Circuit Court for Baltimore City
Case No. T22060005

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 552

September Term, 2023

IN RE: D.O.

Leahy,
Beachley,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: January 18, 2024

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On April 25, 2023, the Circuit Court for Baltimore City terminated the parental rights of Ms. D. in relation to her youngest child, D.O. Ms. D. appeals from that decision, and presents three questions for our review, which we have consolidated to a single question[1]:

Did the court err in terminating Ms. D.'s parental rights?

For the reasons set forth below, we hold that the court erred. We therefore vacate and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

D.O. was born in May 2016, with numerous medical problems, most notably: congenital heart disease, dextrocardia (his heart points to the right instead of the left), situs inversus totalis (his abdominal organs are on the opposite sides of his body), spleen malfunction, and primary ciliary dyskinesia (the small hair-like structures in his respiratory tract do not function, causing a build-up of mucus). These medical issues cause him to have breathing problems, heart problems, be more prone to illnesses, and less able to fight infections. D.O. has needed to use a gastrostomy tube ("g-tube") for feeding and

[1] Ms. D. presented the following questions:

1. Did the court erroneously find that DSS made adequate efforts to reunify D.O. and mother, warranting reversal of the TPR?

2. Did the court erroneously find, and was the evidence insufficient to support, that mother was unfit, exceptional circumstances applied, and TPR was in D.O.'s best interests?

3. Did the court make inadequate clear and specific findings supporting TPR?

medications, and was oxygen-dependent at one point. While he still has a g-tube and a prescription for oxygen, both are rarely used. For the first three years of his life, he was frequently hospitalized and required close monitoring for breathing problems. D.O. has had three heart surgeries and was awaiting a fourth, and final, heart surgery at the time of the TPR hearing. It is anticipated that the g-tube will be removed after that surgery.

Ms. D. tested positive for cannabis at D.O.'s birth and admitted that she had not received prenatal care during her pregnancy. D.O., however, did not test positive for cannabis at birth. D.O. was placed in foster care eight days after his birth, although he remained in the NICU for a period of time after placement. The decision to remove him from Ms. D.'s care was based on his medical fragility, exposure to cannabis, and lack of prenatal care, as well as Ms. D.'s unstable housing and history of domestic violence with D.O.'s father, Mr. O.[2] After being discharged from the hospital, D.O. was placed in the care of foster parents Mr. and Mrs. M., and continues to reside with them to this day. The parties stipulated that D.O. "has done well" in the foster home.

Because D.O. has been in foster care for seven years, we shall provide a brief overview of the more notable court orders during his time in care. D.O. was determined to be a child in need of assistance ("CINA") [3] on February 13, 2017. The initial permanency

[2] Mr. O. was deemed to have consented to TPR after failing to note an objection. He is not a party to this appeal.

[3] A CINA is "a child who requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child's parents, guardian, or custodian are unable or unwilling to give proper (continued)

plan for D.O. was reunification with Ms. D. She was granted unsupervised visitation with D.O. on February 13, 2017, but an order on March 10, 2017, imposed a condition that "unsupervised visitation is subject to medical clearance."[4] Although Ms. D. completed medical training in 2017 and 2019, she was never provided unsupervised visitation, and in March of 2019, the court ordered that her visitation "shall remain supervised." Her visitation has remained supervised since that time. On May 28, 2019, the court ordered that Ms. D. "shall be given advance notice of all medical appointments and may attend." On December 17, 2019, the court ordered that a bonding assessment be performed, and it supplemented that order on February 5 and 11, 2020, requiring that a "therapeutic assessment" be conducted concerning D.O.'s separation anxiety, and that the doctor performing the bonding assessment be made aware that Mrs. M. had been "sitting in with mother's visits for the last 3 years." On September 16, 2020, the court again ordered that a bonding assessment be performed. For reasons we shall discuss later in this opinion, no bonding assessment was ever performed for Ms. D., although a bonding assessment was performed for the foster parents.

On February 5, 2020, the permanency plan changed from reunification to a concurrent plan of reunification with Ms. D. and adoption by a third party. The permanency plan changed again on December 22, 2020, to adoption by a third party. On

care and attention to the child and the child's needs." Md. Code (1974, 2020 Repl. Vol.), § 3-801(f) of the Courts and Judicial Proceedings Article.

[4] The record does not disclose what Ms. D. needed to do to obtain "medical clearance."

March 29, 2021, the court struck the December 22, 2020 order, effectively returning the permanency plan to a concurrent plan of reunification and adoption. On July 26, 2021, the court again changed the permanency plan to adoption by a third party. The Department of Social Services ("DSS" or the "Department") filed a petition for TPR on March 9, 2022.

A TPR hearing was held over seven days between February 28, 2023, and April 25, 2023. Numerous witnesses, including two experts, testified, and over eighty documents were admitted into evidence. Among the documents were court orders from the CINA case, three service agreements, parental fitness and bonding evaluations for the foster parents, a parental fitness evaluation for Ms. D., and contact notes authored by DSS workers.

MS. D.'S TESTIMONY

Ms. D. has a total of eight children, six of whom live with her. Some of her children are adults, but she has two young children close to D.O.'s age who have lived with her since April 2019. Three of her children (one now an adult) were removed from her care at the same time as D.O. Those children were returned to her care in April 2019. She testified that she frequently brings her two young children with her to visit D.O.

Ms. D. testified that her visits with D.O. have been supervised for the entirety of the time that he has been in foster care. Prior to her other children being returned to her care, Ms. D. asked for unsupervised visitation with D.O., which was rejected without explanation. She testified that, when the court granted her unsupervised visitation with D.O. in 2017, DSS did not allow her to have unsupervised visits. When the court changed

the order to unsupervised visitation "subject to medical clearance," DSS did not do anything to help her get medical clearance. However, Ms. D. also admitted that she did not talk to the caseworker or any medical professionals about medical clearance.

Visitation with D.O. started in September 2016, supervised by DSS, and Mentor Maryland[5] took over supervising the visits in January 2017. When Ms. D. asked DSS if some visits could occur at places other than the Mentor Maryland office, she was told "because of [her] visitation situation with [D.O.], it wasn't allowed." Initially, according to Ms. D., the visits were scheduled every two weeks for one hour. For approximately a year before the TPR hearing, the visits had been occurring monthly. Ms. D. asserted that she has no input in selecting the time of the visitation, although she does have input on what day visitation occurs.

D.O.'s foster mother, Mrs. M., transported D.O. to visits with Ms. D. Ms. D. testified that, although she is scheduled to have one-hour visits, Mrs. M. was a half hour late bringing D.O. to the October 2022 visit, had been late "the last four, five visits," and Ms. D. was not given any additional time with D.O. Prior to June 2022, Mrs. M. brought D.O. on time. Ms. D. informed the caseworker about Mrs. M.'s tardiness, and the caseworker told Ms. D. "she would speak to the foster mom and rectify it." Mrs. M. was on time for the March 2023 visit.

[5] Mentor Maryland is an organization that provides numerous services, including facilitating the placement and monitoring of medically fragile children in foster homes. *Medically Fragile Foster Care*, MENTOR MARYLAND, https://www.md-mentor.com/youth-and-families-services/medically-fragile-foster-care (last visited Jan. 9, 2024).

Between April 2020 and "[s]ometime in 2022," her visits with D.O. were over Zoom. Ms. D. testified that the quality of the Zoom visits was "not good" because the visits would sometimes take place while Mrs. M. was driving or shopping with D.O. At other times, D.O. would be distracted during visits because there were other people around.

Ms. D. did not schedule any visits with D.O. for the months of November 2022 through January 2023 because she had seasonal employment with UPS that "didn't allow [her] the time off to be able to do the visit." She testified that she was placed "on call" at UPS, meaning she "pretty much [had] to wait for a text message telling [her] where and what time [she] had to be there," and her hours usually started after 1:00 p.m. and ended after 6:00 p.m. Visits at that time could not start before 5:00 p.m. because DSS would not allow D.O. to be picked up from school early for the visits.[6] She raised the issue with DSS, and "was trying to make it work, but the schedule just wasn't going to be able to do it." She informed the caseworker that as soon as her "on call" status ended, she would be able to restart visits. Although a visit was scheduled for February 2023, Ms. D. asked to reschedule that visit because she was sick. Thus, her last visit with D.O. before the start of the hearing was four months prior, in October 2022.

Shortly after D.O.'s birth, Ms. D. was referred to a drug treatment program. She testified that she attended the program, but was determined not to be in need of services because she did not meet "the qualifications of an addict." DSS did not ask Ms. D. to

[6] There was never any evidence concerning the possibility of weekend visitation.

submit to drug testing. Although DSS did not require Ms. D. to engage in mental health treatment, Ms. D. began therapy on her own in 2016 after someone at the drug treatment program suggested it. The parties stipulated that Ms. D. is currently in therapy. Ms. D. received medical training in 2017 and 2019 concerning D.O.'s medications and use of the g-tube and oxygen. She was told by a caseworker that those two trainings were "the only medical training [she] would receive," and she has not been asked to update her training. She believes that she would be able to recognize when D.O. is getting sick. Ms. D. was referred to and completed parenting classes in September 2016; DSS has not asked her to complete further parenting classes. She obtained housing through a DSS program in April 2019 and has remained in the same house since that time. When Ms. D. asked the caseworker what more she needed to do to have D.O. returned to her care, the caseworker told her, "There was nothing [Ms. D.] had to complete. Everything had been completed."

Ms. D. provided testimony concerning a bonding evaluation scheduled for her and D.O. in February 2020. That bonding study did not occur because D.O. "was very agitated" and Ms. D. believed it was best not to risk increasing his stress levels because of his health conditions. The decision not to do the bonding evaluation was a joint decision between Ms. D. and the assigned evaluator, Dr. Ruth Zajdel. Ms. D. testified, "we came to an understanding that we would just try and come back and do it another time[,]" but the evaluation could not be rescheduled due to Covid-19.

Ms. D. testified that, although Mrs. M. was supposed to provide Ms. D. with information about D.O.'s medical appointments, Mrs. M. consistently gave her the

incorrect time for appointments. Ms. D. received no response from DSS when she raised the issue. Consequently, Ms. D. has not attended any of D.O.'s medical appointments. However, Ms. D. was informed each time D.O. was hospitalized. Ms. D. would visit him at the hospital "[a]s much as [she] possibly could," usually staying three or four hours, and once staying at the hospital overnight. She admitted that she did not obtain contact information from any of D.O.'s doctors at the hospital, and did not ask them about follow-up appointments.

Ms. D. confirmed that D.O. did not test positive for cannabis when he was born, and that she did not test positive for any substances other than cannabis.

MRS. M'S TESTIMONY

Mrs. M. testified concerning D.O.'s health that "the last couple of years he's been doing very well." In the past, when D.O. would get a cold, his breathing problems sometimes required him to be hospitalized, but recently he has only gotten "minor" colds that last three days. Some of the signs Mrs. M. looks for when D.O. gets sick include behavior changes such as being "a little cranky" or "sleep[ing] a lot." D.O. is no longer being fed using the g-tube, but his doctors "plan on keeping that until he ha[s] his last heart surgery," which she anticipated being scheduled in the summer of 2023. Mrs. M. testified that D.O. has had three prior heart surgeries, and has "been in and out of the hospital at least 17 times," although he has not been hospitalized for an illness since 2017. Ms. D. visited D.O. several times for three or four hours each time he was in the hospital. Mrs.

M. confirmed that D.O. had not used oxygen "in a long time" and has "been doing well with his breathing."

D.O. routinely has appointments with a cardiologist every six months, a pulmonologist and geneticist once per year, and a gastroenterologist periodically to monitor his g-tube. Mrs. M. testified that Ms. D. has rarely attended D.O.'s appointments, but when asked if Ms. D. was informed of the appointments, Mrs. M. responded: "No. I don't think so. I'm not for sure." She testified that she was never asked to keep Ms. D. informed about D.O.'s appointments.

According to Mrs. M., D.O. is doing well in school, and has "a whole bunch of friends" both at school and in her neighborhood. He spends over an hour on most days "running around playing" outside. Mrs. M. testified that, when D.O. first started going to school, he tried to use his foster parents' last name.

Concerning D.O.'s visitation with Ms. D., Mrs. M. testified that the visits had been weekly, but were changed to monthly because the weekly visits "didn't happen." Visitation with Ms. D. was "frequent at one time and then she just dropped off." Mrs. M. testified that she is sometimes five or ten minutes late getting D.O. to the visits because of traffic. When she is late, visit times are not extended, but she does not know why. Mrs. M. testified that, in 2021, Ms. D. attended visits with D.O. "frequently," or "half the time," but "some months she came every week." At one point, D.O. would routinely cry during visits with Ms. D. when Mrs. M. left the room, but "now he's used to going to do his visit because he said he's going to see his brother[] and sister." Mrs. M. sat in on visits when D.O. "was

real small" because "[t]hat's how they had it set up," but "it's been a long time" since she last sat in on a visit. She estimated that she stopped sitting in on the visits when D.O. was three years old. It took D.O. "a couple months or more" to stop crying during visits when Mrs. M. was not present. When D.O. does not get a chance to visit with Ms. D., "he doesn't mention it." Additionally, Mrs. M. reported being unaware of D.O. having any attachment to his siblings.

DR. RUTH ZAJDEL'S TESTIMONY

The Department called Dr. Ruth Zajdel as an expert in bonding and parental fitness. As a psychologist for the Circuit Court for Baltimore City, Dr. Zajdel was tasked with conducting parental fitness and bonding evaluations for the foster parents and Ms. D. She testified that the foster parents are "parentally fit," and that D.O. is "securely bonded to both" foster parents.

Although a bonding evaluation with Ms. D. and D.O. was scheduled in February 2020, Dr. Zajdel did not conduct the evaluation because D.O. refused to go to the room where the evaluation was to be conducted. Dr. Zajdel described the incident:

> When it was time for the bonding evaluation to begin, [D.O.] was initially very excited to see his Mom and happy to see her, went to her, spoke to her. When it was time to go . . . from the waiting area to the toy room with myself, [D.O.], and his biological mom, he refused to go. And he got very, very upset to the point where we decided . . . we were not going to be able to do the bonding evaluation.
>
> . . .
>
> [Ms. D.] was not interested in participating. She was fairly argumentative. She did not help comfort [D.O.] when he became upset. I asked her to try to

> encourage him to come back for the bonding evaluation. She declined my offer.

The bonding evaluation was rescheduled, but cancelled when the courts closed due to Covid-19. Dr. Zajdel testified that, by the time her office began conducting bonding evaluations again, the deadline set in the order for the bonding evaluation had passed. Consequently, a bonding evaluation was never completed for Ms. D. and D.O.

Ms. D.'s parental fitness evaluation was scheduled to be conducted in March 2020, but was also postponed due to Covid-19. Dr. Zajdel was able to interview Ms. D. for the evaluation through teleconferencing in August 2020. During that evaluation, Dr. Zajdel "noted a complete change in [Ms. D.'s] demeanor. She was much more willing to engage with me. She was cooperative with the process." Ms. D. reported in the interview that, between February and August 2020, she had gotten out of an abusive relationship and started therapy. Dr. Zajdel testified that Ms. D. raised several concerns with her during the August 2020 interview, including Mrs. M. being present during visitation, and Ms. D. not being informed of D.O.'s medical appointments.

Dr. Zajdel testified concerning the need for children to form secure attachments to their caregivers, and that a caregiver may foster such an attachment by being "reliably and consistently available to the child's needs," understanding the child's "cues" regarding their physical and emotional needs, and knowing how to fill those needs. When asked whether a foster parent's presence during visitation could impact bonding between the parent and child, Dr. Zajdel could not say whether it might have a positive or negative impact. She opined that visitation more frequent than every two weeks might not be needed

to form a parent-child bond because "[e]very individual child is different in this process." Rather, the important thing is that visitation is "consistent and reliably occurring."

Dr. Zajdel's written reports for both parental fitness evaluations and the foster parents' bonding evaluation were admitted into evidence. These documents reflect that D.O. is securely bonded to his foster parents. Mrs. M. reported to Dr. Zajdel that Ms. D. "did not attempt to contact [D.O.] for almost two years after the child was born and only requested visitation after the termination process began." In her September 2, 2020 report on Ms. D.'s parental fitness, Dr. Zajdel stated that Ms. D. was "more emotionally stable, cooperative to the evaluation process, and less argumentative" than when she met Dr. Zajdel in February 2020. Ms. D. "shared that she has been actively engaged in weekly individual therapy sessions" which have been helpful, and she ended contact with Mr. O., who was physically and verbally abusive toward her. Dr. Zajdel noted that Ms. D. "appeared to have a fairly accurate understanding of all of [D.O.'s] medical issues and special needs." She believed that D.O. could form a secure attachment to Ms. D. "given the right circumstances." She provided the following suggestions:

> With support, [D.O.] can be encouraged to spend meaningful time with [Ms. D.], who now appears to be more capable of appropriately caring for her son than she has in the past. [D.O.'s] exposure to [Ms. D.] and separation from [Mrs. M.] should happen gradually. For example, [D.O.] should practice being apart from [Mrs. M.] in his home or other familiar locations for short periods of time and that time should gradually increase. Likewise, [D.O.] should be exposed to time spent with [Ms. D.] without [Mrs. M.] present for only short periods of time, at first, and should then gradually increase as he feels more comfortable. There are other behavioral techniques that can also be utilized to help decrease [D.O.'s] separation anxiety, such as creating reliable routines surrounding visits so the child knows what to expect and offering the child transitional objects that help comfort him.

> Given [D.O.'s] complex medical needs, it is recommended that his doctors be consulted to help establish clear guidelines about when to pause visits with [Ms. D.] so that the child's distress does not have any negative impacts on his health. In addition, given the extent of [D.O.'s] separation anxiety, it is recommended that [the foster parents] and [Ms. D.] work with a trained professional who can help ease the transition into [D.O.] having independent visits with his biological mother. A referral to Kennedy Krieger Institute is likely appropriate in this case, as they are a well-known and trusted agency in this area who offer behavioral treatments that are targeted at decreasing childhood anxiety.

VISITATION SUPERVISOR'S TESTIMONY

Michael Black, a Family Support Worker at Mentor Maryland, testified that he had been supervising Ms. D.'s visits with D.O. since 2018. Mr. Black testified that, in 2018, the visits took place weekly in Mentor Maryland's office and Ms. D. "didn't seem very involved at that point," and was "on her phone and things like that." However, he indicated that Ms. D. has been more involved recently, and became "much more involved in trying to interact with" D.O. when the visits changed to monthly. Mr. Black believed that the visits did not go well when Ms. D. did not bring her other young children. His testimony indicated that the change to monthly visitation occurred at the same time Ms. D. started bringing her other children to visits, which he estimated to be in 2020 or 2021. However, when shown his notes from 2019 that indicated the visits were occurring every two weeks and Ms. D. was sometimes bringing her other young children to visits, he admitted that he "could be" mistaken about some of the details.

The Department submitted into evidence contact notes authored by Mr. Black after each of the visits he supervised between April 8, 2019, and November 4, 2019. These notes indicate that, during that time period, DSS was only scheduling visits every two

weeks on average despite a provision in a contemporaneous service agreement which required Ms. D. to attend "weekly" visits. Mr. Black's contact notes reflect that Ms. D. attended approximately two-thirds of the scheduled visits, and often failed to attend without notice, requiring Mr. Black to call her ten or fifteen minutes after the visit was scheduled to begin. Ms. D. explained that she simply forgot about three of the visitations that she failed to attend. Mr. Black noted that Ms. D. sometimes failed to meaningfully engage with D.O. and during one visit, Mr. Black "did not witness [Ms. D.] engage or interact with [D.O.] at all during this visit. She did not appear interested in anything he was doing or seemed like she really wanted to be at this visit."

Also notable is that these contact notes contradict certain parts of Mr. Black's testimony. Mr. Black testified that Ms. D. did not bring her other children to visits until sometime after 2020 when the visits switched to monthly. He also recalled that she did not bring the other children until after the foster mother stopped sitting in on visits. Instead, the notes for all visits indicate that Mrs. M. was present in the room during the 2019 visits, and on most days anywhere from one to three of Ms. D.'s other children were also present.

Mr. Black testified that it "did not work out well" when Mrs. M. stopped sitting in on visits. D.O. "would be crying and trying to get out of our visit room and go back to his foster mother. . . . He would be crying and just screaming and saying he wants to leave." During one visit when D.O. was upset and crying, Ms. D. said, "Let's just stop the visit because [D.O.] is too upset." Ms. D. "tried settling him down, but he was just inconsolable and just kept trying to leave[.]" Mr. Black testified that he did not believe it was ever

planned that Mrs. M. would sit in on visits, recalling that "[i]t just seemed to be that's the way it happened." According to Mr. Black, "The visits did not get better until they went to monthly and Ms. D. started bringing her younger children."

In 2021, D.O. was "much more interactive" when the other children were present. Ms. D. "would attempt to interact with him. Sometimes he would be open to it and sometimes he would not." Mr. Black did not recall any times that D.O. initiated interactions with Ms. D. He also testified that, in 2021 and 2022, Ms. D. was consistently on time for visits, interacted appropriately with the children, "and if she ha[d] to cancel for any reason, she always [gave him] a notice," although she did not cancel often.

Because the visits were exclusively scheduled by DSS, all communication about scheduling went through DSS. He explained that the recent visits were scheduled for 5:00 p.m. to 6:00 p.m. The office typically closes at 5:00 p.m., but Mr. Black "made exceptions for this case." However, because he cannot keep the office open past 6:00 p.m., the visits were not extended if Mrs. M. arrived late for visitation. He testified that Ms. D. routinely arrives early for visits, and Mrs. M. is sometimes late. He noted that, even when Mrs. M. "arrives at 5:30, usually at 6:00 Ms. D. starts getting the kids read[y] to go," and she has not asked him to extend the time. However, he conceded that he told Ms. D. that he cannot keep the office open past 6:00 p.m.

PEDIATRICIAN'S TESTIMONY

Dr. Nakiya Showell, D.O.'s pediatrician from the time he was two months old, testified as his treating doctor and as an expert in pediatrics. She began her testimony by

describing D.O.'s numerous medical problems, recounted above. In summary, she testified that his heart's ability to circulate oxygen-rich blood around his body is compromised, he is less able to fight infections, and more prone to respiratory infections than the average child. During pediatric appointments, Dr. Showell pays "special attention to his illness history," behavior, and symptoms because "just a small cold can really make him very sick." She testified that "in the first two years of [D.O.'s] life, he was hospitalized several time[s]." D.O. was last hospitalized for acute illness in December 2018. He regularly has appointments with a cardiologist and a pulmonologist, but "has not seen a gastroenterologist in several years" despite still having a g-tube. Although a typical healthy child D.O.'s age would normally be seen by a pediatrician once per year, D.O. is seen every six months.

In order to prevent serious illness, Dr. Showell stressed the importance of ensuring that D.O.'s caregivers are able to recognize when D.O. is sick. "[T]he things that need to be in place are . . . just being able to monitor him and be able to recognize that he's changing, his behavior, if he has any symptoms, respiratory symptoms and being very prompt and being very responsive to that." A caregiver does not need special training to recognize D.O.'s symptoms, but rather

> [j]ust experience. I mean, you don't need to be a doctor to see that he's sick, especially if you've been around him and you recognize even those subtle sign[s]. . . . So just knowing him and having experience when he's not acting like his normal self and being able to promptly recognize when he's ill is what's needed. . . . You just have to have experience with being around him.

She also testified that, to ensure D.O.'s health and well-being, a caregiver needs experience "being with him, caring for him, recognizing the signs of him getting sick . . . [a]nd also, being in the spaces where the information is being shared," including regular appointments and during hospital discharge.

She stated that part of a routine pediatric visit is to observe interactions between the child and the caregiver, to determine socio-emotional development of the child. Dr. Showell observed that D.O. and Mrs. M. "seem to have a very loving relationship." She confirmed that no one at her clinic had reached out to Ms. D. about D.O.'s appointments, and that Ms. D. had not attended any of his pediatric appointments.

DSS CASEWORKER'S TESTIMONY

The Department assigned Cleona Garfield as D.O.'s caseworker in May 2021. She testified that D.O. is "very active," and "doesn't stay seated too long." She observed D.O. to be "very attached to his foster mother and father," and that he is "doing very well" in school and has "no behavior problems."

Ms. Garfield noted that D.O. does not currently require oxygen and has not been hospitalized for illness since 2017. She also testified that the foster parents keep DSS apprised of all of D.O.'s medical appointments.

Ms. Garfield's contacts with Ms. D. have primarily involved scheduling visitation, which is done by phone or email. Ms. Garfield initiates contact with Ms. D., Mrs. M., and Mr. Black to schedule the visits. She testified that she typically contacts Ms. D. first to confirm the day and time she is available for visitation. She would then contact Mrs. M.

and Mr. Black to "make them aware of the time that Ms. D. was available for these visits." Ms. D. and Mrs. M. would contact Ms. Garfield if they needed to cancel a visit. Ms. Garfield confirmed that Ms. D.'s visits with D.O. have never been unsupervised.

Ms. D. informed Ms. Garfield that although Mrs. M. frequently arrived late for visitation, the visits were not extended. Ms. Garfield testified that she is not able to extend the visits past 6:00 p.m., and "[t]here's been no makeup" offered to Ms. D. However, she also noted that Ms. D. did not request that Ms. Garfield do anything about Mrs. M.'s tardiness.

Ms. Garfield could not remember if Ms. D. visited D.O. in November 2022, but testified that there were no visits in December 2022 or January 2023 because "Mother was not available due to her work schedule." According to Ms. Garfield, she spoke with Ms. D. in November or December 2022, at which time Ms. D. told her she got a temporary job and was not available for visits, but that Ms. D. would contact Ms. Garfield when she was available. Ms. Garfield recalled that Ms. D. advised her that Ms. D. worked "in the evenings from 6:00 to something." Ms. Garfield did not suggest an alternate arrangement, stating, "[t]here were no other options to suggest because she was not available." Ms. Garfield did not make any adjustments to the visitation time. According to Ms. Garfield, the visits could not start earlier than 5:00 p.m. because of D.O.'s school schedule. Because Ms. D. had not called, Ms. Garfield reached out to Ms. D. in February 2023 to schedule a visit. Ms. Garfield did not contact Ms. D. before February "because [Ms. D.] made [Ms. Garfield] aware she wasn't going to be available."

Some of the contact notes kept by Ms. Garfield and her predecessor caseworker were admitted into evidence. Additional details provided by these notes include the following:

- D.O. underwent heart surgery in early May 2021. Ms. D. was present in the hospital during that surgery.
- In June and July 2021, Ms. D.'s visits with D.O. were held weekly from 4:00 p.m. to 6:00 p.m.
- By September 2021, Ms. D.'s visits with D.O. had changed to monthly.
- Ms. D. began work at UPS on November 7, 2022, and reported to Ms. Garfield that her hours are 5:00 p.m. to 10:00 p.m. Ms. Garfield believed that Ms. D. would contact her in January after her seasonal employment ended. When Ms. Garfield contacted Ms. D. to schedule a visit in February 2023, Ms. D. did not provide a reason as to why she did not contact Ms. Garfield the previous month. Ms. D. reported that she had started a new job on February 9, 2023, at Family Dollar.
- Ms. D. contacted Ms. Garfield seven hours before the scheduled February 2023 visit asking to reschedule the visit because she had a stomach virus.

COURT'S FINDINGS

On April 25, 2023, the court presented its findings and conclusions from the bench:

> As to [FL § 5-323(d)(1)(i),] the services offered to the parent before the child's placement, were they offered by a local department or another agency or professional. And at the time of [D.O.'s] birth, . . . he was in a truly fragile state. He was born with a series of congenital heart defects, including ventricular septal defect, pulmonic valves stenosis and dextraposition of the aorta. [D.O.] was born with his liver on the left side, spleen on the right side and stomach on the right side. At the time of [D.O.'s] birth, his mother admitted a history of abusing elicit drugs, including marijuana. [D.O.] was born drug exposed to marijuana and his Mother tested positive for the same.
>
> During the pregnancy, Ms. D. received no prenatal care and that she admitted to suffering from depression. It appears that no services were offered to Ms. D. prior to [D.O.'s] placement as he was placed from the

hospital. At the time of a shelter, Ms. D. was not gainfully employed and her living situation was unstable.

Additionally, Ms. D. and Mr. O. had a history of domestic violence. Furthermore, Ms. D., Child Protective Services' history dates back to 2003. History includes allegations of neglect and substance abuse issues.

[D.O.] came into care on or about June 1st, 2016. He was found to be a child in need of assistance and committed to the Department on or about February 2nd, 2017.

With respect to [FL § 5-323(d)(1)(ii)], "Extent, nature and timeliness of services offered by the local Department to facilitate reunion of the child and parent," since [D.O.'s] placement, DSS has offered various services to Ms. D. to facilitate reunification. DSS referred Ms. D. to Partners in Recovery and an FIM meeting provided in-person and video visitation opportunities, assisted in locating proper housing and monitored the Respondent's care. And DSS also referred Ms. D. to the Family Tree where she completed the parenting program on or about February 14th, 2016 [sic]. Additionally, DSS, is generally being the moving party in the effort to maintain communications with Ms. D.

[FL § 5-323(d)(1)(iii),] "The extent to which a local department and parent have fulfilled their obligations under the Social Services Agreement." And the Baltimore City . . . Department of Social Services . . . has offered and provided services as indicated a moment ago. DSS has made referrals so that [D.O.] would consistently receive appropriate medical care. [D.O.] has been oxygen dependent, he requires significant medical attention from Johns Hopkins Hospital, and DSS has addressed those means by ensuring that he was at his appointments.

However, this [c]ourt is concerned that DSS failed to comply with the requirement to provide makeup visits for any time missed by the foster mother's failure and to arrive at the visit in a timely manner.

Further, this [c]ourt is also concerned about Mentor Maryland's inflexibility in extending visitation time to accommodate the foster parents lateness. DSS had a responsibility to provide for visitation as directed, unless it was the parent who was late. Ms. D. has made some efforts to comply with some of her requirements. She obtained suitable housing in 2019, completed parenting classes. However, her visitation left much to be desired.

During the holiday season from November 2022 through January 2023, Ms. D. failed to comply with the visitation schedule because she obtained a seasonal job with UPS. There's no evidence that Ms. D. requested some adjustment to the visitation schedule.

[FL § 5-323(d)(2)] "The results of the parents efforts to adjust to parents circumstances, conditions or conduct to make it in the child's best interest for the child to be returned to the current home." [FL § 5-323(d)(2)(i)(1)], "The extent to which the parent has maintained regular contact with the child." Ms. D. has made some efforts to maintain regular contact with [D.O.]. She visited with [D.O.] by phone and in person. However, when the foster mother was late bringing [D.O.] into the visit, neither Ment[or] Maryland nor DSS made any efforts to make up for lost time. However, the Zoom log visits did show that from August 5th, 2020 through April 14, 2021 Ms. D. made all of the visits. The agency missed a couple of visits and it is unclear who was a no show as to other visits. That was Exhibit No. 182.

On the other hand, [Ms. D.] missed visiting [D.O.] during the holiday season from November 27th, 2022 through January 2023, as the [c]ourt previously mentioned.

[FL § 5-323(d)(2)(i)(2),] "The local department of which the child is committed." Ms. D. made no efforts to maintain contact with DSS except when DSS contacted her. [FL § 5-323(d)(2)(i)(3),] The child's caregiver, the foster mother, . . . has had [D.O.] in her care since 2016. It appears that the visits were scheduled through Mentor Maryland.

[FL § 5-323(d)(2)(ii),] "The parents contribution to a reasonable part of the child's care and support if the parent is financially able to do so." According to the evidence, [Ms. D.] did not provide support for [D.O.'s] care and within the last few months, and she has reportedly had two jobs.

[FL § 5-323(d)(2)(iii),] "The existence of a parental disability that makes the parent consistently unable to care for the child's immediate and ongoing physical and psychological needs for long periods of time." There's no evidence that Ms. D. suffers from any parental disability that would consistently render her unable to care for [D.O.].

[FL § 5-323(d)(2)(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 interest to extend the time for a specified period." [D.O.] has been in the care of [Mrs. M.] since he was released from the hospital. He's almost seven years old at this point. Although Ms. D. does not require drug treatment, [she] has completed at least one round of parenting classes, and she has a stable home, this [c]ourt has concerns about whether extending the time would be in [D.O.'s] best interest.

[FL § 5-323(d)(3)(i)], "Whether the parent has abused or neglected the child or a minor, and the seriousness of the abuse or neglect." DSS presented no evidence of abuse or neglect of the Respondent or the other children, with the exception that [D.O.] was born marijuana exposed.

[FL § 5-323(d)(3)(ii)(i)(A)], "On admission to a hospital for the child's delivery, the mother tested positive for a drug as evidenced by a positive toxicology.["] On admission for [D.O.'s] delivery, [Ms. D.] tested positive for marijuana. [FL § 5-323(d)(3)(ii)(1)(B),] Upon the birth of the child, the child tested positive for the drug, as evidenced by a positive toxicology. When [D.O.] was born, he tested positive for marijuana.

[FL § 5-323(d)(3)(ii)(2)], "The mother refused any level of drug treatment." According to the evidence, Ms. D. tested positive for marijuana, was evaluated and was determined to not be in need of additional services.

[FL § 5-323(d)(3)(iii)(1)], the parent subjected the child to chronic abuse["] other than using marijuana while pregnant, failing to submit to prenatal care.[] There's no evidence of chronic abuse, [FL § 5-323(d)(3)(iii)(2),] chronic and life threatening neglect. [D.O.] has not been in his mother's care since birth, therefore, there's no evidence of any life threatening neglect.

[FL § 5-323(d)(3)(iii)(3) and (4),] "Sexual abuse," there's no evidence of sexual abuse and there's no evidence of torture.

[FL § 5-323(d)(3)(iv)(1)(A), (B), and (C),] "The parent has been . . . convicted in any state of any court in the United States of the crime of violence against the minor offspring of the parent." The answer is no; the child, no; another parent of the child, the answer is no, as well.

[FL § 5-323(d)(3)(iv)(2),] "Aiding or abetting, conspiring or soliciting to commit the crimes described in Item 1," the answer is no.

[FL § 5-323(d)(3)(v),] "The parent has voluntarily lost parental rights to a sibling of the child," and at this point the answer is no.

[FL § 5-323(d)(4)(i),] "The Child's emotional ties with or feelings toward the child's parents, the child's siblings and others who may affect the child's best interest significantly." Certainly [D.O.] knows his biological mother. However, it appears from the evidence that he has no significant ties to Ms. D.

[FL § 5-323(d)(4)(ii)(1), (2), and (3)], "The child's adjustment to the community.["] [D.O.] has never lived with his biological mother, so his home in his community has been with [the foster family]. [D.O.] has thrived in the foster home and community. And the [c]ourt will say the same for the question as to home. As far as placement, [D.O.'s] placement is where he's lived for most of his life.

[FL § 5-323(d)(4)(ii)(4),] School, [D.O.] has thrived in school as placed by his foster parents.

[FL § 5-323(d)(4)(iii),] "The child's feelings about severance [of the] parent/child relationship." [D.O.'s] feelings about the severance of the [parent] child relationship appears inconsequential to -- that is due in part to the fact that [D.O.] has lived with his foster family for nearly seven years. When he is sick, he goes to his foster father and or mother. When he has concerns, he relies on them for his comfort. On the other hand, per Dr. Z[aj]del, additional visitations would have been warranted. However, Dr. Z[aj]del noted that at the August [sic] 2020 bonding evaluation, [D.O.] was happy to see his biological mother or appeared happy to see her. However, when it came time for [D.O.] to go back into the room to be evaluated with his mother, [D.O.] refused to go back into the room and Ms. D. refused to console him.

[FL § 5-323(d)(4)(iv),] "The likely impact of terminating parental rights and the child's well-being." Given the lack of energy DSS expended in facilitating parent/child relation visitation, the length of time [D.O.] has spent with his foster parents which is most of his life and [D.O.'s] significant pending surgery and other medical needs, this [c]ourt is concerned that the failure to terminate Ms. D.'s parental rights would have a devastating impact on [D.O.'s] well-being.

One of the concerns is that Ms. D. admittedly recognized that she does not know [D.O.'s] routines, his manners, and that raises concerns as one of the doctors testified about was subtle symptoms of him being sick. Without knowing that given the significant medical conditions that he has, that is a grave concern this [c]ourt, [D.O. has] already attempted to change his name

> in school and had to be redirected in this regard. Under the circumstances, this [c]ourt considers these things in part as a missed opportunity.
>
> DSS has proven by clear and convincing evidence that it is in [D.O.'s] best interest to terminate Ms. D. parental rights and Ms. D. is unfit to remain in a parental relationship with [D.O.]. The exceptional circumstances exist that the continuation of Ms. D.'s relationship is detrimental to [D.O.] and that he has significant medical concerns and a possible pending surgery. He has needs that other children that are in her care do not.
>
> Also, given the length of time he has been away from her and in foster care, I want to speak to his best interest needs to remain where he is, and so the court grants the . . . Petition, . . . grants limited guardianship to the Department and to address his medical care, mental health, educational decisions, and out-of-state travel.
>
> . . .
>
> Ms. D. is not entitled to future notice of guardianship. Mr. O. is entitled to notice of guardianship. Despite the [c]ourt's concerns about the visitation, the [c]ourt finds that the Department did make reasonable efforts to comply with the permanency plan.

The court entered a written opinion the same day. Ms. D. noted this timely appeal.

DISCUSSION

It is well-established that parents have a fundamental right to raise their children. *In re Adoption/Guardianship of C.A. and D.A.*, 234 Md. App. 30, 47 (2017); *see also Santosky v. Kramer*, 455 U.S. 745, 758–59 (1982). Furthermore, children have "a constitutionally protected liberty interest in the preservation of parental rights" and "'an interest in maintaining a close familial relationship with siblings.'" *In re Adoption/Guardianship No. T00032005*, 141 Md. App. 570, 580 (2001) (quoting *In re Adoption/Guardianship No. T97036005*, 358 Md. 1, 16 (2000)). These rights are not absolute and parental rights can be terminated when it is in the best interest of the child.

C.A. and D.A., 234 Md. App. at 47. There is a strong presumption, however, that it is in a child's best interest to maintain the parent-child relationship. *Id.* at 48. This presumption can only be overcome where the parent is unfit to continue the parent-child relationship or where exceptional circumstances exist such that continuation of the parent-child relationship is detrimental to the child's best interests. *Id.*; *see also* Md. Code (1984, 2019 Repl. Vol.), § 5-323(b) of the Family Law Article ("FL").

The Maryland General Assembly created a list of factors that a court must consider in determining whether a parent is unfit, whether exceptional circumstances exist, and whether it is in the best interest of a child to terminate the relationship. FL § 5-323(d); *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 501 (2007).

> The court's role in TPR cases is to give the most careful consideration to the relevant statutory factors, to make specific findings based on the evidence with respect to each of them, and, mindful of the presumption favoring a continuation of the parental relationship, determine expressly whether those findings suffice either to show an unfitness on the part of the parent to remain in a parental relationship with the child or to constitute an exceptional circumstance that would make a continuation of the parental relationship detrimental to the best interest of the child, and, if so, how.

Rashawn H., 402 Md. at 501.

Our review of a decision to terminate parental rights "involves three interrelated standards: (1) a clearly erroneous standard, applicable to the juvenile court's factual findings; (2) a *de novo* standard, applicable to the juvenile court's legal conclusions; and (3) an abuse of discretion standard, applicable to the juvenile court's ultimate decision." *C.A. and D.A.*, 234 Md. App. at 45 (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). Our role is not to determine whether "we might have reached a different conclusion. Rather, it

is to decide only whether there was sufficient evidence—by a clear and convincing standard—to support [the court's] determination that it would be in the best interest of [the child] to terminate the parental rights of [the parent]." *Id.* at 46 (alterations in original) (citation omitted) (quoting *In re Adoption No. 09598 in Cir. Ct. for Prince George's Cnty.*, 77 Md. App. 511, 518 (1989)).

Section 5-323(d) of the Family Law Article sets forth the factors a court must consider:

> Except as provided in subsection (c) of this section, 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, including:
>
> (1)(i) all services offered to the parent before the child's placement, whether offered by a local department, another agency, or a professional;
>
> (ii) the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent; and
>
> (iii) the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any;
>
> (2) the results of the parent's effort to adjust the parent's circumstances, condition, or conduct to make it in the child's best interests for the child to be returned to the parent's home, including:
>
> (i) the extent to which the parent has maintained regular contact with:
>
> 1. the child;
>
> 2. the local department to which the child is committed; and
>
> 3. if feasible, the child's caregiver;

(ii) the parent's contribution to a reasonable part of the child's care and support, if the parent is financially able to do so;

(iii) the existence of a parental disability that makes the parent consistently unable to care for the child's immediate and ongoing physical or psychological needs for long periods of time; and

(iv) whether additional services would be likely to bring about a lasting parental adjustment so that the child could be returned to the parent within an ascertainable time not to exceed 18 months from the date of placement 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:

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

(ii) 1. A. on admission to a hospital for the child's delivery, the mother tested positive for a drug[7] as evidenced by a positive toxicology test; or

B. upon the birth of the child, the child tested positive for a drug as evidenced by a positive toxicology test; and

2. the mother refused the level of drug treatment recommended by a qualified addictions specialist, as defined in § 5-1201 of this title, or by a physician or psychologist, as defined in the Health Occupations Article;

(iii) the parent subjected the child to:

1. chronic abuse;

2. chronic and life-threatening neglect;

3. sexual abuse; or

[7] "Drug" is defined in FL § 5-323(a): "In this section, 'drug' means cocaine, heroin, methamphetamine, or a derivative of cocaine, heroin, or methamphetamine."

4. torture;

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

1. a crime of violence against:

A. a minor offspring of the parent;

B. the child; or

C. another parent of the child; or

2. aiding or abetting, conspiring, or soliciting to commit a crime described in item 1 of this item; and

(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, the child's siblings, and others who may affect the child's best interests significantly;

(ii) the child's adjustment to:

1. community;

2. home;

3. placement; and

4. school;

(iii) the child's feelings about severance of the parent-child relationship; and

(iv) the likely impact of terminating parental rights on the child's well-being.

Numerous cases have emphasized the importance of the court's careful consideration of these factors. "[I]n cases where parental rights are terminated, it is important that each factor be addressed specifically not only to demonstrate that all factors were considered

but also to provide a record for review of this drastic measure." *C.A. and D.A.*, 234 Md. App. at 48–49 (quoting *In re Adoption/Guardianship No. 87A262*, 323 Md. 12, 19–20 (1991)). "[T]he court must work through the statutory factors in detail . . . and explain with particularity how the evidence satisfied them and how the court weighed them[.]" *In re Adoption of K'Amora K.*, 218 Md. App. 287, 304 (2014). The court must further "determine expressly whether those findings suffice either to show an unfitness . . . or to constitute an exceptional circumstance that would make a continuation of the parental relationship detrimental to the best interest of the child[.]" *In re Adoption of Ta'Niya C.*, 417 Md. 90, 102 (2010) (quoting *Rashawn H.,* 402 Md. at 501). "So important are these statutory considerations that, on review, we cannot be left to speculate as to whether the trial court has fulfilled its obligations. . . . Indeed, in considering each factor under [FL § 5-323], the court must even make findings of 'the non-existence of facts where appropriate.'" *In re Adoption/Guardianship No. 95195062/CAD in Cir. Ct. for Balt. City*, 116 Md. App. 443, 457 (1997) (quoting *In re Adoption No. 2428 in Cir. Ct. for Wash. Cnty.*, 81 Md. App. 133, 139 n.1 (1989)).

As in *Rashawn H.*, we shall vacate the juvenile court's judgment and remand for further proceedings for two principal reasons. First, we shall articulate our concerns about some of the court's statutorily-required fact findings. Second, we shall require the court to explain how it weighed the evidence to conclude that unfitness or exceptional circumstances exist sufficient to rebut the presumption favoring the parental relationship. We shall separately explain our rationale on both counts.

I. The Juvenile Court's Statutorily-Required Findings

We begin with the court's failure to make adequate findings under the FL § 5-323(d)(1)(iii), (2)(i)(3), and (4)(i) factors—"the extent to which a local department and parent have fulfilled their obligations under a social services agreement," "the extent to which the parent has maintained regular contact with . . . if feasible, the child's caregiver," and "the child's emotional ties with and feelings toward the child's parents, the child's siblings, and others who may affect the child's best interests significantly."

For factor (d)(1)(iii), the court found that DSS provided numerous services, but failed to provide Ms. D. with make-up visits when Mrs. M. arrived late. The court's only finding as to Ms. D.'s compliance with the service agreements was that she "made some efforts to comply with some of her requirements," specifically obtaining suitable housing and completing parenting classes, and that she missed three months of visitation from November 2022 to January 2023. Additionally, the court seems to have found that Ms. D.'s failure to attend visitation in late 2022 and early 2023 was a failure to fulfill an obligation under a service agreement, despite there being no service agreement in evidence applicable to that period of time. The last of the three service agreements admitted into evidence was dated December 9, 2019, and had an end date of June 9, 2020. Therefore, while it is true that Ms. D. did not visit with D.O. from November 2022 to January 2023, that was not a failure to fulfill an obligation *under a service agreement*. Equally important, the court failed to address Ms. D.'s compliance with many aspects of the service agreements. There is no dispute that, in addition to obtaining adequate housing and

completing parenting classes, she secured employment and participated in required medical training. The court also failed to mention DSS's admitted failure to comply with its obligation under the December 9, 2019 service agreement to "remind mom of all appointments."[8] Furthermore, as previously noted, DSS only scheduled visitation every two weeks during a time when it was requiring Ms. D. to "attend weekly visit[s]." Ms. D.'s efforts to comply with the service agreements were central to her case opposing termination of her parental rights, yet the court did not substantially address them.

With regard to Ms. D.'s contact with Mrs. M., the court stated only that "The child's caregiver, the foster mother, . . . has had [D.O.] in her care since 2016. It appears that the visits were scheduled through Mentor Maryland." It is not clear whether the court found that Ms. D. was not required to maintain contact with Mrs. M. or whether it found that Ms. D. failed to maintain contact with Mrs. M. The record contains minimal evidence about communications between Ms. D. and Mrs. M. However, Ms. D. testified that DSS asked Mrs. M. to inform Ms. D. about D.O.'s medical appointments, indicating that communication between them may have been feasible to some extent. We are unable to

[8] Although not directly relevant to any of the FL § 5-323(d) factors, DSS also admitted, without explanation, that it failed to ever provide Ms. D. with unsupervised visitation or inform her of D.O.'s medical appointments, even when it was ordered to do so. In light of the court's ultimate conclusion that Ms. D. is unfit and/or exceptional circumstances exist in part because of D.O.'s medical issues and Ms. D.'s unfamiliarity with D.O.'s routines and mannerisms, the court should have considered DSS's failure to comply with court orders.

discern on this record whether the court viewed this factor favorably or unfavorably to Ms. D.

As to D.O.'s emotional ties with his biological family, the court found: "Certainly [D.O.] knows his biological mother. However, it appears from the evidence that he has no significant ties to Ms. D." Notably, the court failed to make any mention of D.O.'s relationship with his siblings, despite extensive evidence on this point. Mr. Black's contact notes and testimony indicate that two of D.O.'s siblings frequently visited with him, and that D.O. visited with at least one of his other siblings. Mr. Black testified that visits were more productive when D.O.'s siblings were present. Indeed, there was evidence indicating that the primary focus of many of D.O.'s visits with his biological family was the opportunity to interact and play with his siblings. Mrs. M. testified that D.O. described visits with Ms. D. as "going to see his brother[] and sister." We acknowledge that there was also testimony that, although D.O. enjoyed playing with his siblings, he may not have had strong emotional ties to them. Mrs. M. testified that she was not aware of D.O. having any attachment to his siblings, and that he does not appear to be upset when regular visits do not occur. Additionally, there was no evidence that D.O. had ever met most of his older siblings, including some currently living with Ms. D. Although the court did not clearly err in finding that D.O. "has no significant ties to Ms. D.," the court did not make any findings (or address the conflicting evidence) concerning D.O.'s emotional ties to his

siblings as expressly required by the statute.[9]

In addition, we note that the court's findings contain several errors, specifically in its findings on the FL § 5-323(d)(2)(i)(1), (2)(ii), and (3)(ii) factors. These factors concern Ms. D.'s contact with D.O., her contribution to D.O.'s support, and Ms. D. and D.O. testing positive for cannabis at the time of D.O.'s birth.

In its findings on factor (2)(i)(1), "the extent to which the parent has maintained regular contact with the child," the court referenced Exhibit 182, a document described as a log of Zoom visits between August 5, 2020, and April 14, 2021. The court noted that Exhibit 182 showed that "Ms. D. made all of the visits" during that time period and that "[t]he agency missed a couple of visits." While Exhibit 182 was one of a large number of documents that DSS sent to the court prior to the TPR hearing, about half of which became part of the evidentiary record, Exhibit 182 was not admitted into evidence. Nor was there any testimony or other documentary evidence that would support the court's findings on this point. Although this finding appears to weigh in Ms. D.'s favor, we are troubled that the court relied on a document not in evidence. Although we understand how mistakes can easily be made with such a voluminous record, we are concerned about the possibility that

[9] We note that the court also failed to make any findings as to the final part of the (4)(i) factor, concerning ties to "others who may affect the child's best interests significantly." Although our review of the record does not reveal any persons other than Ms. D. and D.O.'s siblings who may significantly affect his best interests, on remand, "the court must even make findings of 'the non-existence of facts where appropriate.'" *See No. 95195062/CAD*, 116 Md. App. at 457 (quoting *No. 2428*, 81 Md. App. at 139 n.1).

the court may have relied in part on other documents not in evidence in making findings that were less favorable to Ms. D.

As to factor (2)(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," the court found that Ms. D. "did not provide support for [D.O.'s] care and within the last few months . . . she has reportedly had two jobs." However, there was no evidence presented concerning whether Ms. D. contributed to D.O.'s support, or whether she was ever asked to do so. Moreover, the court's reference to Ms. D. having "two jobs" leads us to believe that the court faulted Ms. D. for not contributing to D.O.'s support. There is substantial evidence suggesting that Ms. D. may not have been financially able to contribute to D.O.'s support despite being employed. Ms. D. has six of her children living with her, and has been in Section 8 housing since April 2019. The uncontradicted testimony was that her job at UPS was temporary and part-time, and the scant evidence concerning the job she started after her employment at UPS ended indicated that she was making $13 per hour working at a retail store. Thus, the court's findings on this factor are problematic.

As to factor (3)(ii), the court found that "On admission for [D.O.'s] delivery, [Ms. D.] tested positive for marijuana" and "When [D.O.] was born, he tested positive for marijuana." Although the court is correct that Ms. D. tested positive for cannabis at D.O.'s delivery, all the documentary evidence and testimony indicated that D.O. did not test positive for cannabis. The court's finding that "the child tested positive for the drug, as

evidenced by a positive toxicology" is clearly erroneous.[10] Furthermore, after referring to factor (3)(ii) ("on admission to a hospital for the child's delivery, the mother tested positive for a *drug*"), the court apparently thought that the term "drug" included cannabis. But cannabis is not a "drug" as defined in FL § 5-323(a). That definition limits the word "drug" to "cocaine, heroin, methamphetamine, or a derivative of cocaine, heroin, or methamphetamine."[11] FL § 5-323(a). To the extent the court found that Ms. D. tested positive for a "drug," it erred.

In summary, the court (1) did not make appropriate findings concerning the parties' fulfillment of their obligations under service agreements; (2) failed to make clear findings concerning communication between Ms. D. and Mrs. M.; (3) did not make any findings concerning D.O.'s relationship with his siblings; (4) erred by relying on a document not admitted into evidence; (5) made insufficient findings related to Ms. D.'s contributions to D.O.'s support and whether Ms. D. was financially able to contribute to his support; and (6) erred in finding that D.O. tested positive for cannabis at birth, and likewise erred to the extent it found that Ms. D. tested positive for a "drug" at the time of D.O.'s birth. We hold that, because of these errors, the court did not comply with its obligation to demonstrate that all statutory factors were adequately considered, as required by FL § 5-323(d).

[10] We see no evidence of a toxicology report in this record. Moreover, we note that Exhibit 183, a document authored by DSS that was not admitted into evidence, stated that D.O. did test positive for cannabis. Again, this raises the possibility that the court may have relied on a document not admitted into evidence for its finding here, as it did for factor (2)(i)(1).

[11] This definition has not changed since 2007.

II. The Court Failed to Explain How It Weighed the FL § 5-323(d) Factors

Terminating a parent's rights is a "drastic measure" that may only be undertaken after a careful review of the facts. *C.A. and D.A.*, 234 Md. App. at 48–49 (quoting *No. 87A262*, 323 Md. at 20). "A mistake in the process would irrevocably deprive the parent of a fundamental constitutional right. It is for this reason that every procedural safeguard must be carefully followed." *No. 95195062/CAD*, 116 Md. App. at 460.

After concluding its fact-findings related to the statutory factors, the court provided the following explanation in support of its conclusion that Ms. D. is unfit and that exceptional circumstances exist, thereby making it in D.O.'s best interests to terminate parental rights:

> One of the concerns is that Ms. D. admittedly recognized that she does not know [D.O.'s] routines, his manners, and that raises concerns as one of the doctors testified about was subtle symptoms of him being sick. Without knowing that given the significant medical conditions that he has, that is a grave concern this [c]ourt, [D.O. has] already attempted to change his name in school and had to be redirected in this regard. Under the circumstances, this [c]ourt considers these things in part as a missed opportunity.
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> . . . [D.O.] has significant medical concerns and a possible pending surgery. He has needs that other children that are in her care do not.
>
> Also, given the length of time he has been away from her and in foster care, I want to speak to his best interest needs to remain where he is[.]

Notably absent in the court's reasoning is any analysis to support its conclusion that Ms. D. is unfit to maintain a *parental relationship* with D.O. Instead, the court seems to have focused more on Ms. D.'s unfitness to have *custody* of D.O., an issue which is not an appropriate consideration in a TPR proceeding. *See Rashawn H.*, 402 Md. at 495–499 ("To

justify a TPR judgment, . . . the focus must be on the continued parental relationship, not custody.").

As to the court's exceptional circumstances finding, it failed to explain how the length of time D.O. has been separated from Ms. D. and D.O.'s medical problems outweigh the factors that it found in Ms. D.'s favor. The evidence concerning the pending surgery mentioned by the court indicated that it was the last surgery D.O. would need for his heart problems, and that his g-tube would be removed after he recovered from that surgery. There was no indication that this surgery might increase his medical needs beyond Ms. D.'s capabilities. Indeed, the court accepted that the only "skill" Ms. D. was lacking that would allow her to safely care for D.O. is familiarity with his mannerisms and routines, which the court stated was the result of a "missed opportunity." But again, this consideration appears to be more significant in determining physical custody of D.O. The court's final statement, that it is in D.O.'s best interest to "to remain where he is," is further indicative of the court's improper focus on physical custody of D.O. rather than the parent-child relationship. As with the court's unfitness finding, the court failed to provide a clear explanation of how it weighed the factors to conclude that exceptional circumstances existed such that it was in D.O.'s best interests *to not have a parent-child relationship* with Ms. D.

Although it appears that the court sincerely believed that it was in D.O.'s best interest to terminate parental rights, the court's errors and omissions in its findings cast doubt on the validity of the court's ultimate conclusion to terminate parental rights,

especially in light of the court's repeated comments that it was "concerned" about DSS's failure to afford Ms. D. proper visitation. Compounding the problem is the court's failure to state how it weighed the factors and the court's conclusion that Ms. D. is unfit without any explanation of its reasons for that finding. *See K'Amora K.*, 218 Md. App. at 304 ("[T]he court must work through the statutory factors in detail . . . and explain with particularity how the evidence satisfied them *and how the court weighed them*." (emphasis added)); *Rashawn H.*, 402 Md. at 501 (A court must "determine expressly whether [its] findings suffice . . . to show an unfitness on the part of the parent to remain in a parental relationship with the child . . . , *and, if so, how*." (emphasis added)). Such an explanation is especially important in a case where, as here, there was evidence and findings both detrimental and beneficial to the parent's interests.

We therefore must vacate the court's judgment and remand for further findings. We echo the language in *Rashawn H.* that,

> [o]n remand, the court will have to make clear and specific findings with respect to each of the relevant statutory factors and, to the extent that any amalgam of those findings leads to a conclusion that [Ms. D. is unfit or] exceptional circumstances exist sufficient to rebut the presumption favoring the parental relationship, explain clearly how and why that is so.

402 Md. at 504–05. As in *Rashawn H.*, the court, in its discretion, may receive additional evidence in light of the time that has elapsed between the TPR hearing and the filing of this opinion.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH

THIS OPINION. COSTS TO BE PAID BY APPELLEE, BALTIMORE CITY DEPARTMENT OF SOCIAL SERVICES.