

Circuit Court for Baltimore City  
Case No. T15211002

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 149

September Term, 2018

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In Re: Adoption/Guardianship of M.S.

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Wright,  
Graeff,  
Salmon, James P.,  
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Wright, J.

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Filed: January 16, 2019

\*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.

Ms. M. (“Mother”) and Mr. S. (“Father”), appellants, challenge a judgment of the Circuit Court for Baltimore City, sitting as a juvenile court, terminating their parental rights to their daughter M.S. On appeal, Mother and Father present the following questions for our review, which we have consolidated into one:<sup>1</sup>

1. Did the court err in terminating appellant’s parental rights?

We answer this question in the negative and will affirm the judgment of the circuit court.

### **BACKGROUND**

M.S., born May 25, 2009, is the nine-year-old biological child of Mother and Father. At the time of M.S.’s birth, Mother and Father were both seventeen years old and were unable to care for her. Mother had been adjudicated a Child in Need of Assistance (“CINA”) in May 1991 and therefore was in foster care placement.

After M.S. was only a year old, Mother was twice admitted to a psychiatric hospital for serious mental illnesses, including schizophrenia.<sup>2</sup> Due to Father’s lack of

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<sup>1</sup> Appellants presented the following two questions for our review:

1. Did the court err by concluding that Mr. S. was unfit to parent M.S.?
2. Did the court err by finding that exceptional circumstances warranted either parents’ rights?

<sup>2</sup> Mother has a history of mental illness including PTSD, anxiety, and Schizophrenia, with hallucinatory, delusional, and paranoia tendencies.

housing and job stability, and Mother's continued placement in foster care, M.S. was adjudicated a CINA in November 2010 at the age of one year and five months.

Between 2010 to 2016, the Baltimore County Department of Social Services (the "Department") tried, unsuccessfully, to reunite M.S. with Mother and Father. At countless times this proved difficult as neither Mother or Father could meet the terms of their service agreements, attain adequate housing, or secure steady employment.<sup>3</sup>

BCDSS provided Mother with parenting classes, housing assistance, employment assistance, and mental health treatment by entering into multiple service agreements. In July 2010, M.S. was placed under the care of her paternal grandfather, Mr. Eddie, where she remained until grandfather's housing situation became unstable in November 2011.

In September 2012, M.S. was placed with her foster mother, Candace F. ("Ms. F."). A court-ordered bonding evaluation demonstrated that when M.S. was first placed with Ms. F., she was "withdrawn" but eventually securely bonded to Ms. F. In addition, the bonding evaluation noted that M.S.'s paternal grandfather wanted Ms. F. to adopt M.S. Under Ms. F.'s care, M.S. took part in cheerleading, soccer, community service, and was discharged from speech therapy. As required by her service agreement, Mother was required to schedule visits with Ms. F., but when Ms. F. attempted to contact Mother

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<sup>3</sup> At various points throughout these efforts at reunification, Father failed to maintain contact with the Department or M.S. While Mother maintained contact with the Department, she often did not have documentation of stable housing or employment, despite telling the Department that she was in school, employed, and residing in a stable environment (defined as housing where M.S. would have her own room or room with an age-appropriate child).

and Father about M.S., they rarely answered her calls and did not appear at any of M.S.'s activities.

In November 2015, the juvenile court changed M.S.'s permanency plan to placement with a non-relative for adoption or custody and guardianship. Additionally, the Department filed a petition with the court for guardianship with the right to consent to adoption and notified Mother and Father. Concurrent with that petition, the Department sought to terminate Father and Mother's parental rights.

Before the Termination of Parental Rights ("TPR") hearing, the court ordered bonding studies. Father did not appear for the studies. Mother appeared at a bonding study, but only after many attempts by the Department to reach her. The psychologist conducting the evaluation concluded that Ms. F. was providing a "nurturing environment" for M.S. In Mother's study, the psychologist determined that Mother's interactions with M.S. were "atypical" for a "mother/daughter relationship," and that M.S. did not appear to see Mother as a "commanding adult."

### **The First TPR Hearing**

The juvenile court considered the petition on June 1, 2016. Father, Mother, M.S., and the Department were present and represented by able counsel. At the hearing, the Department called Mary Yox, the custodian of records for the Medical Services Division of the Circuit Court for Baltimore City. Through her testimony, the Department introduced the court-ordered bonding studies and the in-placement review evaluations of Ms. F., which the parents objected to, claiming that the documents constituted

inadmissible hearsay evidence. The court overruled the objection and admitted the studies and evaluations under the business records exception to the hearsay rule. None of the professionals who conducted the studies or evaluations were called to testify.

On August 1, 2016, the juvenile court orally granted the Department's petition. The court relied, in part, on the bonding studies to find that M.S. is "bonded and attached to [Ms. F.]" The court found by clear and convincing evidence that exceptional circumstances would make continuation of the parental relationship detrimental to M.S.'s best interests, relying, in part, on a finding that a change in custody "would have a detrimental emotional affect on [M.S.] because of her secure bond with Ms. F." Mother and Father appealed to the Court of Special Appeals. *See In Re: Adoption/Guardianship of M.S.*, No. 1255, September Term, 2016 (Feb 13, 2017), wherein this Court vacated the judgment and remanded for further proceedings because the court erred in admitting the expert opinions as to bonding studies under the business records exception to the hearsay rule.

### **Second TPR Hearing**

On February 22, 2018, the juvenile court heard additional testimony in the guardianship proceeding. The author of the bonding studies was the only witness who testified; neither Mother nor Father presented any additional evidence. The juvenile court terminated Mother's and Father's parental rights. This timely appeal followed.

### **STANDARD OF REVIEW**

We review a juvenile court's decision to terminate parental rights under three interrelated standards. *See In re Adoption of Ta'Niya C.*, 417 Md. 90, 100 (2010)

(citation omitted). First, we review factual findings under the clearly erroneous standard. *In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. 30, 45 (2017). Second, we review legal conclusions *de novo*. *Id.* Finally, we review the juvenile court’s “ultimate decision” for an abuse of discretion. *Id.* Regarding the abuse of discretion standard, “we will only disturb a court’s ruling if it does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.” *In re Adoption of Jayden G.*, 433 Md. 50, 87 (2013) (internal quotations and citation omitted).

The general presumption is that it is in the child’s best interest to remain in the care and custody of the child’s parents. However, that presumption can be overcome in certain circumstances:

In TPR cases, a parent’s right to custody of his or her children “must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect.” *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 497 (2007). Thus, this parental right is terminated “upon a showing either that the parent is ‘unfit’ or that ‘exceptional circumstances’ exist which would make continued custody with the parent detrimental to the best interest of the child.” *Id.* at 495.

*In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 709 (2011).

### **TERMINATION OF PARENTAL RIGHTS**

When the State petitions to terminate parental rights without a parent’s consent, “the court’s paramount consideration is the child’s best interests.” *Jayden G.*, 433 Md. at 82 (citing *Ta’Niya C.*, 417 Md. at 94). Recognizing that parents have a constitutionally-protected interest in raising their children without undue State interference, Maryland law presumes that it is in the best interest of children to remain in the care and custody of

their parents. *Rashawn H.*, 402 Md. at 495 (citations omitted). The natural rights of parents, however, are “not absolute.” *Id.* at 497. Rather, the parents’ rights “must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect.” *Id.* at 497. Thus, in appropriate cases the “presumption that the interest of the child is best served by maintaining the parental relationship . . . may be rebutted . . . by a showing that the parent is either unfit or that exceptional circumstances exist that would make the continued relationship detrimental to the child’s best interest.” *Id.* at 498. Since 2009, those considerations have been set forth explicitly in Md. Code (1984, 2012 Repl. Vol., 2017 Supp.), Family Law Article (“FL”) § 5-323(d).

“[T]he trial court must consider the statutory factors listed in [FL § 5-323(d)] to determine whether exceptional circumstances warranting termination of parental rights exist.” *Ta’Niya C.*, 417 Md. at 103-04 (footnotes omitted). “[T]he same factors that a court uses to determine whether termination of parental rights is in the child’s best interest under the TPR statute equally serve to determine whether exceptional circumstances exist.” *Id.* at 104 (citing *Rashawn H.*, 402 Md. at 499). “[The statutory] factors, though couched as considerations in determining whether termination is in the child’s best interest, also serve as criteria for determining the kinds of exceptional circumstances that would suffice to rebut the presumption favoring a continued parental relationship and justify termination of that relationship.” *Ta’Niya C.*, 417 Md. at 104 (citations omitted).

“In addition to these statutory factors, courts may consider ‘such parental characteristics as age, stability, and the capacity and interest of a parent to provide for the emotional, social, moral, material, and educational needs of the child.’” *Ta’Niya C.*, 417 Md. at 104 n.11, *cert. denied*, *Pastore v. Sharp*, 81 Md. App. 314, 320 (1989). Indeed, the governing statute itself does not confine the court’s analysis to the factors specifically enumerated therein: it states that “a juvenile court shall give primary consideration to the health and safety of the child and consideration to all other factors needed to determine whether terminating a parent’s rights is in the child’s best interests, including” the factors enumerated in the statute. FL § 5-323(d).

## **DISCUSSION**

### **Juvenile Court’s Consideration of the Factors Under FL § 5-323(d)**

When a circuit court considers a petition for guardianship of a child and to terminate parental rights, FL § 5-323(d) requires that the court must give “primary consideration to the health and safety of the child and consideration to all other factors needed to determine whether terminating a parent’s rights is in the child’s best interests . . . .” Those factors that must be considered include: (1) the services offered to the parent; (2) the results of the parent’s and the Department’s efforts to adjust the circumstances, conditions, or conduct of the parent; (3) the parent’s history of abuse or neglect of the child or another minor in the home; (4) the child’s emotional ties with the parents and the child’s feelings about severance of the relationship between the parent and child. *See* FL § 5-323(d). The record reflects that the juvenile court properly considered the relevant

factors set forth in FL § 5-323(d) in determining that Mother and Father's parental rights should be terminated.

With respect to FL § 5-323(d)(1)(i)-(iii), concerning the nature, extent, and timeliness of services offered to the parents and the fulfillment of the obligations of the Department and the parents under the service agreements, the juvenile court found that the Department had offered numerous referrals and services to both Father and Mother, including parenting services, resources for jobs, temporary agencies, and schools, offers for visitation with M.S., affordable housing assistance, and mental health services. The circuit court found that Father routinely failed to respond to the Department's letters regarding resources for jobs, temporary agencies, or schools from July 2013 to June 2015. The court noted that Ms. M. took advantage of the parenting classes and mental health services the Department provided for her, but that she did not avail herself of the affordable housing assistance, and she was only in "partial compliance" with her prescribed medication. Turning to the offers for visitation, the court found that Ms. M. was often "not compliant" with the Department's visitation offers.

Regarding FL § 5-323(d)(2)(i)-(iv), concerning the results of the parents' effort to adjust their circumstances, conditions, or actions (including support of the child) to make it in the child's best interest to return home, including the maintenance of regular contact with the Department, the child, and the child's caregiver, in addition to support of the child, the juvenile court found that neither Mother or Father showed evidence of practices leading to the conclusion that it would be in M.S.'s best interest to return to their care. In terms of regular contact with the Department, the circuit court found that "Father did not

assist his cause to reunify with [M.S.].” A worker from the Department was not able to contact Father from November 2011 to July 2012. The court noted that Father failed to respond to a letter from the Department dated December 27, 2013, notifying him that M.S. would be placed for adoption. The court credited Mother with maintaining more regular contact with the Department.

Turning next to regular contact with M.S., the circuit court found that both Mother and Father left much to be desired. While Mother did visit M.S., she was “often not compliant,” and because Mother’s visitation was “inconsistent,” M.S.’s emotional ties with Mother were “difficult to assess.” The court credited Mother, noting that she was more consistent with visitation in 2016, but still had inconsistent visits. The record supports this finding.

Addressing Father’s contact with M.S., the circuit court found that in July 2010, M.S. was placed under an Order of Shelter Care with her parental grandfather. When M.S. lived with her paternal grandfather, Father “saw his daughter daily when she lived with paternal grandfather, as [F]ather also lived there.” M.S. and Father spent time together playing with M.S.’ cousins, playing with toys, and taking trips to the park. The court found that M.S. “had emotional ties to the Father and Father’s family and she spent, as I could make a determination, up to maybe about 30 percent of her life with them during the weekend periods of time.” In November 2011, the paternal grandfather’s housing situation became unstable and M.S. was placed with Mother in a foster home through the Casey Foundation. The court made no findings as to Mother’s time spent

with M.S., only noting that M.S. and Mother spent time together during the placement in Mother's foster care home.

Regarding the care Father provided when M.S. was living with her paternal grandfather, Father testified that at that time he "fed, bathed, changed diapers and clothes of [M.S.], that he also provided milk and Pampers for [M.S.'s] care[.]" The court made no findings as to the care that Mother provided to M.S.

Addressing whether the parents had worked to improve the circumstances, conditions, or conduct, the circuit court found that this case was "pressurized and time sensitive," and that M.S.'s biological parents needed to prove their stability within a certain time frame. The court found that for both parents, housing stability remained an issue. The record supports the court's finding that per the service agreements that Mother and Father signed, they both failed to secure adequate, safe housing for M.S. Regarding job stability, the court found that Mother had a job and Father was continuing his job search and pursuing his GED.

Regarding Father, the circuit court found that although Father had attempted to "better his station in life," he remained unemployed. Father's testimony that he had stable housing was not challenged through cross-examination by any party. Ultimately, the court found that "[t]he progress [F]ather had made does not rise to the level of fitness or readiness to resume parental responsibility as there was no job and no stable housing." The court found that although Mother was currently employed, she was not sufficiently addressing her mental health needs.

The circuit court then turned to FL § 5-323(4)(i)-(iv), concerning the child's emotional ties to their parents and the child's adjustment to community, home, placement, school, and the child's feelings about severing the parent-child relationship, and, finally, what the impact of terminating parental rights would be on the child's wellbeing. The circuit court determined that M.S.'s "emotional ties with [M]other were more difficult to assess" given Mother's inconsistent visitation. Speaking of the visitation sessions that did occur, the court noted that "Mother would get upset when [M.S.] referred to [Ms. F.] as, quote, 'mommy.'" The court also noted that M.S. appeared to have bonded with her foster mother.

Turning to M.S.'s progress while in foster care, the circuit court initially noted that M.S. had been in foster care since December 2010, that she was placed in the Department's foster care in July 2010, that she was placed with her foster mother in July 2012, and that changing her custody would have a detrimental impact on M.S. The circuit court found that M.S. matured significantly in the course of her time with the foster mother. M.S. no longer needed an Individual Education Plan, had resolved her attention difficulties, and attached to Ms. F. and Ms. F.'s family.

Finally, the circuit court noted that "[h]ad the parents within the previous years up [until] five, maybe six, demonstrated an ability to care for [M.S.] in a way that does not endanger [M.S.'s] welfare, no individual factor even proven would justify as a termination of parental rights."

## **ANALYSIS**

The juvenile court correctly determined that Father was unfit to parent M.S., and that exceptional circumstances warranted the termination of Father and Mother's parental rights. The circuit court's determination is well-supported by the evidence. Appellants challenge this determination and argue that Father is not unfit to parent M.S. and that exceptional circumstances do not warrant termination of either parent's parental rights. We disagree.

First, appellants aver that "[t]he court's conclusion that [Father] lacked stable housing or employment was not supported by the evidence and was a legally impermissible basis to find that he was unfit." Father argues that he was living with his family, that his efforts at securing employment were "significant and ongoing," and that he maintained a relationship with M.S., who had a "deep and abiding relationship with [Father's] family."

M.S., through counsel, responded that for the six years of the CINA proceedings, Father did not participate in arranging visits, never contacted the caseworker about arranging for the visits, never contacted M.S.'s foster parent, Ms. F., and that he only assisted M.S.'s paternal grandfather, who had assumed the parenting role. In addition, counsel for M.S. also claimed that Father never responded to the letters sent by the Department, that he stopped attending the CINA proceedings, and that "[he] has been entirely passive. His role has been at best that of a fun uncle."

The Department similarly argues that Father did not maintain contact with the Department, and notes that Father even conceded as much in a stipulation agreement. The Department contends that Father did not fulfill the terms of his second service

agreement with the Department. According to the Department, it was not until December 2013 that Father indicated an interest in regaining the custody of M.S.

We agree with the arguments made by M.S. and the Department. The juvenile court properly found that Father was unfit to parent M.S. We reiterate that, under an analysis to terminate parental rights, the facts must show that the parent is unfit to continue the relationship, or that exceptional circumstances make the continued relationship detrimental to the child's best interests. *Rashawn H.*, 402 Md. at 499. While unfitness or exceptional circumstances, alone, do not mandate a decision to terminate parental rights, the ultimate decision to terminate parental rights centers around the best interests of the child. *See Jayden G.*, 433 Md. at 94.

In the instant case, the circuit court found Father unfit to parent M.S. due to a lack of stable housing and employment. Our courts have emphasized the importance of stability and permanency for the child in the TPR analysis. In *In re K'Amora K.*, 218 Md., App. 287, 307-308, this Court adopted *Jayden G.* to describe the limbo a foster child experiences:

The status of a foster child, particularly *for* the foster child, is a strange one. He's part of no-man's land . . . . The child knows instinctively that there is nothing permanent about the setup, and he is, so to speak, on loan to the family he is residing with. If it doesn't work out, he can be swooped up and put in another home. It's pretty hard to ask a child or foster parent to make a large emotional commitment under these conditions.

*K'Amora K.*, 218 Md. App. at 307 (quoting *Jayden G.*, 433 Md. at 83-84) (quoting Joseph Goldstein, *Finding the Least Detrimental Alternative: The Problem for the Law of Child Placement*, in *Parents of Children in Placement: Perspectives and Programs* 188 n.9

(Paula A. Sinanoglu & Anthony N. Maluccio eds., 1981)); *see also* Joseph Goldstein, Anna Freud & Albert J. Solnit, *Beyond the Best Interests of the Child* 43 (New Edition with Epilogue, 1979) (“Therefore, to avoid irreparable psychological injury, placement, whenever in dispute, must be treated as the emergency it is for the child.”); *id.* at n.\* (“Three months may not be a long time for an adult decisionmaker. For a young child it may be forever.”).

In *K’Amora K.*, this Court also noted that:

[A] parent’s *actions* and *failures to act* both can bear on the presence of exceptional circumstances and the question of whether continuing the parent-child relationship serves the child’s best interests. In *Jayden G.*, the trial court terminated parental rights after finding the mother to be unfit *and* finding exceptional circumstances. The mother claimed that the court had focused improperly on the positive care that Jayden had received from his foster family rather than her continued involvement in Jayden's life. Court of Appeals noted that Jayden’s mother had failed to make *any* positive progress over the two-plus years that Jayden lived in foster care which, coupled with Jayden’s healthy adjustment to living with a foster family, led the Court to conclude “that a severance of the relationship with the [m]other *would not have a detrimental effect on Jayden, but . . . would allow him to achieve permanency.*”

*K’Amora K.*, 218 Md. App. at 307 (citations omitted) (emphasis in original).

In *K’Amora K.*, the circuit court terminated Mother’s parental rights after finding that “exceptional circumstances” justified the severance of the parent-child relationship.

*Id.* at 288. *K’Amora* was placed in foster care shortly after her birth. *Id.* at 290.

*K’Amora*’s relationship with her Mother was detached. Mother often became “angry, frustrated, and confused” when *K’Amora* cried at visits. *Id.* at 291. On appeal, this Court discussed that “[FL § 5-323(b)] . . . authorizes a circuit court to terminate a parent’s rights even *absent* a specific finding that a parent is unfit to care for her child.”

*Id.* at 304. This Court noted that “Mother had almost *no* actual involvement in K’Amora’s life” and “had missed nearly half of her visits with K’Amora[.]” *Id.* at 308.

This Court held that:

[T]he circuit court neither overreacted nor abused its discretion in terminating Mother’s parental rights. The court faced the reality that sending K’Amora to live with Mother would have uprooted her from the safe and stable (and only) family environment she had known. The exceptional circumstances alternative is meant to cover situations, such as this, in which a child’s transcendent best interests are not served by continuing a relationship with a parent who might not be clearly and convincingly unfit.

K’Amora K., 218 Md. App. at 310.

In the instant case, there is ample evidence indicating that continuing the parental relationship would be detrimental to M.S.’s progress and would uproot her the safe, stable, and loving environment she has lived in for three years. Father cannot maintain consistent employment or adequate housing, and Mother cannot maintain housing at all. In addition to a lack of stable housing and employment, M.S. has been in foster care since her birth, a period of over nine years. This Court recognizes that our paramount consideration must be the best interests of the child, and M.S. needs permanency and adequate housing, not a status of limbo. We discern no error on the part of the circuit court, sitting as a juvenile court, terminating Mother and Father’s parental rights.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR BALTIMORE CITY AFFIRMED;  
COSTS TO BE PAID BY APPELLANTS.**