Circuit Court for Harford County
Case Nos. 12-Z-15-41 TPR, 12-Z-15-42 TPR,
12-Z-15-43 TPR, 12-Z-15-44 TPR

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 303

September Term, 2018

IN RE: ADOPTION/GUARDIANSHIP OF
O.C., J.C., E.B., AND D.B.

Graeff,
Nazarian,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: September 26, 2018

C.W.[1] ("Mother") is the mother of the four girls:[2] O.C., age 11; J.C., age 8; E.B.,[3] age 6; and D.B., age 4. All four were adjudicated Children In Need of Assistance ("CINA") early in life and have spent most of their years in the care of guardians and foster parents. In the spring of 2018, the Circuit Court for Harford County terminated Mother's parental rights to each of her four daughters after finding by clear and convincing evidence that exceptional circumstances existed and that it served each child's best interests to sever the parental relationship. The court grounded its findings of exceptional circumstances in Mother's failure to comply with the terms of her service agreements with the Department of Social Services ("DSS"), Mother's inability to meet the children's high levels of need, and the minimal amount of time that the children had been in Mother's custody compared to their time in foster placements. Mother challenges the termination decisions for all four children and we affirm.

I. BACKGROUND

Each of the children before us has a unique placement history and a distinct set of needs and challenges.

A. O.C.'s Early Life and Placement History

O.C. was born in March 2007 and was in Mother's custody for the first two years

[1] Mother has married and changed her name since the Department of Social Services first engaged with this family. The record and the parties' briefs refer to her as C.B., C.W., and C.B.W. at different times; we will use the first and last initials of her married name.

[2] Mother has a fifth daughter, S.C., who is in the custody of her maternal grandmother and is not a party to this proceeding.

[3] E.B. goes by the nickname L.B., but we will use the initials of her given name.

of her life. At the time of her birth, they lived with Mother's then-boyfriend, D.C., and D.C.'s mother, S.M., in S.M.'s home. Mother, D.C., and O relocated to South Dakota within a year, then returned to Maryland in early 2009. O resumed living with S.M., who soon became her primary caregiver.

S.M., who at the time believed herself to be O's biological grandmother, filed for custody when O was two years old, and O remained in S.M's custody until she was seven. During that time, Mother visited O sporadically; at times she went weeks or months without seeing her daughter. O, meanwhile, developed serious behavioral problems including uncontrollable tantrums, self-injurious behaviors, and making violent threats against others. After multiple attempts to address O's problems through therapy and psychiatric hospitalization, S.M. relinquished custody of O, and DSS took over her care in 2014.

Between January 2014 and November 2015, O lived in four different foster placements in Cecil and Harford Counties, none for more than eight months.[4] When she was placed in her current foster home, O continued to exhibit a range of concerning behaviors, including anger and aggression, property destruction, poor hygiene, sexual behaviors, and poor school performance. In her foster home, O is seen regularly by a therapist and a psychiatrist. She has shown marked improvement in her school performance with the aid of a tutor and has become involved in extracurricular activities. Mother has visitation with O but her participation has been erratic; when Mother still had weekly unsupervised visitation, there were times when she did not visit her daughter at all for

[4] O's case was initially in Cecil County DSS, then transferred to Harford County DSS.

weeks on end. O wishes to be adopted by her foster mother, Dr. W., who is willing to adopt her.

B. J.C.'s and E.B.'s Early Lives and Placement Histories

J.C. was born in June 2010 and lived with Mother and Mother's then-boyfriend in a motel. During J's infancy, a passerby, S.D., saw J lying unattended in her stroller outside the door of the motel room. After seeing J alone outside the motel three times, S.D. offered to babysit the child. Although there had been no prior relationship between Mother and S.D., Mother accepted her offer, and by the time J was eight months old, she was living with S.D. full time. Mother visited sporadically, but at times could not be reached by phone.

E.B. was born in October 2011. By the time she was three weeks old, she too lived with S.D., who became the legal guardian for both J and E in September 2012. The juvenile court ordered biweekly visitation with Mother, but Mother missed more than half of the scheduled visits. In October 2013, J and E were removed from S.D. when witnesses saw her hitting one of the children in a public bathroom.

J and E were then placed in a foster home together until August 2014. At that point, the two girls were joined by their younger sister, D.B., for a trial home placement with Mother. During the trial, J's and E's mental health needs went unaddressed which, for J in particular, could have been catastrophic. J, at the age of five, was experiencing hallucinations and suicidal and homicidal ideations. She was prescribed Risperdal, an antipsychotic, a measure that is "essentially unheard of" in children her age. The trial lasted approximately five months, ending when Mother was arrested for assault and all three

children were removed.

After the failed home placement, J bounced among four different treatment foster homes, each of which failed after a few months because of her "exceptionally disruptive and challenging behaviors." In December 2016, however, J was placed in her current treatment foster home. She has developed a strong bond with her foster parent, D.M., whom she calls "mom," and she receives therapy and psychiatric services. Since her placement with D.M., J's academic performance has improved, and she has become involved in extracurricular activities. J has monthly visitation with Mother, but after visits her behavior tends to deteriorate.

After the failed home placement trial, E went through six different foster placements, each disrupted by her behavioral issues. E was placed with the S Family in October 2016; she still lived there at the time these guardianship proceedings began, but the placement was disrupted in October 2017, and E moved to her current placement with the B Family. E continues to have behavioral problems, but has improved in her current placement with the aid of a psychotherapist, occupational therapist, and the B Family. E calls her foster parents "mommy" and "daddy," and the B Family is interested in adopting her.

C. D.B.'s Early Life and Placement History

D.B. was born in December 2013 and was immediately removed from Mother and placed in the same foster home as her older sisters, J and E. After the failed trial home placement with Mother in 2014, D was placed in her current foster home with the M

Family. When she arrived at the M home, D was very overweight and wearing clothing that was far too tight. She had a very bad diaper rash that required a prescription to treat. When her placement began, D had many issues, including speech problems, inappropriate interactions with strangers, and a tendency to bite. The M Family has worked to address D's issues and supports her participation in therapy and speech services. She refers to her foster parents as "mommy" and "daddy" and to their biological daughter as "sister."

D. Mother's History with DSS

Mother voluntarily relinquished her three older children to the care of non-relative guardians (in the case of J.C. and E.B., a stranger) in their infancy or early childhood. Her youngest daughter was removed from her care at birth by DSS. With all four children in foster care, DSS began providing services to Mother with the eventual goal of family reunification. Mother's initial psychological evaluation in 2014 revealed multiple prior diagnoses including obsessive compulsive disorder and bipolar disorder. DSS referred Mother for mental health counseling, offered financial and housing assistance, arranged transportation, and facilitated visits with her children.

Mother complied with the terms of her initial service agreement and, after progressing without incident from supervised to unsupervised visitation, DSS conducted a lengthy trial home placement with J, E, and D that lasted approximately five months. But even with extensive assistance from DSS, Mother was unable to provide a safe and stable environment for the children. She failed to keep her children's scheduled mental health appointments, despite serious concerns about J's and E's behaviors. The family was forced

to vacate their trailer when Mother argued with its owner and they sought peace orders against one another. DSS retrieved the family's belongings from the trailer after they moved out, but had to dispose of everything due to a "strong urine smell." Then they moved into a townhouse with several other adults, where Mother got into a fight with a housemate and was arrested for assault. DSS removed the children and placed them back in foster care after Mother's arrest.[5]

After the failed home visit, Mother did not contact DSS to resume visitation for ten days and became noncompliant with the service agreements. She did not provide DSS with any documentation to prove she had stable housing, steady employment, or that she was attending mental health counseling. For a year-and-a-half, she refused to provide DSS with a home address and said she would do so when she had stable housing. When Mother finally allowed DSS to inspect her home, it was uninhabitable and unsafe for children. Mother's therapist confirmed that although she was engaged in her treatment when she attended, she missed appointments for weeks at a time. Given the severity of her bipolar diagnosis, her failure to show that she was receiving therapy or medication management caused DSS particular concern. And because DSS could not confirm that Mother had housing or was attending to her mental health needs, she was permitted only supervised visitation with her children.

[5] Mother was arrested, but not prosecuted.

In June 2015, after seeing no improvement, DSS changed the children's permanency plans to adoption, and Mother filed an exception. In August 2015, Mother's visits were reduced to monthly and continued to be supervised**.**

E. Juvenile Court Proceedings

On June 29, 2015, DSS filed petitions to terminate Mother's parental rights to all four children under Maryland Code (1984, 2012 Repl. Vol.), § 5-323 of the Family Law Article. Mother contested the petitions and multiple, lengthy termination of parental rights ("TPR") hearings followed. During the TPR hearings, DSS called several experts and DSS caseworkers to testify about Mother's mental health and the children's needs and placement histories.

Dr. Nelson Bentley, accepted as an expert in psychology, testified that he had conducted a psychological evaluation of Mother in 2014 and confirmed an earlier diagnosis of bipolar disorder. Dr. Bentley stated that because bipolar disorder is not something that will improve on its own, the concerns he had in 2014 persist today. In the past, Mother had refused to take responsibility for her role in her children's entry into the foster care system and denied having any problems or symptoms of bipolar disorder. Dr. Bentley opined that without proper treatment, including therapy and medication management, he questioned Mother's ability to parent safely and was concerned about reunification with the children.

Noel Francis, the family's DSS worker since 2015, testified as an expert in social work. She told the court that the children's tumultuous placement histories had "cultivated extreme behavioral problems" and that the stability they would gain through adoption

would enable them to develop healthy emotional attachments and set them up for a successful future. She opined that Mother lacked the capability to meet her daughters' significant mental health needs and would be unable to care for the children in the foreseeable future. Ms. Francis testified that adoption by the children's respective foster parents would be in their best interests and that the children have expressed a desire to be adopted.

Penny Zimmerman, E.B.'s therapist, also accepted as an expert in social work, likewise emphasized the importance of permanence to a child's healthy emotional development. She testified about the adverse consequences of children being subjected to multiple placements and caregivers, as the children in this case have been for their whole lives.

After hearing this testimony and closing arguments for each child, the court made oral rulings for O.C., J.C., and D.B. on February 13, 2018.[6] Each child's circumstances were considered under the guidelines set forth in FL § 5-323. The court found exceptional circumstances that made a continued parental relationship with Mother detrimental to the children and that it was in their best interests for Mother's parental rights to be terminated. The juvenile court reached the same conclusion as to E.B. in a separate hearing on March 13, 2018. Mother appeals.

[6] Because of the then-recent disruption in E.B.'s placement midway through the proceedings, the court elected to postpone her case and to hold a follow-up hearing before making a determination.

II. DISCUSSION

When reviewing a termination of parental rights, we employ three interrelated standards of review:

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

In re Yve S., 373 Md. 551, 586 (2003).

The Supreme Court of the United States has long recognized the fundamental right of parents to "make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66 (2000). Maryland courts also have emphasized that parental rights "occup[y] a unique place in our legal culture," *In re Yves S.*, 373 Md. at 567 (quoting *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 101 (1981) and found that "a parent's interest in raising a child is a fundamental right that cannot be taken away unless clearly justified." *Boswell v. Boswell*, 352 Md. 204, 218 (1998). We recognize the importance of a parent's fundamental rights by imposing "a prima facie presumption that the child's welfare will be best subserved in the care and custody of its parents rather than in the custody of others . . . ." *Ross v. Pick*, 199 Md. 341, 351 (1952). These rights, however, are not absolute. *In re Adoption/Guardianship of Mark M.*, 365 Md. 687, 705 (2002). When a parent's continuing relationship with their child imperils the child's physical or emotional

well-being, the State, acting under its *parens patriae* authority, is obligated to intercede. *In re Samone H.*, 385 Md. 282, 300–301 (2005). Under those circumstances, the presumption remains intact, but "a *parent's* rights do not drive [the] decision," *In re Adoption/Guardianship of K'Amora K*, 218 Md. App. 287, 302 (2014) (emphasis in original); the best interests of the child do. *In re Karl H.* 394 Md. 402, 416 (2006).

A. The Trial Court Properly Found Exceptional Circumstances That Justified Terminating Mother's Parental Rights

FL § 5-323(b) authorizes courts to terminate parental rights upon a finding that a parent is unfit or that exceptional circumstances would make continuing the relationship detrimental to the child's best interests:

> If, after consideration of factors as required in this section, a juvenile court finds 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 the child's best interests, the juvenile court may grant guardianship of the child without consent otherwise required under this subtitle and over the child's objection.

In this case, the court did not go so far as to brand Mother as unfit, but did find exceptional circumstances that made continuing the parental relationship detrimental to the children. *See In re Adoption of K'Amora K.*, 218 Md. App. 287 at 310 (exceptional circumstances finding is appropriate when "a child's transcendent best interests are not served by continuing a relationship with a parent who might not be clearly and convincingly unfit."). FL § 5-323(d) provides a list of factors that juvenile courts consider when determining whether exceptional circumstances exist in a TPR case:

[I]n ruling on a petition for guardianship of a child, 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:

(1)(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;*

(2) *the results of the parent's effort to adjust the parent's circumstances, condition, or conduct to make it in the child's best interests for the child to be returned to the parent's home, 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. . .*

* * *

(4)(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) (emphasis added). These factors, "though couched as considerations in determining whether termination is in the child's best interest, serve also 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." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 499 (2007) (emphasis added). The juvenile court considers them against the individual circumstances of the parent and children:

> [The court must] give the most careful consideration to the relevant statutory factors, to make specific findings based on the evidence with respect to each of them, and, mindful of the presumption favoring a continuation of the parental relationship, determine expressly whether those findings . . . constitute an exceptional circumstance that would make a continuation of the parental relationship detrimental to the best interests of the child . . . .

Id. at 501.

Mother argues that the evidence "did not provide a sufficient basis for finding . . . that exceptional circumstances existed that would make it detrimental to the children to maintain the parental relationship." We disagree.

The court began its oral ruling by acknowledging the presumption that the children's best interests would be served by remaining with Mother absent clear and convincing evidence of unfitness or exceptional circumstances, then worked methodically through the FL § 5-323 factors before finding exceptional circumstances. For each child, the court identified the services DSS provided and the extent to which Mother had, or hadn't, fulfilled her terms of the agreements. FL § 5-323(d)(1). The court concluded that there was "no lack of intervention" by DSS, but that despite its "herculean efforts" to facilitate reunification, Mother had been largely noncompliant.

Mother asserts that there was "no evidence to show how her failure to fulfill those terms would adversely affect her ability to continue the legal relationship with her children." But that's not true, and the court explained why. Mother had the same three obligations under her service agreements over the course of several years.[7] *First*, Mother agreed to "attend mental health treatment, medication management, and engage in mental health counseling." *Second*, Mother agreed to "obtain independent housing and submit proof of a lease to [DSS]." *Third*, Mother agreed to "obtain and maintain employment and submit paystubs to [DSS] as requested." Mother failed to fulfill any of these agreements, and there can be no serious dispute that her ability to have and maintain a parental relationship with her children has been compromised by her inability to maintain safe and stable housing and steady employment and, especially, to manage her serious mental illness.

[7] The same three items appear in service plans dated 1/1/17, 2/24/15, and 3/13/14.

In building to this conclusion, the court walked through the statutory factors and detailed how Mother's noncompliance affected her relationships with her children. The court found that Mother's refusal to document her own mental health care demonstrated a lack of maturity and an inability to provide care for the girls, whom have serious mental health challenges of their own. FL § 5-323(d)(2). The court noted that there were periods of time during which DSS and the children's guardians couldn't get in contact with Mother at all. FL § 5-323(d)(2)(i). The findings weren't all negative—the court acknowledged that Mother made better progress during some time periods, and that she paid child support during the time she had steady employment. FL § 5-323(d)(2)(ii). But overall, the court concluded that Mother had not made the efforts, or the progress, necessary to allow her to care for her children.

Mother contends that in its consideration of her mental health, FL § 5-323(d)(2)(iii), "the court failed to draw a nexus between [Mother's] diagnosis [of bipolar disorder], which was three years in the past . . . and her present ability to parent." That's not quite true. The court did rely on testimony from a certified expert in psychology, Dr. Bentley, who had examined Mother three years earlier. But Dr. Bentley testified at the hearing not on Mother's acute mental health status, but that Mother's condition would not improve or resolve on its own, and that, without treatment, he had serious concerns about her ability to parent. That bore directly on the question before the court, whose "primary consideration [is the] health and safety of the child," FL § 5-323(d) and established a direct nexus

between Mother's diagnosis, her refusal to provide any evidence that her condition is managed, and her ability to parent her children.

Finally, the court found that additional services were unlikely to bring about the level of change necessary to allow Mother's children to be returned to her in a period of eighteen months, FL § 5-323(b)(2)(iv), and assessed each child's adjustment to her respective foster home as well as her emotional ties with Mother. FL § 5-323(b)(4). All told, the court's finding of exceptional circumstances resulted from a thorough consideration of the statutory factors and was supported by ample evidence. We find no error.

B. The Juvenile Court Properly Found That Terminating Mother's Parental Rights Served The Children's Best Interests.

Next, Mother argues that the court failed to connect its finding of exceptional circumstances with its finding that termination of parental rights served the children's best interest. Mother is right that a finding of exceptional circumstances alone does not dictate that a parent's rights must be terminated—"[r]ather, they demonstrate that the presumption favoring the parent has been overcome." *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 218 (2018). The ultimate decision to terminate parental rights turns on the "transcendent standard" of the child's best interests. *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 112 (2010). And here, the juvenile court made specific findings, findings that related to each individual child about *why* the exceptional circumstances, and the resulting detriment to each child, supported the conclusion that the children's best interests were served by terminating their relationship with Mother.

For O.C., the court focused on O's high level of need due to her "severe emotional deficits" and Mother's inability to attend to them. The court noted that O "has been out of her mother's care . . . for a hundred [] of her 130 months . . . on this earth," and cited expert testimony that impermanency had damaging effects on children. Based on these circumstances, the court found that O needed stability and that her best interests "require[d] the [c]ourt to find . . . that [Mother's] rights should be terminated."

The court found that J.C. is "a child who has serious difficulties who needs very, very, very mature and stable help from whoever is acting in a parental role." Citing Mother's inability to care for J and J's "excellent adjustment" in her long-term foster placement, the court found that a continuing parental relationship with Mother would be detrimental to J and that it was in J's best interests for Mother's parental rights to be terminated.

With regard to E.B., the court found that although Mother seemed to have good intentions, she did not "carry through her intentions in terms of actions that would allow her to parent . . . ." The court noted that E had been highly successful with her new foster family and, by that point, she had lived longer there than she ever had with Mother. The court found by clear and convincing evidence that a continuing parental relationship with Mother would be detrimental to E, and that it was in E's best interests for Mother's rights to be terminated.[8]

[8] Mother asserts in her brief that the court "noted that it expected that the children would maintain relationships with their mother after the guardianship proceedings" and that this indicates that "[the court's] findings do not support its conclusions." That overstates the

Finally, the court found that D.B. had been in her current foster placement for three of her four years and that, under the circumstances, it "couldn't think of anything more cruel" than to remove her and return her to Mother, who had "fail[ed] to take more appropriate actions to reunify" with her youngest daughter. The court again found, by clear and convincing evidence, that a continued parental relationship with Mother would be detrimental to D and that it was in her best interests for Mother's rights to be terminated.

The court considered carefully both the overall impact of Mother's failures to comply with service agreements and to make progress toward reunification and the individual needs of each of the four girls. We see no error in either the court's findings or its conclusions that it would be detrimental to the children to remain in a parental relationship with Mother and in their best interests to terminate that relationship.

C. The Juvenile Court Did Not Inappropriately Consider Custody Factors in Making Its TPR Decision

Finally, Mother argues that the juvenile court improperly focused its inquiry on "whether [] [M]other was capable of resuming physical custody, rather than on whether she and the children could have a continued parental relationship." It's true that custody cases and TPR cases are distinct and that different standards apply. *See generally Rashawn*

court's findings. The court only mentioned the possibility of continuing contact with Mother during E.B.'s separate hearing on March 13, 2018, in response to testimony by E.B.'s foster mother that she would allow visitation, at her discretion, because "[E.B.] really loves her mother." The court allowed that continued visitation with Mother would be in E.B.'s best interests, but stated explicitly that it was not making any decisions in that regard. Nothing in the court's ruling or this opinion precludes the children's guardians or adoptive parents from permitting visitation, at their discretion, but visitation has not been ordered and is not a condition of the termination decisions.

H., 402 Md. at 496–499 (explaining that "deficiencies that may properly lead to a finding of unfitness or exceptional circumstances in a custody case *will not* necessarily suffice to justify a TPR judgment. *Id.* at 498 (emphasis added)). But although the court did consider some of the factors bearing on custody here, it applied the correct standard to its decision to terminate Mother's parental rights.

When making custody determinations, courts apply a different set of factors—outlined in *Ross v. Hoffman*—than the statutory factors underlying terminations of parental rights:

> The factors which . . . may be of probative value in determining the existence of exceptional circumstances *include the length of time the child has been away from the biological parent*, the *age of the child* when care was assumed by the third party, the possible emotional effect on the child of a change of custody, the period of time which elapsed before the parent sought to reclaim the child, the nature and strength of the ties between the child and the third party custodian, the intensity and genuineness of the parent's desire to have the child, [and] the *stability and certainty as to the child's future in the custody of the parent*.

280 Md. 172, 191 (1977) (emphasis added). While it is "undoubtedly the best practice for juvenile courts to adhere to [the factors in] FL § 5-323(d)" in making determinations of parental fitness and exceptional circumstances, several of the *Ross* factors overlap significantly with the TPR factors and may bear as well on the best interests analysis. *See In re Adoption/Guardianship of H.W.*, 460 Md. 201 (2018); *Rashawn H.*, 402 Md. at 499–500. So long as the juvenile court does not rest on custody factors in its TPR decision by, for example, giving undue consideration to a potential future adoptive placement, the court

doesn't err by considering *Ross* factors in its best interests analysis. *In re H.W.*, 460 Md. at 298. *See also In re Adoption/Guardianship of Amber R.*, 417 Md. 701 (2011) ("a juvenile court . . . cannot simply proceed under the assumption that freeing a child for adoption is inherently better than keeping the child in foster care and maintaining parental rights." *Id.* at 714 (internal quotations omitted)).

In this case, the court did not err when it considered *Ross* factors such as the length of time the children had been away from Mother and the likelihood of parental reunification in the course of determining the children's best interests. 280 Md. at 191. Indeed, a parent's ability in the foreseeable future to serve as a custodial caregiver is highly relevant in a TPR determination. The TPR statute itself acknowledges as much, if in slightly different words:

- "[T]he parent's effort to adjust the parent's circumstances, condition, or conduct to make it in the child's best interests *for the child to be returned to the parent's home*." FL § 5-323(d)(2) (emphasis added).
- "[W]hether 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 . . . ." FL § 5-323(d)(2)(iv) (emphasis added).

The court's emphasis on the relative time each child spent in Mother's care compared to foster placements was also appropriate. Stability and permanency are critically important considerations in TPR proceedings as well as in custody cases. *See, e.g., In re Adoption/Guardianship of Jayden G.*, 433 Md. 50, 82 (2013) ("A critical factor in determining what is in the best interest of child is the desire for permanency in the child's life."); *Rashawn H.*, 402 Md. at 501 ("The State is not required to allow children . . . to

grow up in permanent chaos and instability, bouncing from one foster home to another until they reach eighteen and are pushed out onto the streets as adults . . . ."). Here, as in *In re H.W.*, the juvenile court's *reference* to the *Ross* factors was not a finding *based* on those factors, but rather a part of the broader best interests consideration that was grounded properly in the statutory factors for determining exceptional circumstances.

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