, home/placement, school

The juvenile court found that I.Q. had not yet had significant opportunities to engage with the community but does have some connections to the Mentor Maryland program. Although I.Q.'s neighborhood is community-oriented, he struggles to interact with the neighbors and is afraid of their pets. I.Q.'s foster family has helped him establish a daily routine, and he lives in a home that is easy to navigate. The M.s are equipped to care for I.Q., have appropriate training and experience, and additionally care for another medically fragile child. I.Q. has adjusted well to the Maryland School for the Blind and exhibits positive behavior influenced by his peers.

Conversely, because Mother has never been permitted to have unsupervised or overnight visitation, it is unclear how he would react in Mother's home. I.Q. has been to Mother's home for one holiday; although, there was no evidence presented regarding his adjustment to the environment. I.Q. has grown accustomed to his life with the M.s and established daily home and school routines. The juvenile court did not make a specific finding regarding whether removing I.Q. from this environment would be in his best interest, and the juvenile court's failure to do so was legal error.

xv. § 5-323(d)(4)(iii): Child's feelings regarding the severance of the parent-child relationship

I.Q. is only four years old, and due to his developmental disabilities has difficulty with verbal communication. The juvenile court noted that while no evidence was presented specifically on this issue, Mrs. M. testified that I.Q. is "typically happy to see [Mother] when visitation occurs." The juvenile court, however, failed to address I.Q.'s clear distress in early visits with Mother, which ended early when I.Q. became inconsolable. This also does not speak to I.Q.'s feelings towards Mother as a parental figure, as it has been noted that Mother and I.Q. have a "friend[-like] relationship" rather than a secure parent-child attachment, which the juvenile court did not discuss. The juvenile court's failure to address I.Q.'s reactions to visits with Mother and observations about the parental relationship between I.Q. and Mother was legal error.

xvi. § 5-323(d)(4)(iv): Impact of terminating parent's rights on the child's well-being

The juvenile court determined that "there is a possibility that [I.Q.'s] well-being will be adversely affected" if Mother's parental rights are terminated. As support for this

assertion, the juvenile court noted that the M.s, who are holding themselves out as adoptive resources, are 68 and 75 years old. An adoptive resource's age is not the focus of a guardianship proceeding. Of paramount concern is I.Q.'s health and safety. FL § 5-323(d). At the CINA proceedings, the juvenile court stated that Mother's "capacity to support [I.Q.'s] healthy emotional development may be limited" and placing I.Q. with Mother would cause a "significant disruption" to the consistent care he receives. To disregard this finding due to the age of I.Q.'s current foster parents was legal error, as it does not focus on the best interest of I.Q.

Throughout its analysis of the Family Law § 5-323(d) factors, the juvenile court emphasized the actions Mother has taken to complete her service agreements and begin developing the skills she would need to care for I.Q. We commend Mother for her efforts thus far, however, the juvenile court improperly prioritized Mother's efforts over I.Q.'s best interests.

As noted, the primary consideration when weighing the Family Law § 5-323(d) factors must be the best interest of the child. *See, e.g.*, *In re Ta'Niya C.*, 417 Md. at 111. I.Q. has now been in foster care for over four years, and Mother has had ample time to receive services and demonstrate her ability to care for I.Q. After four years, the juvenile court found that Mother is still "developing" her parenting skills, but the juvenile court failed to consider the impact that it would have on I.Q.'s well-being to continue to give Mother an indefinite amount of time to develop them. *See In re Adoption/Guardianship No. 10941*, 335 Md. 99, 119 (1994) (holding that a court cannot leave a child in "legal limbo" and wait for an event that may "never happen"). Mother committed life-

threatening neglect that has caused I.Q. to suffer irreparable harm. This aggravating circumstance must be considered when determining what is in I.Q.'s best interest. Mother has not demonstrated that I.Q. will be safe in her care, particularly with his increased needs that have resulted from her initial neglect.

Conversely, the M.s are particularly trained and equipped to meet I.Q.'s needs. I.Q. has a strong bond with both parents and suffers from anxiety when removed from their presence. I.Q.'s relationship with Mother is "friend[-like]" at best, and she has not demonstrated that they have a parent-child bond. The juvenile court did not consider the impact it would have on I.Q. if he was removed from the only family he has known. By failing to do so, the juvenile court committed legal error as it focused on Mother rather than I.Q.'s best interests.

II. THE JUVENILE COURT CLEARLY ERRED BY NOT MAKING A SPECIFIC FINDING ABOUT I.Q.'S FUTURE SAFETY IN MOTHER'S CARE.

The trial court is required to deny custody to the parent unless the court makes a specific finding by a preponderance of the evidence that there is no likelihood of further abuse or neglect. FL § 9-101(b); *In re Yve S.*, 373 Md. at 571. Under Family Law § 5-323(f), when aggravating circumstances exist, a court must "make a specific finding, based on the facts in the record, whether return of the child to a parent's custody poses an unacceptable risk to the child's future safety." FL § 5-323(f). The best interest inquiry focuses on the child's perspective, not the parent's. *See Jayden G.*, 433 Md. 50, 68 (2013). If the juvenile court fails to make a specific safety finding, "its order must be vacated." *See In re Joshua W.*, 94 Md. 486, 501 (1993).

In her brief, Mother argues that the Department did not preserve the issue of aggravating circumstances for appellate review. Mother acknowledges that "chronic and life-threatening neglect" is an aggravating circumstance enumerated in Family Law § 5-323(e)(2), and that if the juvenile court found that Mother had committed chronic and life-threatening neglect, the juvenile court would be required to make a finding about whether returning I.Q. to Mother presents an unacceptable risk of harm to I.Q.'s safety. FL § 5-323(f). Mother argues, however, that neither the Department, nor the attorney for I.Q. raised this issue below. In its reply brief, the Department responded that an issue is preserved for appellate review "raised in or decided by the trial court." Md. Rule 8-131(a). The Department contends that the issue is properly preserved, as the attorney for I.Q. properly raised this issue during closing arguments, stating that I.Q. was subjected to chronic abuse and chronic and life-threatening neglect. Responding, Mother's counsel observed that "the question of whether [Mother] subjected [I.Q.] to serious, chronic, life-threatening neglect is really at the heart of this case." The Department asserted, and we agree, that an issue that is "at the heart of [the] case" is eligible for review. Furthermore, the issue regarding aggravating circumstances was decided, as the juvenile court found that Mother "did subject [I.Q.] to life-threatening neglect by failing to seek timely medical treatment for [I.Q.]." Thus, the issue of whether Mother subjected I.Q. to chronic life-threatening neglect is properly before us.

The juvenile court found that the Department did not establish by clear and convincing evidence that exceptional circumstances existed which would make the continuation of a parental relationship detrimental to I.Q. This determination was based

on erroneous factual findings, incorrect application of the law, and an abuse of the juvenile court's discretion. As discussed above, Mother's chronic life-threatening neglect which resulted in I.Q.'s severe developmental disabilities and permanent blindness was an aggravating circumstance. The juvenile court was then required to make a specific finding that returning I.Q. to Mother's care would not jeopardize his safety. The juvenile court erred by not making this specific finding.

Mother argues that the juvenile court did find that returning I.Q. to Mother would not pose an unacceptable risk of harm to I.Q., as the juvenile court found Mother was fit to parent I.Q. The Department counters, and we agree, that the juvenile court's conclusion that "[Mother's] fitness is not at issue and her continued parental relationship with I.Q. is not detrimental to his safety and welfare," is not a specific finding that satisfies § 5-323(f). The juvenile court makes three particular references to I.Q.'s safety; however, as a matter of law, none of these references satisfy § 5-323(f). First, the juvenile court stated that Mother's home met basic health standards, and, therefore, I.Q. would be in a safe physical environment. This does not address Mother's ability to care for I.Q. with his special needs and is inapplicable to determining whether placement with Mother would be in I.Q.'s best interest. It further disregarded testimony from Mrs. M. concerning Mother's inability to anticipate and address I.Q.'s needs as a blind child.

Second, the juvenile court stated that Mother's "completion of a domestic violence awareness program and desire not to communicate with [Father] underscore the fact that [Mother] has taken steps to ensure that both she and [I.Q.] will be in a safe environment moving forward." While this action rids I.Q. of the risk of potential further abuse by

Father, the likely maltreater, it disregards the very real fact that Mother's neglectful actions in failing to seek medical assistance for several days contributed to I.Q.'s distress and resulting disabilities. The juvenile court made no finding that Mother is unlikely to repeat severe neglect of I.Q. in the future.

The third reference to safety by the juvenile court was that "[Mother's] fitness is not at issue and her continued parental relationship with [I.Q] is not detrimental to his safety or welfare." The juvenile court appears to have based this determination on Mother's progress in programs mandated by the service agreements with the Department and consistent willingness to participate in I.Q.'s life through medical appointments and visitation. This praises Mother's efforts but is not a specific finding that I.Q. will be safe in Mother's care.

We struggle to reconcile the juvenile court's determination that Mother's "fitness is not at issue" with its repeated refusal to grant Mother unsupervised visitation when requested. For four years, Mother has had only supervised visitation and has never progressed to unsupervised or overnights visits with I.Q., as his safety consistently remained in question. As recently as December 30, 2022, Mother was again not granted unsupervised visitation. Under Family Law § 9-101, Mother has the burden to prove that I.Q. will be safe in her care, despite the finding of neglect. *See In re Yve S.*, 373 Md. 551 (2003) ("The burden is on the parent previously having been found to have abused or neglected his or her child to adduce evidence and persuade the court to make the requisite finding under § 9–101(b)."). Mother has never met this burden, as she has never been granted unsupervised visitation with I.Q.

We agree with the Department and I.Q. that the juvenile court improperly valued Mother's actions over I.Q.'s best interest. Aggravating circumstances require termination when mitigating factors do not directly address the safety concerns. It was error to determine that Mother has proven I.Q. will be safe in her care. Mother must be able to care for I.Q. in a way that does not endanger his welfare and must demonstrate this ability "within a reasonable time." *In re Rashawn H.*, 402 Md. at 499-500. With the juvenile court's finding that Mother still needs "additional services" to continue "developing" her parenting skills, it is unclear when she will have the suitable skills to care for I.Q.'s complex needs. We will not continue to leave I.Q. in legal limbo while Mother develops these skills. I.Q. has been in foster care for over four years now. He deserves permanency.

We therefore vacate the judgment of the juvenile court and remand with the instruction to conduct a new hearing on the Department's petition for guardianship that properly considers the Family Law § 5-323(d) factors and makes a specific finding regarding whether a continued parental relationship with Mother would be detrimental to I.Q.'s best interest and if he will be safe in Mother's care.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY VACATED; CASE REMANDED FOR A NEW HEARING REGARDING THE DEPARTMENT'S GUARDIANSHIP PETITION NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.

Circuit Court for Baltimore City
Case No. T21077003

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0108

September Term, 2023

IN RE: I.Q.

Friedman,
Zic,
Curtin, Yolanda L.
(Circuit Court Judge, Specially Assigned),

JJ.

Concurring Opinion by Friedman, J.

Filed: November 9, 2023

I join all of the majority opinion except that part of its analysis labeled as Section I.B.iii. In that section, the majority finds the juvenile court's determination that Mother satisfied the conditions of both the first and second service agreements with the Department to be clearly erroneous. Slip Op. at 12 n. 7, 27-29. There is no debate that Mother satisfied the first service agreement. Rather, the only disagreement is whether she satisfied the second service agreement, which added a single condition: that Mother "provide [the Department] with information surrounding the removal and [I.Q.'s] medical conditions." The juvenile court determined that this single additional condition was "vague" and that Mother had responded to it, "to the best of her ability." In that finding, I read significant discomfort with that single condition because the Department attempted to place Mother in a "Catch-22" situation by which she could only answer truthfully, and thus have a chance of blocking the termination, if she changed her story and admitted that she knew how I.Q. was abused ***but*** if she changed her story and admitted that she knew how I.Q. was abused, she would have no chance of blocking the termination. Given that discomfort, which I share, I don't think the juvenile court's finding was clearly erroneous. Moreover, in my view, given the other holdings, we need not reach this aspect of the juvenile court's decision.