Circuit Court for Calvert County
Case No. C-04-JV-21-000046

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0270

September Term, 2022

In Re R.W.

Graeff,
Tang,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: October 19, 2022

Appellant, J.W. ("Mother"), challenges a judgment of the Circuit Court for Calvert County, sitting as a juvenile court, terminating her parental rights with respect to one of her children, R.W., and granting guardianship to the Calvert County Department of Social Services ("Department"). On appeal, Mother presents two questions for our review, which we have rephrased as follows:[1]

I. Did the court err in relying on uncorroborated hearsay that R.W. was substance-exposed at birth?

II. Did the court err in terminating Mother's parental rights?

For the reasons set forth below, we answer both questions in the negative and shall affirm the judgment.

BACKGROUND

Mother has two children, one of whom is the subject of this appeal: R.W., born in February 2016. At the time Mother gave birth to R.W., her parental rights with respect to her other child had been terminated involuntarily. Consequently, Mother arranged for R.W. to live with a friend, V.H., three weeks after R.W.'s birth.[2] R.W. lived with V.H. for

[1] The questions as phrased by Mother in her brief are:

1. Whether the Circuit Court abused its discretion when determining that R.W. was abused or neglected, where the factual finding that R.W. was born substance exposed was clearly erroneous and based on uncorroborated hearsay?

2. Whether the Circuit Court abused its discretion when terminating Mother's parental rights because there was no clear and convincing evidence that Mother was unfit?

[2] R.W.'s father is believed to be J.J., but his paternity was not verified. J.J. has never had a relationship with R.W. He did not appear in the underlying proceeding.

the next three years. On September 25, 2019, the Department removed R.W. from V.H.'s home due to concerns about V.H.'s substance abuse, and it placed R.W. in the care of non-relative foster parents.

I.

Shelter Care and Related Hearings

On September 26, 2019, the Department filed a Petition for Shelter Care in Case No. C-04-JV-19-000093. On October 4, 2019, the juvenile court held a shelter care hearing. In locating Mother prior to the hearing, the Department learned that Mother had been released recently from the Wicomico County Detention Center, was on unsupervised probation, and was last known to reside at a shelter. Following the hearing, the court granted the Department temporary custody of R.W.

On October 28, 2019, the court held an adjudication and disposition hearing. By that time, as the court found, Mother had been "charged with a CDS infraction on October 20, 2019, theft $100 to under $1,500 on October 22, 2019[,] and ha[d] hearings pending for violation of probation in Calvert County. Mother also had a hearing in Wicomico County on October 24, 2019 for theft less than $100.00[.]" Following the adjudication and disposition hearing, the court determined R.W. was a child in need of assistance, and it placed her in the care and custody of the Department. Thereafter, the court held review hearings on September 30, 2020;[3] March 1, 2021; August 23, 2021; and February 7, 2022.

[3] The first review hearing was postponed to September 30, 2020, partly due to the COVID-19 pandemic.

Following the September 30, 2020 review hearing, the court found that Mother "was incarcerated during this review period and then moved to Chrysalis House. [She] did not complete the program at the Chrysalis House and was arrested in April and July 2020. On July 30, 2020, [she] was found incompetent to stand trial and [was] residing at Springfield Psychiatric Hospital[.]"[4] With respect to R.W.'s placement with the foster parents, the court noted that she was "doing well overall." The court ordered that R.W. remain in the care and custody of the Department and that the "permanency plan for [R.W.] shall be reunification concurrent with a plan of custody and guardianship to a relative or non-relative[.]"

Following the March 1, 2021 review hearing, the court found that Mother had had inconsistent contact with the Department and continued to struggle with substance use and mental health. R.W. continued to thrive in the foster parents' home. No material changes were made to R.W.'s custody arrangements.

Following the August 23, 2021 review hearing, the court found that R.W. continued to thrive with the foster parents, despite experiencing some behavioral issues. Although Mother had "more contact with the Department during this review period[,]" the court found that she continued to struggle with substance use and mental health, demonstrated by her premature departure from another treatment program and receiving a "citation for huffing an aerosol can." Mother had contacted the Department in the beginning of August

[4] As explained *infra*, Mother was later found competent to stand trial. Her difficulties with substance use and treatment, post-adjudication/disposition, are detailed in the next section.

2021 to "re-start" visitation, but she did not follow-up with the Department. The court ordered that the permanency plan be changed from reunification to adoption.

Following the February 7, 2022 review hearing,[5] the court found that R.W. continued to thrive in the foster parents' home, was enrolled in kindergarten, and was doing well in school. It found that Mother "continue[d] to struggle with substance use and mental health and was arrested twice during this review period[.]" The court ordered that the permanency plan continue to be adoption.

At each juncture, the court granted Mother regular supervised visitation with R.W. It also ordered Mother to complete a substance abuse and mental health assessment and/or treatment and follow all related recommendations.

II.

Termination of Parental Rights

On October 13, 2021, more than two years after R.W. came into its care and custody, the Department filed a Petition for Termination of Parental Rights ("TPR") in Case No. C-04-JV-21-000046. The Department explained that Mother "struggles with substance abuse, mental illness, and homelessness and is not able to provide a safe and stable home for [R.W.]" It further indicated that R.W. "is bonded with her prospective adoptive parents, [the foster parents], and [R.W.]'s needs have been appropriately met by the Department and her current foster parents/prospective adoptive parents."

[5] By this time, the Department had filed a Petition for Termination of Parental Rights on October 13, 2021 in Case No. C-04-JV-21-000046, *infra*. The hearing on the Petition was scheduled for April 8, 2022.

At the TPR hearing on April 8, 2022, the court heard testimony from the Department's case worker, R.W.'s therapist, R.W.'s foster mother, and Mother. The court admitted documents from certain treatment programs and took judicial notice of the Petition for Shelter Care, the Department's reports, the permanency plan review hearing orders, and eight criminal cases against Mother. The following summarizes the evidence pertinent to the TPR hearing.

A. Mother's Difficulties with Substance Use and Treatment

On January 15, 2020, Mother entered an inpatient treatment facility at Chrysalis House. She was diagnosed with hallucinogenic and inhalant dependencies. On April 14, 2020, Mother left the facility against therapeutic advice because "she [was] tired of being [there]." Her provider noted that Mother "does not have enough treatment and coping skills to sustain long term sobriety." The day she left Chrysalis House, Mother was arrested for huffing.

On July 16, 2020, Mother was arrested again and charged with second-degree assault, intoxicated public disturbance, and trespassing. As mentioned, the criminal court found Mother incompetent to stand trial and transferred her to Springfield Hospital Center. She was later found competent to stand trial and released.

On October 23, 2020, the Department learned that Mother had inhaled product at a store and passed out next to the building. Mother served 24 days of incarceration for intoxicated public disturbance.

In November 2020, Mother entered a substance abuse program at Porter House.

On March 8, 2021, Mother transitioned into another treatment program at Recovery Network because she was discovered huffing cleaning products at a previous facility.[6] The facility conducted a psychological evaluation of Mother and diagnosed her with moderate inhalant-use disorder, severe alcohol-use disorder, major depressive disorder, and post-traumatic stress disorder. Mother was compliant with her substance abuse and mental health program at Recovery Network until July 16, 2021. On July 16, the facility gave Mother a weekend pass, and she never returned. Her whereabouts were unknown until July 29, 2021 when she was cited for huffing an aerosol can outside a fast-food restaurant.

Later that year, Mother was arrested on two separate occasions for various offenses related to inhalant use.

On February 10, 2022, Mother entered a treatment program at Hilda's Place, but she left after about a month.

By the April 8, 2022 TPR hearing, Mother had six pending criminal cases against her. She had been in a substance abuse program at Avenues for 16 days. Completion of the program required 60 days of treatment, but Mother testified that she needed to leave the facility early to secure housing. With respect to her inhalant use, Mother explained, "I wouldn't have done that inhaling if I had housing and I had a job, I wouldn't have been doing that. But it's not like I can't quit doing it[,]" "I don't use like real drugs[,]" and "I don't inhale every day."

[6] At the TPR hearing, the case worker testified that Mother was discharged from Springfield Hospital because Mother was "trying to huff cleaning solution from the janitor's closet." Mother disputed that she was discharged from Springfield Hospital for that reason, explaining that she was released because she was found competent.

Although the Recovery Network conducted a psychological evaluation of Mother in March 2021, an "intensive psychological" evaluation was never completed by a Department-approved provider because the Department was oftentimes unable to locate or contact Mother. According to the Department, the "intensive psychological" evaluation would have provided more information about Mother's mental health.

B. R.W.'s Relationship with Mother

According to the case worker, R.W. and Mother have no relationship, partly because Mother's visits with R.W. were infrequent and inconsistent. The Department arranged for regular phone calls between R.W. and Mother, but Mother often lost the foster parents' phone number and had to contact the Department for it. During the approximately 30 months the Department had custody of R.W., Mother had ten to fifteen phone calls with her.

The absence of a bond between Mother and R.W. was undisputed. According to the case worker, "we had to always remind [R.W.] who [Mother] was. We had to tell [R.W.] that [Mother] is your mom. You know, [R.W.] didn't know." R.W.'s therapist, who observed Mother with R.W. in two virtual therapeutic visits, testified that Mother "struggled with finding topics to talk about" with R.W. R.W. did not appear to engage with Mother and was eager to end the sessions. Mother agreed that there was no bond, explaining, "[O]f course [R.W.]'s bonded to [the foster parents], because she's been gone from me since she was three weeks old. And if she was with me all that time, she would be bonded to me. So, no, she probably doesn't really know who I am."

C. R.W.'s Relationship with Her Foster Parents

Since the end of September 2019, R.W. has been with her foster parents, whom she refers to as "mommy" and "daddy." She is described as an "easy going" six-year-old child, who has been reaching developmental milestones. R.W. is "extremely bonded" to her foster family, to include not only her foster parents, but her foster parents' extended family and her foster siblings, whom she calls her brothers and sisters. R.W. "appears to love [her foster parents] very much" and appears comfortable with them. R.W.'s foster parents want to adopt her.

D. Mother's Opposition to Terminating Her Parental Rights

Mother testified that she needed about a year to find housing and employment before she is ready to have R.W. live with her. According to Mother, the Department provided no resources to aid her in finding housing or employment.[7] Although she "never really had housing" and was last employed four years ago, Mother said she is capable of securing a job and an apartment. She was able to secure a job and an apartment the year before, but she lost both because she was arrested. She further testified that "if I maintain sobriety and get an apartment and work a job and stuff, then I think I should have a chance." Mother explained that she was found competent, she can handle her own finances, and she is "perfectly capable" of taking care of R.W.

[7] The case worker testified that the Department referred Mother to the Southern Maryland Community Network, a program offered through the Calvert County Health Department, which offers housing assistance for people who have been incarcerated and employment assistance for people with disabilities.

E. The Court's Decision to Terminate Mother's Parental Rights

At the conclusion of the TPR hearing, the court terminated Mother's parental rights after considering the factors enumerated in Maryland Code (1984, 2019 Repl. Vol.) § 5-323(d) of the Family Law Article ("FL"). Mother timely noted her appeal of the court's decision.

We shall include additional facts in our discussion of the issues.

STANDARD OF REVIEW

When reviewing a juvenile court's decision at the conclusion of a termination of parental rights proceeding, "Maryland appellate courts apply three different but interrelated standards of review[.]" *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 47 (2019) (quoting *In re Adoption/Guardianship of Cadence B.*, 417 Md. 146, 155 (2010)). First, the juvenile court's factual findings are reviewed for clear error. *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 708 (2011). In evaluating the court's findings of fact, we must give "the greatest respect" to the court's opportunity to view and assess the witnesses' testimony and evidence. *Id.* at 719. Second, we determine "without deference" whether the court erred as a matter of law; if the court erred, further proceedings are ordinarily required unless the error is harmless. *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214 (2018). Finally, we evaluate the court's ultimate decision for abuse of discretion. *In re Yve S.*, 373 Md. 551, 583 (2003). A decision will be reversed for abuse of discretion only if it is "well removed from any center mark imagined by the reviewing court and

beyond the fringe of what that court deems minimally acceptable." *Id.* at 583-84 (citation omitted.)

DISCUSSION

Before terminating a parent's rights, the court is required to find, by clear and convincing evidence, that "a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interests of the child such that terminating the rights of the parent is in a child's best interests[.]" FL § 5-323(b). To determine whether termination of parental rights is in the child's best interest, the court must consider the statutory factors under FL § 5-323(d)(1)-(4). The § 5-323(d) factors are 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.

C.E., 464 Md. at 51. "The court must weigh all of the statutory factors together, without presumptively giving one factor more weight than another." *In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 737 (2014). "[A]lthough the juvenile court must consider every factor in FL § 5-323(d), it is not necessary that every factor apply, or even be found, in every case." *Id.* Consideration of these factors properly prioritizes the child's health and safety, so that the child's best interest remains the "transcendent standard in adoption, third-party custody cases, and TPR proceedings." *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 112 (2010).

I.

Mother argues that the court abused its discretion when it made a factual finding that R.W. was born substance-exposed predicated on the case worker's uncorroborated hearsay testimony. Mother, however, failed to preserve her hearsay argument by not objecting to the purported hearsay.

When the case worker testified that R.W. was born "substance-exposed," Mother, who was represented by counsel, interjected:

> [MOTHER]: No, she wasn't. That's bullshit.
>
> THE COURT: Hold on. Ma'am, ma'am, ma'am.
>
> [MOTHER]: That's a lie though.
>
> THE COURT: [Mother], you've got to hold on. So this is how it's going to go, all right?
>
> [MOTHER]: I was in a program when I had her.
>
> THE COURT: Ma'am. Ma'am.
>
> [MOTHER]: I'd been there for months.
>
> THE COURT: Ma'am. All right, so this is how this process works, okay?
>
> [MOTHER]: But that's a fucking lie.
>
> THE COURT: Ma'am, let me just explain how this process works, okay? Yes? So the Department is going to call a witness. Now that's [the case worker]. [The case worker] is going to testify. Then [your attorney] gets to ask questions of [the case worker] and then you and your lawyer--really your lawyer, through you or you through your lawyer, sorry, get to ask [the case worker] questions also. So some of the things that [the

case worker] says, I'm sure you're not going to agree with. And that's when your lawyer gets to do what's called cross examination and ask [the case worker] questions. But you don't get to jump in. *Your lawyer is going to make objections that she thinks are appropriate based on the legal standard. All right? Yes?*

[MOTHER]: *Yes.*

* * *

Well, I just don't understand how they can stand up there and say lies like my daughter was exposed to drugs. I'd been in a program for, like, three months before I had her.

THE COURT: Okay. So you will also be able to testify if you choose to at the end as well. And the advantage of you testifying at the end, if you decide to--and I don't know that you are or aren't going to--but the advantage is that you get to address all this stuff if your lawyer asks you questions about it. All right?

[MOTHER]: Okay.

(Emphasis added.)

Maryland Rule 8-131(a) provides that, ordinarily, an appellate court will not consider an issue that was neither raised in nor decided by the trial court. "[W]hen a party has the option either to object or not to object, as [she] sees fit, [her] failure to exercise the option while it is still within the power of the trial court to correct the error, constitutes a waiver of error estopping [her] from bringing it to the attention of the [appellate court]." *In re Katherine C.*, 390 Md. 554, 560 n.10 (2006) (quoting *Banks v. State*, 203 Md. 488, 495 (1954)).

To preserve an issue for appellate review, "[the] party must make it clear that [the party] has an objection to the particular evidence." *Fireman's Fund Ins. v. Bragg*, 76 Md. App. 709, 719 (1988). An "objection" is a "formal statement opposing something that has occurred, or is about to occur, in court and seeking the judge's immediate ruling on the point." Black's Law Dictionary (11th ed. 2019). We do not construe Mother's outburst as an objection. She did not seek the court's immediate ruling on any point, and the court did not make one. Instead, Mother disputed the fact that R.W. was born substance-exposed, which the court explained could be challenged by Mother through cross-examination and/or with evidence to the contrary. Mother indicated her understanding and left any objection-making to her counsel, who did not undertake to object to or ask the court to strike the case worker's testimony. *See Holmes v. State*, 119 Md. App. 518, 523 (1998) ("Because the trial judge was never asked to exclude or to strike the testimony at issue, we shall not now review the admissibility of that evidence.").

With respect to Mother's argument that the substance-exposed testimony was uncorroborated, it is unavailing. Mother testified and disputed the fact that R.W. was born substance-exposed, which the court acknowledged in reciting its factual findings. We have advised that it is not our function to resolve conflicts in the evidence. *Oliver v. Hays*, 121 Md. App. 292, 309-10 (1998) (rejecting appellant's contention that the trial court was required to disregard uncorroborated testimony). That undertaking is the exclusive responsibility of the trial court. *Id.* at 310.

Assuming *arguendo* that the purported objection was preserved, and the challenged testimony should have been disregarded, any error in relying on the substance-exposed testimony was harmless. First, the court discounted the substance-exposed testimony. *See* section II.C., *infra*. Second, as explained in the next section, the court based its decision on, *inter alia*, Mother's failure to avail herself of the services the Department provided, her failure to maintain consistent contact with R.W., and the difficulty she had meeting her own needs due to her criminal history and substance use. Viewing the totality of the circumstances, the evidence that R.W. was born substance-exposed was not relied upon by the court in its ruling, and therefore, any error in admitting it was harmless. *See, e.g.*, *In re Beverly B.*, 72 Md. App. 433, 443 (1987) (assuming the court erred in admitting hearsay testimony, any error was harmless because the court did not rely on the hearsay evidence in reaching its decision).

II.

Mother argues that the court abused its discretion in terminating her parental rights because there was no clear and convincing evidence that she was unfit. Her primary contentions are two-fold: (1) Mother's mental illness is not a sufficient basis to find her unfit, and (2) the court did not consider the "more recent progress [Mother] made in treatment of her mental illness and substance abuse." We conclude that the aggregate of the evidence was more than sufficient to support the court's decision. We summarize the pertinent facts and analysis under each category of FL § 5-323(d) that supported the court's decision.

A. Services That the Department Offered to Assist in Achieving Reunification of R.W. and Mother

Under the first category of FL § 5-323(d), the court considered "(i) all services offered to the parent before the child's placement, whether offered by a local department, another agency, or a professional; (ii) the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent; and (iii) the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any[.]" FL § 5-323(d)(1).

The court found that the Department offered services to assist Mother to achieve reunification. The Department implemented a visitation plan and made referrals to parenting classes. It located another family member (Mother's sister), but it was determined she could not be a resource. With respect to Mother's substance abuse and mental health, the Department attempted to conduct random urinalysis, attempted to coordinate a psychological evaluation, and recommended substance abuse treatment facilities. With respect to the social services agreement, Mother verbally agreed to a plan, but the Department was not able to locate Mother to sign the agreement.

B. Mother's Effort to Adjust Her Behaviors So That R.W. Could Return Home

Under the second category of FL § 5-323(d), the court must consider the results of the parent's effort to adjust her circumstances, condition, or conduct which would make it in the child's best interest to be returned to the parent's care and custody, including:

> (i) the extent to which the parent has maintained regular contact with: 1. the child; 2. the local department to which the child is committed; and 3. if feasible, the child's caregiver;

> (ii) the parent's contribution to a reasonable part of the child's care and support, if the parent is financially able to do so;
>
> (iii) the existence of a parental disability that makes the parent consistently unable to care for the child's immediate and ongoing physical or psychological needs for long periods of time; and
>
> (iv) whether additional services would be likely to bring about a lasting parental adjustment so that the child could be returned to the parent within an ascertainable time not to exceed 18 months from the date of placement unless the juvenile court makes a specific finding that it is in the child's best interests to extend the time for a specified period[.]

FL § 5-323(d)(2). The court found that, over the course of approximately 30 months, Mother's contact with R.W. had been "sporadic and limited." Although the Department implemented a visitation plan for weekly visits, Mother completed only eight visits with R.W.[8] As mentioned, the Department made a referral for parenting classes, which were part of the curriculum at Chrysalis House. Because Mother left the facility prematurely, she did not complete the parenting classes. The court also observed that Mother "had a hard time staying in touch with the Department," partly "due to her lack of housing and also going into different treatment facilities."

Mother has not financially contributed to R.W.'s care and support because her sole source of income is derived from social security. With respect to additional services, the case worker testified that the Department could not offer other services to help reunify Mother and R.W. because "there hasn't been really any progress in the case" since R.W.

[8] Mother visited R.W. on May 1, 15 and 29, 2021; June 12, 2021; July 14, 2021; September 16, 2021; February 23, 2022; and March 15, 2022. The last two visits were conducted remotely with supervision by R.W.'s therapist.

came into the care and custody of the Department in September 2019. The court found that Mother "has never had consistent housing, she struggled and continues to struggle with substance abuse" and mental health, she has been unemployed for the past four years, and "she continues to incur criminal charges."

Relying on *In re Ashley S.*, 431 Md. 678, 715 (2013), Mother argues that "mental illness coupled with homelessness" does not justify termination of her parental rights. The Department, however, "is not required to allow children to live permanently on the streets or in temporary shelters . . . or to grow up in permanent chaos and instability . . . because their parents, even with reasonable assistance from DSS, continue to exhibit an inability or unwillingness to provide minimally acceptable shelter, sustenance, and support for them." *Id*. at 716 (quoting *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 501 (2007)). In the instant case, the evidence demonstrated Mother's inability to provide R.W. with acceptable shelter and support. The court expressly noted that Mother "has a hard time meeting her own needs" and "would have a hard time or does have a hard time meeting [R.W.'s] needs."

Mother relies on *In re Adoption/Guardianship of J.T.*, 242 Md. App. 43, 62 (2019) for further support that mental illness is not a reason to terminate parental rights, especially when the parent's efforts to rehabilitate are "beginning to bear some fruit[.]" Mother contends that an earlier finding of her competence and her proclaimed commitment to build a family with her children indicate that her past treatment was bearing some fruit.

In *J.T.*, the Court reversed an order terminating parental rights where the parent suffered from mental illness. *Id.* at 62. The Court noted two compelling features in that case. First, the parent "demonstrated insight into her mental illness, her willingness to follow a regimen of medication and therapy, and the success of that regimen, albeit interrupted[.]" *Id*. Second, the parent showed, "time and again, [that] J.T. is a priority in her life[.]" *Id*. at 63. That commitment was documented by the department, which acknowledged that the parent was relatively consistent with her weekly visitation schedule and that J.T. exhibited a connection with the parent. *Id*. at 54, 56.

The salient features in *J.T.* are absent in the instant case. First, after the Recovery Network diagnosed Mother with various mental health and substance abuse disorders in March 2021, there was no indication of any follow-up mental health treatment to suggest improvement in Mother's mental stability. With respect to substance abuse, there was abundant evidence that Mother failed to complete various treatment programs and continued to incur criminal charges related to inhalant use.[9] Second, the evidence demonstrated that Mother was unable or unwilling to make R.W. a priority. Although she expressed her desire to keep her family together and contacted the Department on occasion

[9] Mother contends that the court repeatedly referred to her substance abuse issues but failed to specify the substance used. At the TPR hearing, however, Mother admitted to inhaling, which "can be considered a drug" (she denied using "real drugs"). Further, the case worker referred to at least one inhalant as a "cleaning solution." The overarching consideration in deciding whether to terminate parental rights is the child's health and safety. *See* FL § 5-323(d). Regardless of the substance abused, Mother's inhalant use negatively impacted her fitness to care for R.W.

to reengage in visitation, Mother did not maintain regular and consistent contact with R.W. during the approximately 30 months the child was in the Department's care and custody.

C. Existence and Severity of Aggravating Circumstances

Under the third category of FL § 5-323(d), the court considered certain subfactors. First, it considered whether, "upon the birth of the child, the child tested positive for a drug as evidenced by a positive toxicology test[.]" FL § 5-323(d)(3)(ii)(1)(B). In its closing arguments, the Department made oblique reference to the fact that R.W. was born substance-exposed. It expressed uncertainty as to whether this fact qualified under FL § 5-323(d)(3)(ii)(1)(B) because it was "not sure what the drug was that [R.W.] tested positive for and whether that would meet the definition" of "drug" under the statute. *See* FL § 5-323(a) ("Drug" means "cocaine, heroin, methamphetamine, or a derivative of cocaine, heroin, or methamphetamine."). In deciding to terminate Mother's parental rights, the court gave the substance-exposed fact little weight, expressly acknowledging that "[w]hile [R.W.] was born substance-exposed, *there is no further testimony regarding that*." (Emphasis added.) In essence, the court implied that there was insufficient evidence to satisfy FL § 5-323(d)(3)(ii)(1)(B), and it discounted this subfactor.

Second, the court considered whether "the parent has involuntarily lost parental rights to a sibling of the child[.]" FL § 5-323(d)(3)(v). The court found that Mother "involuntarily lost her parental rights to her other daughter[.]"

Finally, the court focused on Mother's inability to care for R.W. for nearly six years and her failure to complete the treatment program at Chrysalis House. As mentioned,

although she completed the psychological evaluation, there was no indication of any follow-up treatment.

D. R.W.'s Emotional Ties, Adjustments, and Her Well-Being

Under the fourth category of FL § 5-323(d), the court considered "(i) the child's emotional ties with and feelings toward the child's parents, the child's siblings, and others who may affect the child's best interests significantly; (ii) the child's adjustment to: 1. community; 2. home; 3. placement; and 4. school; (iii) the child's feelings about severance of the parent-child relationship; and (iv) the likely impact of terminating parental rights on the child's well-being." FL § 5-323(d)(4).

The court found that R.W. has bonded with her foster parents and their extended family, has her own bedroom in the home, and enjoys family vacations with her foster family. She enrolled in kindergarten, developed friendships, and "does well in school." By contrast, the court found that R.W. "has far less emotional ties and feelings with [Mother,]" which is attributable, in part, to limited contact with Mother. In assessing R.W.'s best interests, the court concluded that R.W.'s foster parents "are able to care for [R.W.] and provide her a safe and loving home. [Mother] is unable to provide for [R.W.'s] health and safety at this time."

The court's decision was premised on ample evidence that R.W.'s best interests are served by terminating Mother's parental rights. We find no error or abuse of discretion in the court's decision.

JUDGMENT OF THE CIRCUIT COURT FOR CALVERT COUNTY AFFIRMED; APPELLANT TO PAY COSTS.