Circuit Court for Montgomery County
Case Nos. 06-Z-20-000009 and 06-Z-20-000010

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 402

September Term, 2021

IN RE: X.R. AND Z.R.

Fader, C.J.
Leahy,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: October 20, 2021

In September 2017, the Circuit Court for Montgomery County, sitting as the juvenile court, found X.R. and Z.R., children of L.R. (Father), the appellant, and J.B. (Mother), to be Children in Need of Assistance (CINA). Almost three years later, in July 2020, the Montgomery County Department of Health and Human Services (Department), the appellee, filed a petition for guardianship and to terminate Mother's and Father's parental rights (TPR). Mother, whose whereabouts have been largely unknown since late 2016, did not respond and was deemed to have consented to the termination of her rights. On May 13, 2021, following an evidentiary hearing, the court entered a guardianship order granting the TPR petition as to both parents.[1]

Father noted this timely appeal, presenting two questions for review, which we have rephrased for clarity:

1. Did the juvenile court err by finding that the Department provided Father adequate reunification services during his continuing incarceration so as to justify finding him unfit and terminating his parental rights?

2. Did the juvenile court err by overruling Father's objection to a question asking a witness about allegations that he had attempted to smuggle drugs into a correctional facility?

We shall affirm the judgment of the juvenile court.

FACTS AND PROCEEDINGS

The following facts either are not in dispute or were supported by evidence admitted at the TPR hearing, which took place on April 6, 7, and 8, 2021. In addition to accepting

[1]Mother is not a party to this appeal. The children are appellees and have filed a brief in which they seek to affirm the juvenile court's judgment.

documentary evidence, the juvenile court took testimony from Department social workers Sophie Hotch, Kristine Rodgers, Shiho Murakami, and Julia Sylvain; Kiu Eubanks-Smith, Ph.D., a psychologist who evaluated Father; Mr. T., who with his husband Mr. C., are the children's pre-adoptive foster parents; Father; Father's wife, C.J. (Ms. J.); and Father's brother, E.R.

X.R., born in September 2011, and Z.R., born in April 2014, are two of four children born to Mother and Father.[2] Both parents lived in the greater Baltimore area when the children were born. Father had some minimal involvement in the children's lives. In early 2014, the Baltimore County Department of Social Services investigated Mother upon receiving a report that she, X., and N.R. -- another of the parents' children (born in 2013) -- were living in a house without water, heat, or electricity. The case was closed after Mother moved with the children and could not be located. In 2016, Mother was investigated by the Baltimore City Department of Social Services after she and her newborn child, E.R., tested positive for cocaine.

In early 2016, before Mother gave birth, Father moved away from the Baltimore area due to "relationship issues" with Mother. At that time, he knew that Mother had a serious problem with drug addiction. Mother continued to raise the children on her own and they lived in a state of chronic neglect. That situation culminated on the night of December 7, 2016. Mother left the children unattended at home, possibly so she could buy

[2] Mother had a fifth child who was adopted. The record reveals little about this child.

drugs, and the house caught on fire. N. and E. perished in the fire. X., then five, and Z., then two, survived but were severely traumatized.

The Baltimore City Department of Social Services removed X. and Z. from Mother and placed them with Father, who was living in Montgomery County. In January 2017, the Department took over the children's case. In March of 2017, Father started dating Ms. J., and not long thereafter he and the children moved into Ms. J.'s house. According to Ms. J., Father "did not have a good relationship with his children." While he was living with her, Father "often was irritable when engaging with the children" and was "rough" with them, hitting X. on the head and calling the children "ugly."

In June 2017, Father was arrested for possession of a controlled dangerous substance - not marijuana and possession of paraphernalia. He was released pending trial and referred for substance abuse and mental health evaluations. Those evaluations revealed that he had "a history of drug use including marijuana, cocaine, and Xanax" and was suffering from various mental health problems. Father failed to participate in an intensive outpatient drug treatment program arranged for him and tested positive for marijuana three times in the following two months.

Department workers made an unannounced visit to Ms. J.'s house on July 14, 2017. They found X., Z., and Ms. J.'s 10-year-old daughter at home with no adult supervision. The children were removed from Father's care temporarily and placed in shelter care. They returned two weeks later under an Order of Protective Supervision that spelled out steps Father was supposed to take. That situation lasted about a month. On August 28, 2017,

Father was arrested on charges of first-degree assault and possession of a deadly weapon with intent to injure. He was jailed in the Montgomery County Detention Center pending trial. The Department again removed the children and placed them in shelter care. The juvenile court suspended visitation between Father and the children pending release, which remained the status quo. In total, the children lived with Father for about eight months, ending when X. was about to turn six and Z. was three.

On September 13, 2017, after a hearing, the children were declared to be CINAs. The Department was given limited guardianship over them and they were placed in a treatment foster care home with an older couple experienced in caring for children suffering from trauma. The children had developmental delays, including difficulty communicating, and psychological problems due to the extreme neglect and trauma they had experienced. They began therapy and special school programs. They started to thrive in this setting and developed a close bond with their foster parents.

In late 2017, Father married Ms. J. She was given some supervised visitation with the children and the Department social workers communicated with her about the children.

On March 1, 2018, Father pleaded guilty to first-degree assault. He was sentenced on June 13, 2018 to a term of 25 years' imprisonment, with all but 14 years suspended. Since then he has been incarcerated at the Maryland Correctional Training Center (MCTC) in Hagerstown. His mandatory release date is in April 2028. That date could be changed based on good behavior. He first becomes eligible for parole in 2024.

In May 2018, while Father was awaiting sentencing, the Department arranged for Dr. Eubanks-Smith to perform a psychological evaluation, which consisted of psychological testing and a diagnostic assessment. Dr. Eubanks-Smith diagnosed Father with Bipolar I Disorder, Post-Traumatic Stress Disorder, and Polysubstance Abuse Disorder. She opined that to bring and keep that disorder under control, Father needed to participate in "weekly psychotherapy, medication management services, and psychoeducation about how to manage triggers." Father made clear at the time and still maintains that he is not interested in taking medication and does not see himself as having a bipolar disorder. Dr. Eubanks-Smith further determined that Father's "combination of untreated mental illness and substance abuse issues put him at high risk for future criminal activity." She found there was a continued "risk of neglect [to the children] because even when Father was supported by [Ms. J.], he still had difficulty meeting the children's needs."

Originally, the children's permanency plan was reunification with Father upon his release from prison. In November 2018, after Father had been sentenced and transferred to MCTC, their permanency plan was changed to custody and guardianship by a relative or non-relative. By then, the children had been in foster care for approximately 14 months. They were progressing well in therapy and school and exhibited little, if any, interest in returning to Father's care. X., then seven, never asked about Father. Z., then four, had no memory of him.[3] On March 29, 2019, the juvenile court changed the children's permanency plan to adoption by a relative or non-relative.

[3] Neither child has any memory of Mother.

In October 2019, the Department social workers first introduced the children to Mr. T. and Mr. C., and in December 2019, the Department designated them as the children's new foster parents. Both are experienced therapy foster parents, and, unlike the children's first foster parents, who due to age were not an adoptive resource, they are a potential adoptive placement. The physical transition was handled slowly and carefully so as not to upset the children. With much attention and guidance from Mr. T. and Mr. C., the children adjusted to their new home. Since then, the children have bonded with Mr. T. and Mr. C., and also with Mr. T.'s parents. In mid-2020, X. told his social worker that he feels that his home with Mr. T. and Mr. C. is his "forever home" and that he has started to talk with them about the house fire. He asked Mr. C. to walk through their house with him to check the fire alarm system. He has said he feels safe with Mr. T. and Mr. C. They are committed to helping both children with their trauma therapy and the children are doing well emotionally. The children changed schools when they moved but are continuing to thrive academically. Mr. T. testified that he and Mr. C. want to adopt the children.

In a 14-page opinion docketed on May 13, 2021, the juvenile court granted the Department's petition and terminated Mother's and Father's parental rights. The court made findings of fact, discussed in detail all the factors in Md. Code (2019 Repl. Vol.), section 5-323(d) of the Family Law Article (FL), and concluded by clear and convincing evidence that both parents are unfit to parent the children and "pose an unacceptable risk to the children's future safety," and that it is "in the children's best interest" that their parental rights be terminated.

We shall set forth additional facts in our discussion of the issues.

DISCUSSION

I.

Father advances a narrow challenge to the juvenile court's decision to grant the guardianship petition terminating his parental rights. He does not take issue with most of the court's findings and conclusions. He contends, however, that the juvenile court committed legal error by concluding that the Department provided him with adequate reunification services. He complains that the services the Department provided "in no way served to create or enhance a bond between him and his children." Specifically, he asserts that the Department failed to facilitate services that "might have actually assisted this family in reuniting" such as "regular telephone, Skype or Zoom contact between [Father] and the children" and "participation by telephone [for him] in meetings among social workers."[4] Although Father recognizes that it can be futile to provide reunification services to a parent serving a prison sentence, he argues that that is not an issue here because he "may well be released while [X. and Z.] are still children." Father maintains that his parental rights should not have been terminated given the Department's failure to afford him adequate services to promote reunification with the children.

The Department counters that it provided sufficient reunification services to Father, as the evidence demonstrated, and that Father failed to fulfill his obligations to the children and the Department. Taking into account all the statutory factors the juvenile court must

[4] Father seems to concede that the Department correctly determined that in-person visitation at the prison would have been traumatic for the children.

and did consider, the court properly exercised its discretion to terminate Father's parental rights.

"Maryland appellate courts apply three different but interrelated standards of review when reviewing a juvenile court's decisions at the conclusion of a termination of parental rights proceeding." *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 47 (2019) (citations and quotations omitted). First, any factual findings made by the court are reviewed for clear error. *Id.* Second, any legal conclusions made by the court are reviewed *de novo*. *Id.* Finally, if the court's ultimate conclusion is "founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion." *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 100 (2010) (citations and quotations omitted). "A decision will be reversed for an 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." *In re J.J.*, 231 Md. App. 304, 345 (2016) (citations and quotations omitted).

"Parents have a fundamental right under the Fourteenth Amendment of the United States Constitution to 'make decisions concerning the care, custody, and control of their children.'" *In re C.E.*, 464 Md. at 48 (quoting *Troxel v. Granville*, 530 U.S. 57, 66 (2000)). "The parental right, however, is not absolute, and the presumption that protects it may be rebutted 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." *In re Adoption/Guardianship of Darjal C.*, 191 Md. App. 505, 530 (2010)

(quotations omitted) (quoting *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 495 (2007)). "When it is determined that a parent cannot adequately care for a child, and efforts to reunify the parent and child have failed, the State may intercede and petition for guardianship of the child pursuant to its *parens patriae* authority." *In re C.E.*, 464 Md. at 48. "The grant of guardianship terminates the existing parental relationship and transfers to the State the parental rights that emanate from a parental relationship." *Id.*

Before terminating a parent's rights, the juvenile court must consider the applicable factors set forth in FL section 5-323(d). *In re Adoption/Guardianship of C.A. and D.A.*, 234 Md. App. 30, 48 (2017). Primary consideration must be given to "the health and safety of the child[.]" FL § 5-323(d). Other factors the court shall consider are services offered to the parent before the child's placement; adjustments by the parent to make it in the child's best interests to be returned to the parent's home; whether certain aggravating circumstances, such as abuse or neglect, exist; the child's emotional ties to the parent and to significant others; and the child's adjustment to community placement and general well-being. *Id.*; *see also In re C.E.*, 464 Md. at 51. "If, based on these factors, the court finds by clear and convincing evidence that the child's best interests are served by a termination of parental rights, the court may terminate said rights." *In re C.A. and D.A.*, 234 Md. App. at 49.

Of pertinence to the issue on appeal, FL section 5-323(d)(1) lists the following factors as relevant to services provided:

> (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[.]

(Emphasis added). A reasonable level of services should be "designed to address both the root causes and the effect of the problem[.]" *In re Rashawn H.*, 402 Md. at 500. The services may include "educational services, vocational training, assistance in finding suitable housing and employment, teaching basic parental and daily living skills, therapy to deal with illnesses, disorders, addictions, and other disabilities suffered by the parent or the child, [and] counseling designed to restore or strengthen bonding between parent and child[.]" *Id.* The local department's efforts "are judged on a case-by-case basis." *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 234 (2018).

There are limits, however, to what the Department is required to do:

> The [Department] is not obliged to find employment for the parent, to find and pay for permanent and suitable housing for the family, to bring the parent out of poverty, or to cure or ameliorate any disability that prevents the parent from being able to care for the child. It must provide reasonable assistance in helping the parent to achieve those goals, but its duty to protect the health and safety of the children is not lessened and cannot be cast aside if the parent, despite that assistance, remains unable or unwilling to provide appropriate care.

In re Rashawn H., 402 Md. at 500-01.

As noted, although the juvenile court must consider the adequacy of the services provided, "[t]he primary statutory factor the court must consider before terminating parental rights is 'the health and safety of the child[.]'" *In re C.A. and D.A.*, 234 Md. App. at 49 (quoting FL § 5-323). In fact, "in all cases where the interests of a child are in

jeopardy the paramount consideration is what will best promote the child's welfare, a consideration that is of 'transcendent importance.'" *Id.* at 48 (quoting *In re Adoption/Guardianship No. A91-71A*, 334 Md. 538, 561 (1994)). "Ultimately, [the statutory] factors seek to assist the juvenile court in determining 'whether the parent is, or within a reasonable time will be, able to care for the child in a way that does not endanger the child's welfare.'" *In re C.E.*, 464 Md. at 51-52 (quoting *In re Rashawn H.*, 402 Md. at 500). "As such, the best interest of the child is the overarching standard in TPR proceedings." *Id.* at 52.

At the TPR hearing in this case, the Department presented evidence of various "in-home services" provided during the eight months the children lived with Father after the December 2016 house fire that killed their siblings. Beginning in January 2017, the Department gave Father referrals to take the children to pediatric and dental visits and to enroll X. in school. Father did not take the children to the pediatrician for two months and did not take them to the dentist for four months. The pediatrician referred X. for a pediatric development evaluation and to an audiologist. Father did not take him to the audiologist until July 2017 and failed to take him for the pediatric development evaluation at all. Ultimately, Department social workers took X. for that evaluation after Father was in the detention center. Department social workers enrolled X. in school because Father did not follow through with the registration process. Father also failed to obtain Z.'s birth certificate and social security card so she could receive educational services.

As discussed above, after Father was arrested for possession of a controlled dangerous substance in June 2017, he was enrolled in an outpatient mental-health program but failed to attend; he tested positive for marijuana three times over a two-month period; and he left the children in the care of a ten-year-old. That, together with his "lack of compliance with services for the children, non-compliance with substance abuse treatment, failure to abstain from using marijuana, and not following through with obtaining [Z.'s] birth certificate or social security card for school enrollment" resulted in the children being temporarily removed from his care. The children were removed again when he was arrested and incarcerated at the end of August 2017.

Kristine Rogers was the Department's supervising social worker for X. and Z.'s case beginning in September 2017. She testified that after Father's second arrest, the social workers assigned to the children's case met with him in person at the detention center every month, except in May 2018. A social worker who spoke Spanish was assigned to the case. During those meetings, Father was given updates about the children and shown pictures of them. The social workers brought X.'s IEP for his special education plan to Father, and he signed it. The Department social workers kept in touch with Father's case manager at the detention center. Father signed a service agreement on November 16, 2017. The Department complied with the terms of that service agreement, as did Father. That service agreement required only that Father participate in a substance abuse education program in the detention center. There were some problems with visits, including a visit in January

2018 that had to be cut short when Father became agitated about the Department having obtained the children's birth certificates and social security cards.

Once Father was moved to MCTC, in Washington County, it became difficult for the social workers to meet with him in person. Father refused to sign a service agreement for the period of June 29, 2018, to August 29, 2018. A social worker visited him in October 2018, and he signed a service agreement. After that, the Department continued to send him service agreements, but he would not sign them, although he received them. The assigned social workers provided Father with telephone updates about the children and sent him pictures of them. Father did not try to contact the Department himself or ask about the children. Father did not sign a service agreement provided to him in June 2019. The Department complied with its obligations under the service agreements, whether Father signed them or not.

In December 2019, Shiho Murakami became the supervising social worker for the children. Her first contact with Father was in January 2020. She gave him her email address and telephone number and told him that his case manager at MCTC could provide that information again if he needed it. Ms. Murakami testified that she had four telephone conversations with Father with the assistance of his case manager. Through the case manager, she emailed Father photographs of the children, service agreements, requests to schedule telephone calls, and requests for information. She also sent photographs and information by regular mail. Whenever she wrote to Father, she reminded him that he could call, email, or write her. He never told her that he had tried to contact her without success

and in fact he received the photographs and materials she sent him. Father did not put Ms. Murakami on his approved call list, even though he had her phone number, and never asked his case manager for assistance in placing a call to her. Father took no initiative to seek additional information about the children beyond what he was provided.

Ms. Murakami testified that she emailed service agreements to Father on April 27, 2020, and on November 30, 2020, and also sent them by regular mail. Father confirmed by telephone that he received them. He did not sign them, however.[5] She also provided Father with releases to allow her to obtain records of any services he was receiving and any services he could receive at MCTC. She testified that she made this request five or six times and that, even though she sent releases to Father and he received them, he did not sign them. In fact, he told her he would not sign the releases. During each contact Ms. Murakami had with Father, she stressed the importance of his signing the service provider releases. Without the releases, Ms. Murakami could not determine what services Father was receiving or what services were available that she could recommend he receive. She was able to determine from Father's case manager that he had registered for a parenting program that was cancelled due to the Covid-19 pandemic, but the case manager told her that without releases she could not provide any additional information.

Ms. Murakami opined that, from her interactions with Father and her review of the records documenting his behavior, he lacked insight and was not able to put the children's

[5] In his testimony, Father claimed he did not receive the service agreements and that he could not read or write English. Other witnesses contradicted that testimony, however, and the court rejected it.

interests before his own. His position was that because he possibly would receive parole in 2024, the children should "wait" for him.

Evidence showed that the Department consulted regularly with the children's therapists about the possibility of visitation between the children and Father. The therapists did not recommend visitation and indeed recommended that it remain suspended due to the children's fragile emotional states. For two years, X. was in therapy with LaVaughn Turner. X. shared memories of the fire with him and made progress in dealing with his trauma. X. never mentioned Father. It was Mr. Turner's opinion that X. would not benefit from seeing Father in prison as that would retraumatize him. Z. began receiving art therapy in 2018, and regular therapy in 2019. She had no memory of Father and did not open up easily to discuss the house fire.

Ms. Sylvain began working as the children's therapist in January of 2020 and considered that they had made remarkable strides. Before then, the children had disclosed that they had "little to no recollection of their father and the time they were in his care." To Ms. Sylvain's observation, the children had "little attachment to their father." Even when asked, X. showed no interest in communicating with Father. In Ms. Sylvain's opinion, re-introducing Father into the children's lives would be detrimental to their continuing therapeutic progress and was "not in their best interest." As she saw it, the negative connotations associated with Father's imprisonment would outweigh any benefit the children might receive from visitation. What she termed contact, such as letters or cards from Father, and answers to any questions the children might have about their biological

family members, would be appropriate. This could support their efforts in therapy to deal with past trauma and possibly could lead to their having some interest in contact with Father.

Ms. Sylvain also made clear that any visitation between Father and the children would remain inappropriate so long as Father has not taken the steps necessary to address his mental health and substance abuse diagnoses. Likewise, Dr. Eubanks-Smith opined that visitation would not be in the children's best interests, and recommended that it only take place, if at all, upon Father's receiving treatment for his Bipolar I Disorder. In Dr. Eubanks-Smith's opinion, untreated Bipolar 1 Disorder leads to risky decision-making and problems with "impulsivity, recklessness [and] impulse control"; it also causes "hypersensitivity to rejection or disrespect."[6]

The Department investigated several possible relative placements for the children, including Ms. J.; the children's paternal uncle; the children's paternal grandfather; and several of Ms. J.'s family members. Ultimately, the Department determined that none of those individuals was a viable resource.[7]

As we have explained, in determining whether the Department has proven, by clear and convincing evidence, that a parent is unfit and it is not in the child's best interests for the parental bond to remain, the court should consider all the factors in FL section 5-323(d) that apply. There is no formulaic approach the court must follow in doing so. Each child's

[6] Ms. Rodgers also expressed the view that visitation would not serve the children's best interests.

[7] Ms. J. had a past history of child neglect with the Department.

circumstance must be assessed on a case-by-case basis. The court considers and weighs the factors with the primary consideration being the health and safety of the child.

In the case at bar, the juvenile court made factual findings, all of which are supported by evidence in the record. It accurately summarized the governing law and carefully considered every relevant FL section 5-323(d) factor, including those in subsection (d)(1). In that respect, it detailed the services that were offered to Father during the eight months that he had physical custody of the children and his conduct during that period, which consisted mostly of failing to avail himself of services for his own wellbeing and to take the necessary steps to assure that the children were properly cared for medically and educationally. That period ended with Father's incarceration.

The juvenile court specifically addressed the services that were provided and offered to Father after the children were placed in foster care "to facilitate reunion of the child[ren] and parent." The court explained Dr. Eubanks-Smith's psychological evaluation and the diagnoses she made, emphasizing her testimony that without treatment of his mental illness and substance abuse problems, Father was "at high risk for future criminal activity" and the children were at risk of once again being neglected in his care. Although Father asserts that Dr. Eubanks-Smith's evaluation was not a reunification service, it was: the evaluation mapped out a safe path for him to take toward possible reunification with his children. He rejected that path by not accepting the medication management and other treatments recommended by Dr. Eubanks-Smith. And, if indeed he had accepted some of them, he

made it impossible for the Department's social workers to determine whether he was receiving any of them.

The juvenile court went on to review the service plans offered to Father; what they required the Department to do; and what the Department witnesses testified the Department did to comply with the plans (whether signed or unsigned by Father). The court listed the services that were afforded, including monthly meetings with Father to discuss the case, supervision of the children's placement, arranging for therapy for the children, maintaining weekly contact with Ms. J., developing "a comprehensive understanding of the children's neglect while in Mother's care[,]" facilitating educational evaluations for the children, and "mak[ing] referrals for services, [in] which Father could participate." The court again pointed out that witnesses testified that Father did not give the Department access to information about what services he was or could be receiving at the prison. The court found that the Department had fulfilled its obligations under the service plans, that for the most part Father had not, and that Father's testimony that he could not read the service plans was not credible.

The record evidence does not support Father's assertion that the Department's reunification services were inadequate for lack of Skype, Zoom, or telephone visitation with the children. To begin with, there was no evidence that Skype or Zoom services were available for any prisoners at MCTC, or for Father in particular. Even if those services and telephone contact with the children would have been available, the evidence from all the experts who have treated or are treating the children was uniform that they would not

benefit from and could be negatively affected in their therapeutic progress by contact with Father while he is in prison.

The evidence painted a sad picture of two children, only ten and eight now, who lived in neglect until they were placed in foster care at ages almost six and three. From birth, they were raised by a drug addicted Mother who did not attend to their basic needs, with Father having minimal interactions with them and eventually leaving them to fend for themselves in Mother's custody. They wound up suffering the terror and trauma of a house fire that killed their siblings, an awful event that has scarred and traumatized them. They remain in therapy to deal with its emotional consequences. During the short time they lived with Father, immediately after the fire, he did not attend to them in a timely way, was rough and insulting to them, and put his life in the drug culture before their needs. X. has little recollection of Father and has never expressed a desire to see him, and Z. does not remember him at all.[8] As the juvenile court found and the evidence showed, the children were not bonded with Father. Under these circumstances, it seems reasonable that the Department did not act contrary to the experts' opinions to arrange visitation - - whether in person, by video, or by telephone - - between Father and the children.

Father maintains that his position is supported by *In re Adoption/Guardianship Nos. CAA 92-10852 & 92-10853*, 103 Md. App. 1 (1994), however. We disagree. In that case,

[8] Father also asserts that the Department should have arranged for him to participate by telephone in some of the Department social workers' meetings in which the children's cases were discussed. It is unclear what meetings he is referring to and whether that would have provided him with any more information about the children than he already was receiving from the Department.

the father was incarcerated but was due to be released within a week or two after the TPR hearing. The extent of the local department's "efforts at reunification amounted to a single conversation with [the father] and the mailing of several form letters to him." *Id.* at 21, 29-34. We held that in those circumstances, the juvenile court had abused its discretion by terminating the father's parental rights. By contrast, here the earliest Father is entitled to be released is 2028, and the earliest he possibly could be released is 2024. And, as explained above, the Department provided myriad services to Father, both before and during his imprisonment.

The juvenile court considered and weighed the remaining statutory factors, all of which militated in favor of terminating Father's parental rights. Father made little, if any, effort to adjust his circumstances, condition, or conduct so that it would be in the children's best interests to be returned to him. The children have no emotional attachment to Father and have not shown any interest in communicating with him. Father has made no effort to initiate contact with the Department and has not inquired about the children. Terminating Father's parental rights likely would have no negative effect on them. Father suffers from an untreated mental health disorder that he appears to be unwilling to address and that will interfere with his ability to parent. And despite being neglected by both parents and traumatized by the deaths of their siblings, the children have thrived in foster care and are bonded with their foster parents, who wish to adopt them.

Although Father maintains that the standard of review for this issue is legal error, it is not. He has not pointed out any legal errors on the court's part, and as we stated above,

the court correctly summarized the applicable law. It also made no clearly erroneous factual findings. Father actually is challenging the court's ultimate decision, which is governed by an abuse of discretion standard. After making factual findings and considering all the applicable statutory standards, the court rejected Father's essential argument, which was that the children should stand by and wait for him to finish serving his prison term. As the court put it, "That may be good for Father, but it is not good for the children and they come first . . . They have been in foster care for three and a half years [now four]. To ask them to wait again is unfair. They deserve a permanent and stable situation, which they now have." That determination and the ultimate conclusion that Father is unfit and it is in the best interests of the children that his parental rights be terminated were well within the court's discretion to make.

II.

Father contends the juvenile court committed an evidentiary error by allowing certain testimony by Ms. J. on cross-examination by counsel for the Department. The exchange in question is as follows:

> [DEPARTMENT'S COUNSEL]: Do you recall telling [a social worker] in early 2019 that you had concerns that [Father] and his brother were working together to smuggle drugs into the correctional facility?
>
> [FATHER'S COUNSEL]: Objection.
>
> THE COURT: Overruled. You can answer that, ma'am, if you can answer it.
>
> [WITNESS]: No.

Father argues that, given the context in which the question was posed, it was an improper attempt to elicit "prior bad act" evidence. He further maintains that the evidence the Department's counsel was seeking to elicit had no probative value because it was "comprised solely of one person's speculation[.]" He concludes, therefore, that the court erred, and the error was prejudicial because the information sought was damaging to him.

The Department counters that the question was proper because it sought information relevant to Father's fitness as a parent. Moreover, the Department maintains, if there was any error it was harmless given that Ms. J. answered the question in the negative.

"It has long been established that a parent's past conduct is relevant to a consideration of the parent's future conduct." *In re Adriana T.*, 208 Md. App. 545, 570 (2012). "Reliance upon past behavior as a basis for ascertaining the parent's present and future actions directly serves the purpose of the CINA statute." *Id.* Father's possible participation in a drug-smuggling operation in prison was not irrelevant as it had some probative value on the issue whether, if he ever were to have custody of the children again, he would expose them to the criminal element as he had done before.

Regardless, even if the court erred in allowing the question to be answered, which we believe it did not, the error was harmless. A judgment in a CINA case "will not be reversed in the absence of a showing of error *and* prejudice to the appealing party." *In re Ashley E.*, 158 Md. App. 144, 164 (2004) (emphasis in original). "In that context, prejudice means that it is likely that the outcome of the case was negatively affected by the court's error." *Id.* at 164.

Here, no evidence of Father's involvement in a drug-smuggling operation was adduced. The Department's counsel asked Ms. J. if she remembered telling a social worker about Father and his brother smuggling drugs into the correctional facility, and Ms. J. answered in the negative. We fail to see how Father could have been prejudiced by that exchange, particularly given that the juvenile court did not reference it or Father's alleged drug smuggling when granting the Department's petition to terminate his parental rights.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY SITTING AS THE JUVENILE COURT AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.