Circuit Court for Montgomery County
Case No. 06-Z-20-000035

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 545

September Term, 2021

In Re: J.G.

Berger,
Wells,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, J.

Filed: December 7, 2021

The Circuit Court for Montgomery County, sitting as a juvenile court, granted a petition to terminate the parental rights of D.Y.G. ("Mother") and D.S.D. ("Father"), simultaneously awarding the Montgomery County Department of Social Services ("the Department"), appellee, guardianship with the right to consent to adoption of seven-year-old J.G. ("the Child"), appellee, by Mr. and Mrs. G., with whom the Child has been living much of her life. Although Father consented to the termination of his parental rights on the condition that the Child be adopted by the G. Family, Mother noted this timely appeal.

Mother contends that the juvenile court abused its discretion in concluding that terminating her parental rights was in the Child's best interest based on an outdated mental health evaluation from 2014. Mother also argues that the court compounded the first error by inappropriately focusing on whether it was in the Child's best interest to return to Mother's custody, rather than allow Mother to continue to have a relationship with the Child. Because we are not persuaded that the court erred or abused its discretion in terminating Mother's parental rights, we shall affirm the judgment.

FACTUAL AND LEGAL BACKGROUND

In this appeal, Mother does not challenge any of the underlying factual findings made by the juvenile court regarding the relevant history of this matter. Consequently, we summarize the court's findings and supporting record in a chronology corresponding to the CINA proceedings that have occurred during the Child's life.

PRE-CINA PERIOD
February 2014 – March 2014
Child's age: Birth-5 weeks

The Child was born to Mother, then age 25, on February 13, 2014. Although Father's name does not appear on her birth certificate, his paternity was established by court order.

The Child resided in Montgomery County with both Mother and Father. Mother's four-year-old son was in the custody of Mother's relative "because she was not stable, was in/out of jail, and could not provide for him."

FIRST REMOVAL AND CINA CASE
March 2014 – July 2015
Child's age: 5 weeks to 18 months

On March 22, 2014, the Child's life was endangered when Father immersed her in cold water, causing her body temperature to drop dangerously low. Father reported that he did so in the belief that cocaine he had ingested the night before had seeped out of his pores and gotten onto the baby, who suffered fever and a seizure. Upon her arrival at the emergency room, even after 30 minutes of re-warming efforts by EMTs, the Child's hypothermic body temperature was only 86 degrees, and she "was close to death."

At the time of this incident, Mother was at work. Two days later, on March 24, she signed a safety plan agreeing not to leave the Child in Father's care and that she would follow all hospital and pediatrician recommendations. But, significantly, she did not acknowledge that Father's actions were inappropriate.

On March 26, Mother also agreed to undergo a psychological evaluation and to follow all recommendations, which ultimately included Zoloft and individual therapy.

Katherine A. Martin, Ph.D., conducted interviews and tested Mother during three two-hour sessions in October and November 2014, detailed her findings and recommendations in an extensive report.

Dr. Martin recounted that Mother's self-described background included "a significant history of substance abuse and criminal behavior, including assaults, theft, and violation of probation." In addition to reportedly having "been incarcerated nine or ten times[,]" Mother had numerous psychiatric hospitalizations ("reportedly at least seven") with "prior diagnoses of anxiety and bipolar disorder[,]" for which she had been "prescribed psychotropic medication" that she had "stopped taking[.]"

Dr. Martin observed that Mother "has had difficulty working cooperatively with C[hild] W[elfare] S[ervices], following through with tasks, and providing her daughter . . . a stable living environment." Mother's four-year-old son was being raised by her aunt and uncle.

Dr. Martin diagnosed Mother with Bipolar Disorder, Antisocial Personality Disorder, a Specific Learning Disorder with Impairment in Reading, and a Language Disorder. Mother was "currently scoring at the low average level of intelligence overall[,]" with "a fourth grade level" in reading and significant weaknesses in verbal reasoning, expressive and receptive language, and "auditory working memory (the active part of the memory system that is necessary for temporarily managing information required to carry out complex tasks)."

Dr. Martin noted that Mother acknowledged manic symptoms consistent with bipolar disorder but "lacks insight into her mental health needs." Her "lengthy history of

engaging in impulsive, aggressive, deceitful behaviors without regard for the well-being and rights of others . . . resulted in repeated legal involvement, interpersonal conflict, and instability." These, and her "juvenile conduct problems and multiple incarcerations as an adult[,]" are consistent with Antisocial Personality Disorder that presents "significant difficulty managing her feelings of frustration and anger" and makes her "likely to react angrily and impulsively when frustrated." And Mother had "a lengthy history of substance abuse" but "denie[d] any drug abuse . . . since January 2014[,]" before the Child's birth in February of that year.

Because Mother brought the Child to all three appointments, Dr. Martin was able to observe that Mother "consistently met [the Child's] basic needs (changing her diaper, offering her a bottle)." Yet Mother's interactions frequently "lacked empathy and tenderness, and she appeared to have difficulty reading [the Child's] cues[,]" taking "a long time before she responded to" [the Child],and appearing "impatient and frustrated[.]"

Dr. Martin recommended:

- "a psychopharmacological evaluation to determine the appropriateness of medication to address Bipolar Disorder" and that "to maximize compliance with medication," Mother "meet with her psychiatrist frequently (every two weeks) until her medications are stabilized";

- "weekly individual therapy" to "maximize the likelihood [Mother] can develop greater stability for her and [the Child]" and to provide her with "solution-focused therapy" that includes "educating her about Bipolar Disorder, developing strategies to improve relationships with others, and teaching stress tolerance, emotional regulation, and anger management";

- "intensive parenting support" with "one-on-one parenting skills education to improve her ability to safely and effectively respond to the changing needs of her daughter" and promote "bonding";

- when working with Mother, simplifying directions and orally reading written materials, given Mother's "language processing problems and limited reading skills," along with teaching Mother "memory strategies (e.g., using a planner, programing phone, etc.)" and "be[ing] supportive and patient if [Mother] has difficulty communicating her thoughts easily and clearly";

- "[p]eriodic monitoring for substance abuse" given Mother's significant "risk for relapse";

- "on-going support and supervision by CWS" given that Mother "has never maintained stable housing, employment, or finances, and she has mental health issues and personality traits that will likely make effective parenting challenging. Close support, education, and supervision are necessary in order to maximize her ability to be successful."

Mother did not comply with her agreement regarding medication and therapy. After missing multiple appointments for herself and pediatric appointments for the Child, Mother advised the Department on July 9, that she would not take the prescribed psychotropic medication or participate in therapy.

On July 24, 2014, Mother sought shelter for herself and the Child because they were homeless. When Mother refused to disclose where she and the Child had been staying and refused to stay overnight at a Crisis Center, the Department sought emergency removal and shelter for the Child.

The Child was removed from Mother's care and sheltered by the Department until she was found to be a CINA on September 12, 2014. The Child was returned to Mother's care under an Order of Protective Supervision that included a requirement that the Child not be in Father's care.

On October 24, 2014, Father was convicted of child neglect and sentenced to five years of probation, which included a condition that Father was to have no contact with the Child except for visits supervised by the Department.

From February 26 through July 31, 2015, Mother and the Child lived in Fairfax, Virginia. The Fairfax County Department of Social Services agreed to supervise the case. On July 31, 2015, the Order of Protective Supervision was rescinded, the Child was returned to Mother's custody, and the CINA case was closed.

SECOND REMOVAL AND CINA CASE
September 2015 – September 2018
Child's age: 1½ to 4½ years

Less than two months later, Mother's conduct led to another CINA case that lasted three years, with the Child being placed in the home of Father's relatives, Mr. and Mrs. G. Beginning that summer, in violation of Father's probation, Mother and Child began living with Father in Maryland. On September 23, 2015, Mother and Father had a violent altercation in the Child's presence.

On September 26, Father filed for a protective order. When the police came to serve Mother, she fled, leaving the Child with Father. Mother then went to Father's barbershop and damaged property. After being arrested and incarcerated, Mother voiced concern about the Child being alone in Father's care.

As a result of these events, the Child was again removed from Mother's custody and care. From October 13-22, 2015, the Child was sheltered in foster care. After being adjudicated a CINA on October 22, she was placed into foster care.

Mr. and Mrs. G., the Child's great-aunt and -uncle, completed required courses and credentialing to become foster parents. After they were granted limited guardianship of the Child, she was placed in their Hampton, Virginia home on November 3, 2016. During Mother's monthly two-hour supervised visits that occurred while Mother was taking her prescribed medication and participating in therapy, Mr. G. found Mother's behavior to be appropriate.

On March 30, 2018, after nearly 17 months with the G. family, the Child was placed with Mother for a trial home visit. On September 6, 2018, the Child was reunified with Mother, and the second CINA case was closed.

THIRD REMOVAL AND CINA CASE
July 2019 – September 2019
Child's Age: 5½ years

On July 17, 2019, the Department began a child neglect investigation based on reported concerns that Mother was using cocaine and PCP, that she had discontinued her psychotropic medication several months before, and that she had allowed various men to visit the home and allowed sexual activity in the Child's presence. Mother, meeting that day with two Department social workers, admitted that she had stopped taking her psychotropic medication and entered into a safety plan. She agreed to meet with the Department and People Encouraging People ("PEP"), the agency responsible for providing Mother with therapy and medication management.

The next day, the Department social worker learned from PEP workers that after Mother discontinued her medication in February or March, her mental health had declined markedly, as indicated by her "rapid speech, disorganized thoughts, frequent screaming at

the Child, and hyper-manic behavior." According to the PEP case manager, Mother's yelling appeared to frighten the Child. According to the PEP psychiatrist, Mother refused antipsychotic medications because she wanted another child. Her behavior over the previous three months had been increasingly irritable and agitated. The psychiatrist suspected illicit substance abuse and expressed concern "that a psychiatric hospitalization was imminent due to Mother's hyper-manic state."

Consistent with that account of Mother's behavior, the Child reported to Sharon Jordan, the Department social worker, that Mother "acted 'weird', 'crazy', and often screamed" and that Mother and Father had frequent altercations. The day before, Mother had grabbed her own arm and dug in her fingernails.

On July 24, after a Family Involvement Meeting at the Department, Mother's deteriorated mental health, aggressiveness, and inability to plan for the Child's safety resulted in the Child being removed to an emergency shelter. Mother left the meeting, went to the Child's school, and threatened to open fire at the school and to shoot police. After Mother returned home and called 911 about the Child's removal, she was involuntarily hospitalized.

On August 2, 2019, the Child was adjudicated for a third time to be a CINA. On September 13, the court ordered that she again be placed with Mr. and Mrs. G. at their home in Hampton, Virginia. By orders entered on September 19 and 30, 2019, Mr. and Mrs. G. were awarded limited guardianship of the Child for all caretaking decisions, including medical, educational, and travel. Mother was awarded monthly supervised visitation.

In a CINA report prepared in December 2019, the Department again advised the court that Mother was not compliant with substance abuse or mental health requirements for reuniting with the Child. Pandemic restrictions thereafter affected permanency planning and other proceedings.

Before the first permanency planning hearing took place on June 22, 2020, the Department prepared another report, recommending "that the default permanency plan of reunification with a parent be reaffirmed." Nevertheless, the Department advised that Mother still was "not compliant with participating regularly in mental health treatment and non-compliant with taking prescribed medications." Her current mental health provider had diagnosed Mother with "Major Depressive Disorder with psychotic features and anxiety." Mother had not yet been scheduled to meet with Dr. Martin for a new psychological evaluation.

With the Department's assistance, Mother traveled to Virginia for a supervised visit on November 20, 2019. She did not attend another visit scheduled for November 27, 2019, claiming she did not have the information or money to make the trip. For visits in December 2019 and January 2020, a supervising social worker reported that Mother "was inappropriate with [the Child] verbally and was aggressive with" her. During the January visit, Mother became upset when the Child mentioned Martin Luther King, Jr. Day, telling her to stop talking about celebrating that holiday and grabbing the Child's arm aggressively. The supervisor ended the visit shortly after.

In August 2019 and February 2020, Mother was charged, in separate criminal cases, with counts of theft under $100. In February 2020, she was acquitted on a charge of second-degree assault.

In November 2020, the juvenile court issued a permanency planning review order, finding that "Mother has not made any progress toward alleviating the need for the Court's jurisdiction" and that the Child "cannot be safe and healthy in either of her parents' homes" because Mother was "not engaged in her mental health or substance abuse treatments" and Father "is homeless and cannot be a resource . . . at this time." The court noted that the Child "does not seem to be attached to her mother or father. Neither parent has visited [the Child] in over a year." In contrast, the Child "is very attached to her current caregivers" and "extremely happy" to be with them. "There would be developmental and emotional harm if she were to be removed from" their care.

The juvenile court also found that the Child "has been in State custody for an excessive period of time" and that adoption by her relatives "is in the best interest of [the Child] because it is important for [her] to have stability as soon as possible." The court concluded that it would be in the best interest of the Child to change her permanency plan from reunification with Mother to adoption by the G. Family, because over the course of the Department's involvement, Mother had made insufficient progress toward reunification and the Child's attachment was to the G. Family, rather than Mother or Father.

Before supervised visitation could resume, the court again required Mother to participate in a psychological evaluation and follow all treatment recommendations; to participate in mental health and psychiatric treatment including taking all prescribed

medications; to submit to random urinalysis; and to attend three consecutive meetings with the Department, without raising any concerns about her mental stability.

TPR PETITION AND PROCEEDINGS
December 2020-May 2021
Child's Age: 5¾ to 7¼ years

On December 29, 2020, the Department filed a petition seeking to terminate Mother's and Father's parental rights, and to award the Department guardianship with the right to consent to adoption by Mr. and Mrs. G.

In a subsequent permanency planning report dated February 18, 2021, the Department's social worker, Sharon Jordan, advised the juvenile court that Mother was "not compliant with submitting to random urinalyses" so the Department did not know whether she was "drug free."

Given Mother's mental health history and diagnoses, Ms. Jordan advised that the Child "would not be safe in the home while [Mother] is not medicated." When Ms. Jordan contacted Mother earlier that day, Mother did not answer whether she was in therapy or taking medication, instead "talking erratically" before hanging up. Ms. Jordan reported that Father told her he had Mother "hospitalized last month." Although she stayed for a week and was prescribed medication, she "was not monitored when she left and [was] no longer taking any medications."

Ms. Jordan detailed a series of verbal threats Mother made to Mr. and Mrs. G., Father, and Ms. Jordan. Mother was making calls to Mrs. G. almost every day, leaving threatening and belligerent messages. For example, on December 29, 2020, Mother "left 6 consecutive messages for Mrs. [G.] a few minutes apart" and another message for Ms.

Jordan later that evening, in which she stated that she wanted to fight Mrs. G., that she was "trying so bad not to f—ck up [Father's] barbershop . . . like I did last time[,]" and that if they did not hand over the Child, "I be wrecking both of ya'll. I will shoot both of ya'll." The next day, Mother left similar messages for Mrs. G., along with rambling statements that included disparaging comments about Father, Ms. Jordan, and "not liking black women[.]" After reviewing recordings of the calls, the social worker requested a welfare check on the G. Family and secured a "NO CONTACT order" on their behalf.

Mother's aggressiveness also resulted in the cancellation of Dr. Martin's evaluation. After Ms. Jordan referred Mother to Dr. Martin on December 2, 2019, for a new psychological evaluation, the pandemic delayed the scheduling of that appointment until July 9, 2020. On July 6, however, Mother phoned and "became aggressive with Dr. Martin[,]" who thereafter was only "willing to meet with [Mother] at a CWS office where there would be other people and security." Because those offices remained closed to the public due to the COVID-19 pandemic, Dr. Martin did not conduct a new evaluation before the termination hearing.

The Department also reported that during this period, Mother had criminal charges that resulted in probation for a conviction for theft less than $100; another charge of theft under $100, for which an August 31, 2020, bench warrant had been issued for failure to appear; and a third charge of theft under $100 and trespass on private property, for which her trial date was March 15, 2021.

According to the Department's report, Mother had last visited with the Child on November 20, 2019, in Hampton, Virginia. During the pandemic, Mother did not make

remote video visits, saying "that she [was] unable to download an application that would allow for a video chat."

During her two lengthy placements, the Child "became very bonded to the [G.] family[,]" with whom "[s]he feels safe and is thriving[.]" "Mr. and Mrs. [G.] have made a long term commitment to [the Child] to include adoption."

At a TPR hearing conducted on May 5-6, 2021, Father consented to termination of his parental rights on the condition that the Child be adopted by Mr. and Mrs. G. Mother opposed termination and adoption.

The court heard testimony and received documents from Mother's probation agent, Mr. G., Mrs. G., Sharon Jordan, and Dr. Martin. On May 25, 2021, the juvenile court issued a written order granting the relief requested by the Department, accompanied by a 35-page Memorandum Opinion detailing the evidentiary record, making findings of fact with respect to each one of the required statutory factors, and setting forth conclusions of law supporting its decision to terminate Mother's parental rights. Citing clear and convincing evidence, the court ruled that "Mother is unfit to remain in a parental relationship with the Child and 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 parental rights of the Mother is in the Child's best interest."

The court determined that Mother is unfit to parent the Child because she "has severe mental health issues that she does not manage effectively" and that "will never go away[.]" Given the unrefuted evidence that she "does not engage regularly with her mental health team, regularly refuses to take her prescribed psychotropic medication, and regularly

refutes the efforts of the Department to provide treatment services[,]" the court found that Mother's "life is filled with long periods of instability and erratic, threatening behavior, which endangers the Mother and those around her."

Next, the court determined that there are exceptional circumstances establishing that "mother having custody of her daughter would be detrimental to the Child." The court pointed out that the Child had been a CINA "[f]or nearly five years of [her] short life," with "almost three years . . . in the home of the [G.] family[,]" who "is blood-relation to the child" and "provides the Child with a safe home and a stable environment to succeed – in school and in her emotional development." "Even in the face of threats, the [G.] Family never speaks ill of the Mother or the Father to the Child." Because Mr. and Mrs. G. "love the Child" and "provide stability for" her, and because the Child "wants to stay with" them and "asks regularly when she will be adopted[,]" permanently joining their family would give her "an opportunity to grow up with a stable, loving family in an environment that is fit for a young person to thrive." Conversely, if Mother had custody and care, "the effect would be exceptionally detrimental to the Child" given that Mother's mental health instabilities significantly impair her parenting abilities.

Considering the totality of these circumstances, the court concluded that "the Child knows safety, security, and stability" in her current placement with the G. Family, whereas she would be returned to "an environment of abuse, neglect, and instability" if returned to Mother. The court, after acknowledging "Mother's constitutional right to parent her child," further determined that "the best interest of the Child" is to be adopted by Mr. and Mrs. G. and that "outweighs the Mother's right to parent[.]"

FAMILY LAW FRAMEWORK GOVERNING TERMINATION OF PARENTAL RIGHTS

When determining whether parental rights should be terminated, a juvenile court's "paramount consideration" must be the best interests of the child. *See In re Jayden G.*, 433 Md. 50, 82 (2013); *In re Adoption of K'Amora K.*, 218 Md. App. 287, 302 (2014). Because "[p]arents 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[,]'" there is a "'presumption that the interest of the child is best served by maintaining the parental relationship[.]'" *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 48, 50 (2019) (quoting *Troxel v. Granville*, 530 U.S. 57, 66, 120 S. Ct. 2054 (2000) and *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 498 (2007)). Yet that presumption is weighed "against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect." *In re Rashawn H.*, 402 Md. at 497. Consequently, the presumption in favor of the parental right "is not absolute" and "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 Rashawn H.*, 402 Md. at 495. *See* Md. Code, § 5-323(b) of the Family Law Article ("FL").

In such cases, "[w]hen 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.* The primary purpose of such a petition is for the Department to "'re-transfer to an adoptive family, the parental rights that emanate from that relationship.'" *In re Jayden G.,* 433 Md. at 56 (quoting *In re Rashawn H.*, 402 Md. at 496).

Implementing these principles, FL § 5-323(d) provides that, "in 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[.]" Courts are authorized to terminate parental rights without consent only after making specific factual findings regarding the factors enumerated in FL § 5-323(d)(1)-(4).[1] *See In re Adoption/Guardianship of C.A. and D.A.*, 234 Md. App. 30, 48 (2017). The four categories of factors that the juvenile court "must specifically examine and consider," *In re C.E.*, 464 Md. at 53, include factors concerning (1) the nature and number of services offered and accepted by the parent, (2) "the results" of all efforts made by the parent to reunify with the child, (3) the parent's history of abusing or neglecting any child, and (4) the child's

[1] FL § 5-323(b) provides:

> 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 a 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.

well-being, including the child's ties to the parent and adjustment to the child's current placement.[2]

[2] Specifically, with exemptions not relevant here, under FL § 5-323(d), the juvenile court must consider all of the following factors:

(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 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;

(3) whether:

(continued . . .)

"In addition to statutory factors, courts may consider such parental characteristics as age, stability, and the capacity and interest of a parent to provide for the emotional, social, moral, material, and educational needs of the child." *In re Adoption/Guardianship*

(i) the parent has abused or neglected the child or a minor and the seriousness of the abuse or neglect; . . .

(iii) the parent subjected the child to:

1. chronic abuse;

2. chronic and life-threatening neglect . . .

(iv) the parent has been convicted, in any state or any court of the United States, of:

1. a crime of violence against: . . .

C. another parent of the child . . . ; or

(v) the parent has involuntarily lost parental rights to a sibling of the child; and

(4)(i) the child's emotional ties with and feelings toward the child's parents . . . ;

(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 wellbeing.

of H.W., 460 Md. 201, 220 (2018) (quotation marks and citation omitted). Other factors that may be relevant to a determination of exceptional circumstances

> include: the length of time that the child has been with [her] adoptive parents; the strength of the bond between the child and the adoptive parent; the relative stability of the child's future with the parent; the age of the child at placement; the emotional effect of the adoption on the child; the effect on the child's stability of maintaining the parental relationship; whether the parent abandoned or failed to support or visit with the child; and, the behavior and character of the parent, including the parent's stability with regard to employment, housing, and compliance with the law.

In re C.A. & D.A., 234 Md. App. at 50 (citing *In re Adoption/Guardianship No. A91-71A*, 334 Md. 358, 562-64 (1994)).

"Ultimately," consideration of these factors is designed 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)). "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.

On appeal, this Court reviews an order terminating parental rights under three "interrelated standards": clear error review of the underlying factual findings, *de novo* review of legal conclusions regarding unfitness and exceptional circumstances, and abuse of discretion review of the ultimate decision to terminate under the best interests standard. *See In re C.E.*, 464 Md. at 47-48; *In re H.W.*, 460 Md. at 214. These standards reflect that "[i]n reviewing whether the juvenile court abused its discretion, we are aware that juvenile

courts must apply a statutory termination of parental rights directive to factual scenarios that are far from clear[,]" so that "'to be reversed the decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.'" *In re C.E.*, 464 Md. at 48 (quoting *In re Adoption/Guardianship of Cadence B.*, 417 Md. 146, 155-56 (2010)).

DISCUSSION

Mother does not dispute that the juvenile court applied the correct legal standards generally and considered all of the statutory factors specifically. Nor does she contend that the court's factual findings are clearly erroneous. Instead, she argues that the court (1) abused its discretion by relying on Dr. Martin's 2014 mental health evaluation rather than requiring an updated evaluation and recommendation, and (2) erred by improperly focusing on whether returning the Child to Mother's custody would be in the Child's best interest, rather than on whether continuing the parental relationship would be in the Child's best interest.

The Department and the Child respond that the record does not support either of Mother's contentions. Arguing that the juvenile court properly focused on evidence regarding Mother's past, current, and prospective unfitness to parent the Child given her mental health history, they point to Dr. Martin's hearing testimony and other undisputed evidence that Mother refuses the medication and therapy that is essential to stabilizing her mental health and eliminating the aggressive behaviors that endanger the Child.

We conclude that the juvenile court did not err or abuse its discretion in terminating Mother's parental rights. Specifically, we agree with the Department and the Child that

the decision to terminate was not improperly predicated on either an outdated mental health evaluation or an inappropriate standard for obtaining custody.

In determining that Mother is an unfit parent and that exceptional circumstances exist warranting termination of her parental rights, the court relied on all of the evidence presented at the contested hearing. This included extensive documentation, summarized above, and hearing testimony regarding Mother's continuing instability as a result of her noncompliance with medication and therapy that are essential to managing her mental health.

In addition to Dr. Martin's 2014 evaluation, the juvenile court considered Dr. Martin's testimony that Mother's diagnosed disorders "are generally considered chronic and persistent or stable diagnoses." In particular, Dr. Martin explained that bipolar disorder is "a chronic and persistent illness" characterized by symptoms that "may wax and wane, ranging from periods of manic symptoms, periods of relatively stable mood and periods of depression, but that pattern or waxing and waning of mania and depression does not go away." Successful treatment of this disorder would not eliminate such moods, she testified, but would "stabilize" them. That "is why," to effectively treat this disorder, "it's so critical that people with bipolar disorder participate consistently in mental health treatment" and "take medication consistently[.]"

Similarly, Dr. Martin testified, Mother's antisocial personality disorder is also chronic, characterized by "a pattern of behavior that begins in adolescence . . . often, sort of a criminality frequently, a disrespect for . . . typical social rules, a willingness to be deceitful, aggressive, manipulative, often quite impulsive" with "a lack of remorse" and

responsibility. Younger adults with this disorder may engage in criminal behavior and use a "threatening posture to get what they want with a sort of lack of recognition or respect about how other people might feel[.]"

Although Mother's reading and language disorders may be treated and managed, they also are persistent characteristics involving "sort of fundamental wiring" that affects her ability to learn.

The juvenile court credited Dr. Martin's unrefuted testimony and evidence from the Department that showed that since early 2019, Mother has refused both medication and therapy, which in turn has seriously affected her ability to provide for and parent the Child. Mother's case manager for her housing program reported to the Department in July 2019 that after Mother stopped taking her psychotropic medication, she adversely changed from the "very cooperative" person she had been initially. Mother had "anger management issues," was unemployed, had past due utility bills, and had been denied Supplemental Security Income benefits three times.

Dr. Martin and the Department agreed that Mother's unmanaged mental health disorders are a significant factor in her unstable moods, past hospitalizations, and "crazy" behavior that included snapping and yelling at the Child in a manner that frightened her. Mother's aggressive behavior toward Father, the Child's school, the G. Family, Dr. Martin, Ms. Jordan, and the Department, have all contributed to her recurrent inability 'to provide a safe and stable environment for" the Child. Ms. Jordan, testifying as an expert in social work, opined that Mother's aggression, unstable moods, "ongoing" criminal conduct, and

non-compliance with medication, therapy, and drug-screening, have caused the Child to be "fearful" of Mother and prevent Mother from safely resuming custody or care.

In addition, Mother's failure to visit the Child since November 2019 and her inability to be appropriate in conversations with the Child set back their relationship, so that if Mother were to be reintroduced after resuming her medication and therapy, still "it would be a very, very long process[.]" In the meantime, Ms. Jordan pointed out, "[t]his case has been going on since 2014, and at this point, [the Child] really needs to have stability where she is and . . . the permanency that she has with the [G.] family."

In its extensive memorandum opinion, the court thoroughly considered the evidentiary record in light of each one of the required statutory factors. Emphasizing that the Child has been a CINA for most of her life, the court recognized that for much of that time, Mother has been mentally unstable, leaving the Child to grow up in her kinship placement with Mr. and Mrs. G., her paternal great-aunt and -uncle.

When the first CINA adjudication occurred in March 2014, the Child had been hospitalized at five weeks, following a life-threatening incident that occurred while she was in Father's care. As we have detailed, although the Child was briefly removed and sheltered by the Department, thereafter she remained in her Mother's care subject to a service agreement that, among other things, called for a mental health evaluation and treatment as recommended. Following Dr. Martin's psychological evaluation in 2014, which recounted Mother's long history of psychiatric hospitalizations for her chronic mental disorders, Mother was again prescribed and provided psychotropic medication and

individual therapy. As a condition of reunification and termination of the CINA case, Mother agreed to follow those recommendations for medication and therapy.

Yet within days of that first CINA case closing, Mother sought emergency mental health and housing assistance, admitting she did not comply with those requirements. On July 24, 2015, when the Child was 17 months old, Mother was not taking her medication or engaging in therapy. In addition to missing appointments for herself, she had missed multiple pediatric services appointments for the Child.

As a result of Mother's mental health and housing crises, the Child was removed from Mother for a second and much longer period, during which the Child began to bond with her Father's aunt and uncle, Mr. and Mrs. G., whom she calls Aunt So and Pop-pop. After the Child initially was placed in foster care, she was moved into kinship care with the G. Family at their Hampton, Virginia home. She remained in their care through significant portions of her toddler and preschool years.

By the time she was reunited with Mother in March 2018, the Child was four years old. After her second CINA case was closed in July 2018, however, Mother again became mentally unstable. According to Department reports presented to the juvenile court, by February or March 2019, Mother was refusing medication and therapy, causing her mental health to deteriorate sharply.

In September 2019, the Child was removed for a third time, following Mother's arrest for a violent altercation with Father and damage to his place of business. After her third CINA adjudication, the Child again was placed with Mr. and Mrs. G, where she has remained since November 3, 2019. By the time of the termination hearing in May 2021,

the Child was seven years old and had lived with the G. Family for 17 months during her initial placement and for more than 18 months during her subsequent placement.

As the Department points out, Mother's behaviors following her initial psychological evaluation were "consistent with and indicative of the very diagnoses that Dr. Martin rendered in 2014." Nearly seven years later, Dr. Martin explained at the 2021 termination hearing that Mother's chronic mental health disorders, when untreated, have manifested themselves in manic behavior, physical and verbal aggressions, criminal charges, and, ultimately, her inability to safely maintain a parental relationship with the Child.

In addition to Dr. Martin's 2014 evaluation, the juvenile court appropriately considered Dr. Martin's hearing testimony and other evidence of Mother's problematic behavior, including Mother's threats to "shoot up" the Child's school, her manic and aggressive behaviors, and her involuntary hospitalizations for psychiatric treatment. The juvenile court credited the substantial evidence, cited by Dr. Martin, the Department, and the Child, that although Mother will need lifelong medication, therapy, and community support, she has refused such resources and, as a result, regressed in her ability to maintain a parental relationship with the Child.

In contrast to Mother's stable and appropriate behavior while she was complying with medication and therapy programs in a successful effort to be reunited with the Child in March 2018, Mother's aggressive and erratic behavior caused the Child to be returned to the G. Family in November 2019 and has led to new restrictions on her access to the

Child through her caregivers, Mr. and Mrs. G., and to limitations on the services available from Ms. Jordan and Dr. Martin.

At the hearing, the court heard testimony and received corroborating evidence about Mother's angry, accusatory, profane, and disorganized statements, as well as the harmful consequences of those statements on her relationship with the Child. Mr. and Mrs. G. recounted the manic, abusive, and threatening phone messages Mother began to leave them, featuring racist remarks and threats to shoot Mrs. G. After blocking Mother's frequent calls and obtaining a No Contact order prohibiting her from communicating directly with them, the G. Family no longer facilitated visits or phone calls between the Child and Mother.

Dr. Martin testified about a July 6, 2020, phone call and voicemail message, in which Mother's comments made the psychologist decide that she could not safely evaluate Mother without someone else present. That was the reason that Dr. Martin did not complete an updated evaluation before the termination hearing.

Likewise, Ms. Jordan detailed Mother's abusive messages to her, her co-workers and family, and to Mr. and Mrs. G., which included racial slurs and other epithets, as well as threats of using a gun, and incoherent statements. These behaviors happened "as recently as April 19, 2021." As a result of her inappropriate conduct, Mother's communication with the individuals who monitored her relationship with the Child was restricted, either by court order in the case of the G. Family or by screening and safety measures implemented by Dr. Martin, Ms. Jordan, and the Department.

The juvenile court also considered evidence that Mother's inappropriate behavior diminished the Child's bond with Mother, while increasing the Child's desire to be adopted by Mr. and Mrs. G. Although the Department offered in-person and video visits for Mother, she did not make regular trips before the pandemic, and once social distancing was enforced because of the pandemic, Mother was unable to download the software necessary for video visits. By the May 2021 termination hearing, Mother and the Child had no recent contact.

Meanwhile, during Mother's absence, the Child thrived with the G. Family. Both Mr. and Mrs. G. testified at the hearing that the Child is an integral member of their extended household, which includes the G.'s four adult children and two grandchildren who are closer to the Child's age. Counsel for the Child confirmed at the hearing that she was doing well in first grade, enjoying loving relationships with her relatives in the G. Family, and frequently asking for Mr. and Mrs. G. to adopt her.

Based on this substantial evidence, encompassing far more than Dr. Martin's 2014 evaluation, the court reasonably concluded that Mother's inappropriate behavior while refusing medication and therapy makes it unsafe for the Child to be in her custody or care. The court recognized that Mother's untreated mental health problems contribute to her documented episodes of aggressive behavior, including her threats of violence against the Child's school, the G. family, Dr. Martin, the Department, and its social workers.

Considering the totality of the evidence, the court concluded that since Dr. Martin's 2014 evaluation, Mother had made no sustained progress toward addressing the mental health issues that make her unfit to have custody or care of the Child. In turn, Mother's

decreased interaction with the Child had weakened her parental bond, just as the Child's bonds with the G. Family had strengthened. As a result of Mother's failure to stabilize her mental health, the Child thriving in the G. household, and the Child's desire to be adopted by Mr. and Mrs. G., the court granted the Department's petition to terminate Mother's parental rights and to authorize the Department to consent to relative adoption.

In its memorandum opinion, the court expressly found

> by clear and convincing evidence that the Mother is unfit to remain in a parental relationship with the Child and 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 parental rights of the Mother is in the Child's best interest.

The court explained that "Mother has severe mental health issues that she does not manage effectively[,]" resulting in a life "filled with long periods of instability and erratic, threatening behavior, which endangers the Mother and those around her. Such an environment is one that is unfit in which to parent a child." Moreover, the length of time that the Child has been with the G. Family, who are "blood-relation" and provide "a safe home and stable environment" with the "opportunity to grow up with a stable, loving family" created exceptional circumstances warranting permanency with the G. Family. Given the history of Mother's instability and neglect, the court determined that the Child's best interest in a permanent home outweighs Mother's parental rights.

Based on this record, we are not persuaded that the juvenile court abused its discretion by relying on the 2014 evaluation by Dr. Martin, rather than awaiting a new evaluation. Given the chronic nature of Mother's mental health diagnoses, and the wealth of still-relevant information in that report, it was not so outdated or stale that no court could

have reasonably relied on it in evaluating Mother's current and prospective fitness to parent the Child. Moreover, that report was only part of the extensive evidence considered by the court, which included documentation and testimony from several witness, including Dr. Martin, who described Mother's recent behavior and persistent mental health challenges.

We also conclude that the juvenile court did not erroneously predicate its decision to terminate Mother's parental rights on its conclusion that Mother is not fit to have custody of the Child. To be sure, the court made that finding, given Mother's long periods of instability, despite three removals and CINA adjudications, during which Mother was offered but ultimately rejected remedial services that included mental health treatment and support. Yet the court also focused on the harmful consequences to the Child from Mother's failure to stabilize her chronic mental health disorders – including repeated removals from Mother under emergency circumstances that presented a danger to the Child, diminished contacts with Mother, and prolonged uncertainty that necessarily accompanies the possibility that the Child again could be uprooted from the G. home where she has been thriving.

The permanency factor was an appropriate best interest consideration to weigh against Mother's parental rights. As the juvenile court pointed out, the Child has lived most of her life with the G. Family, with whom she has a loving and stable home. This Court recently reemphasized that "[o]ur CINA system is designed to be temporary because 'a child should have permanency in his or her life.'" *In re M.*, 251 Md. App. 86, 254 A.3d 1, 24 (2021) (quoting *In re Jayden G.*, 433 Md. at 84). Both the General Assembly and the Court of Appeals have recognized that lack of permanency may be detrimental to a CINA,

so that juvenile courts must make "[e]very reasonable effort . . . to effectuate a permanent placement for the child within 24 months after the date of the initial placement." Md. Code, § 3-823(h)(4) of the Courts & Judicial Proceedings Article; *see In re M.*, 254 A.3d at 24. This public policy acknowledges that "emotional commitment and a sense of permanency" are "absolutely necessary to a healthy psychological and physical development." *In re Adoption of Jayden B.*, 433 Md. 50, 84 (2013).

Moreover, juvenile courts can and should evaluate a request to terminate parental rights in order to achieve permanency from the child's perspective.

> As reflected in the statutory factors that the court must consider, permanency planning requires examination of "the child's actual lived experience in the world" by considering "the child's point of view, valuing the child's current emotional attachments, recognizing that time has an effect on the child, and recognizing that removing a child from a placement where the child has formed emotional attachments can cause 'potential emotional, developmental, and educational harm to the child[.]'" Richard A. Perry, *Relative Preference, Emotional Attachments, and the Best Interest of the Child in Need of Assistance*, 50 U. Balt. L.F. 83, 106-07 (2020).
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> "The valid premise is that it is in the child's best interest to be placed in a permanent home and to spend as little time as possible in" the custody of the Department. *See In re Jayden G.*, 433 Md. at 84. That "means having 'constant, loving parents,' knowing 'that their homes will always be their home; that their brothers and sisters will always be near; and that their neighborhoods and schools are familiar places.'" *Id*. at 82-83.

In re M., 254 A.3d at 24-25.

The Child's current placement with Mr. and Mrs. G. offers her such constancy and permanency. During the Child's two extended periods of kinship care, she has stayed with the G. Family past the statutory 18-month and 24-month benchmarks for effectuating a permanent placement. Meanwhile, Mother's parenting instability, like her mental

disorders, has waxed and waned, creating an unstable environment that is not in the Child's best interest.

Ultimately, the considerable time and resources Mother has been offered through the Department have not remedied her unfitness to parent the Child or negated the exceptional circumstances warranting termination of her parental rights. Based on this record, we reject Mother's complaint that the juvenile court erroneously predicated its decision to terminate her parental rights on her unfitness to have custody, rather than on the best interests of the Child.

Finally, to the extent Mother is suggesting that the court should have awarded permanent guardianship to the G. Family while preserving her right to maintain a parental relationship with the Child, we conclude that neither the law, nor the record supports that position. As discussed, the statute authorizes termination of parental rights based on a finding of either unfitness to parent or exceptional circumstances. Here, the court found that both predicates for termination apply, and the record reviewed above supports that determination.

These dual bases for terminating Mother's parental rights distinguish this case from a permanent guardianship case in which parental rights are not terminated, like the one we recently affirmed in *In re M.* In contrast to this case, that juvenile court found the parent fit to maintain his parental relationship, even though it was in his daughter's best interest to close the lengthy CINA case and award permanent guardianship to a family member with whom that child had lived nearly all of her life. *See id.*, 254 A.3d at 23 ("The juvenile

court made clear that Father is not an unfit parent, . . . and that he made efforts and progress toward that goal.").

Here, in contrast, clear and convincing evidence established that Mother has been and is likely to remain unfit to maintain her parental relationship with the Child. Having failed to benefit from the substantial services and resources she has been offered, Mother's mental health has not stabilized over the six plus years since the Child first became a CINA as a newborn.

CONCLUSION

The juvenile court did not abuse its discretion by relying on Dr. Martin's 2014 evaluation of Mother as part of the broad evidentiary record. Moreover, given Mother's persistent refusal to accept medication, therapy, and other resources for stabilizing her mental health to the point that she could maintain a positive parental relationship with the Child, the juvenile court did not err in terminating her rights on the ground that she has been unfit to parent the Child and is not likely to become fit to do so in the foreseeable future. Nor did the court err in determining that Mother's unfitness, when considered in light of the undisputed evidence that for much of her life, the Child has been thriving in a stable home of relatives who want to adopt her, constitutes extraordinary circumstances in which terminating Mother's parental relationship and authorizing relative adoption is in the Child's best interest. *See* FL § 5-323(b).

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