Circuit Court for Baltimore County
Case No. 03-Z-18-000083

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 669

September Term, 2021

IN RE R.P.

Beachley,
Wells,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: January 20, 2022

In November 2015, the Circuit Court for Baltimore County, sitting as a juvenile court, found R.P., the child of E.P. ("Father") and A.T. ("Mother"), to be a Child in Need of Assistance. Nearly three years later, in October of 2018, the Baltimore County Department of Health and Human Services ("the Department") filed a petition for guardianship and termination of Mother's and Father's parental rights ("TPR"). After multiple delays, and following a merits hearing held on June 15, 16, and 17, 2021, the court entered a guardianship order granting the TPR petition as to both parents.[1]

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

> I. Did the juvenile court err in admitting Dr. Munson's "fitness to parent evaluation" and expert testimony relating to that evaluation?
>
> II. Did the juvenile court err in terminating Father's parental rights?

We answer both questions in the negative and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and Father are the natural parents of R.P., born in May of 2015. Mother and Father did not live together after R.P.'s birth. On October 6, 2015, Mother was arrested and charged with second degree child abuse, reckless endangerment, and second degree assault after pushing over a stroller R.P. occupied during an argument with her boyfriend. Father informed the Department that he was unable to care for R.P. because of his living situation. The Department attempted to place R.P. with either Mother's aunt or the parents

[1] On April 28, 2021, Mother consented to TPR. She is not a party to this appeal.

of Mother's boyfriend, but they were unable to care for her. The Department instead placed R.P. in foster care with Ms. W., and R.P. has remained in Ms. W.'s care throughout these proceedings. On November 30, 2015, R.P. was found to be a Child in Need of Assistance ("CINA").[2]

On December 9, 2015, Father signed a service agreement with the Department requiring him, in addition to maintaining regular contact with the Department and regular visitation with R.P., to undergo mental health and substance abuse evaluations, complete parenting courses, and maintain stable employment and housing. The Department offered Father weekly supervised visits with R.P. The Department created subsequent service agreements, but, for unknown reasons, Father did not sign them.

The court initially established a permanency plan of reunification with the parents. This changed to reunification concurrent with adoption after a hearing on July 10, 2017. Weekly supervised visitation continued until May 25, 2018, when the court ordered that Father be allowed unsupervised visits each week. The court eventually reduced Father's visitation to once every two weeks.

[2] "Child in need of assistance" is defined in Md. Code (2001, 2020 Repl. Vol.), § 3-801(f) of the Courts and Judicial Proceedings Article as

> 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 care and attention to the child and the child's needs.

On October 26, 2018, the Department filed a petition to terminate Mother's and Father's parental rights. The TPR hearing was postponed multiple times. Initially, there was difficulty serving Mother, whose whereabouts were unknown at that time. Precautions taken due to the Covid-19 pandemic further delayed the hearing until January 19, 2021, at which time it was postponed because Father was hospitalized. The hearing was postponed again because Father's counsel was on medical leave. The TPR hearing was finally held on June 15–17, 2021.

For the sake of clarity, we will separately discuss five particular topics that permeated the five-year course of the Department's reunification efforts: visitation, home safety visits, parenting classes, drug testing, and the parent/child bonding study.

a. Visitation

We shall recount Father's visitation with R.P., which has not only been sporadic, but decreased in frequency and consistency as the case progressed.

For the period between October 2015 and June 2016, Father visited R.P. ten out of the thirteen offered visits (76.9%). Notably, the three missed visits were consecutive, resulting in Father not visiting R.P. at all during the months of January and February 2016.

Between July and December 2016, Father visited R.P. thirteen out of twenty offered visits (65%). Missed visits were spread fairly evenly throughout this period.

Between January and June 2017, Father visited R.P. thirteen out of seventeen possible visits (76.5%). None of Father's cancellations during this period were consecutive. However, Father often cancelled visits at the last minute, when R.P. was already en route to the Department.

Between July and December 2017, Father visited R.P. thirteen out of nineteen offered visits (68.4%). The only consecutively missed visits during this period were the last visit in June and the first visit in July.

Between January and June 2018, Father visited R.P. fourteen out of eighteen possible visits (77.8%). On May 25, 2018, the court granted Father unsupervised visitation.

Between July and December 2018, Father visited R.P. thirteen out of a possible twenty-three visits (56.5%). Father's contact with R.P. became especially sporadic during this period. He cancelled two consecutive visits in July 2018. After his wedding in July 2018, which R.P. and Ms. W. attended, Father did not contact R.P. again until September 1, 2018. After Ms. W. informed Father about a surgery R.P. was having in August 2018, he promised to visit R.P. on the day of her surgery, but cancelled at the last minute. Father called R.P. on September 1, 2018, but did not request a visit. When Father next requested a visit with R.P. on September 8, 2018, Ms. W. informed him that the Department had suspended his visitation due to his failure to contact the Department for an extended period of time. Father visited R.P. on September 23, 2018, the first visitation since his wedding two months earlier. He next visited three weeks later, on October 14, 2018, after which his visitation became more regular again, missing only one visit in November and one in December 2018.

Between January and June 2019, Father exercised visitation ten out of a possible twenty-one visits (47.6%). He did not visit R.P. in January 2019, and had no contact with her between February 24 and April 5, 2019.

Father made comparative improvements during July 2019 through December 2019—he visited R.P. sixteen out of twenty-four possible visits (66.7%). However, due to a combination of Father failing to contact Ms. W. and Ms. W. having to cancel visitations due to unforeseen circumstances, Father only visited R.P. a total of three times in August and September 2019.

During the first half of 2020, in-person visitation was only available until March 13, 2020. Father visited R.P. in-person five out of nine possible visits during that period (55.6%). His last in-person visit with R.P. was on February 16, 2020. The Department suspended in-person visitation on March 13, 2020, due to the Covid-19 pandemic. Thereafter, Father was able to contact R.P. by telephone or video conferencing software. Father contacted R.P. eleven out of a possible twenty-two days for "virtual visits" (50%). Father had no contact with R.P. between February 17, 2020, and April 2, 2020; nor did he have contact with her between April 13 and May 9, 2020.

Father had no contact with R.P. from June 22, 2020 to September 24, 2020. On July 1, 2020, the suspension of in-person visitation was lifted. An exceptions hearing was held on September 25, 2020, concerning the denial of overnight visitation. The court again denied Father overnight visitation, and reduced his visitation to once every two weeks. After this hearing, Father contacted R.P. for a "virtual visit." From September 25 to December 3, 2020, Father visited R.P. nine times out of a possible fifteen visits (60%). All visitation during this period was through telephone or video conferencing. Father failed to contact R.P. through most of November 2020, until November 25, when R.P. sent him a video message and he called her the next day.

Significantly, between December 4, 2020, and June 15, 2021, the first day of trial, Father only contacted R.P. once, on March 9, 2021. Thus, at the time of trial, Father had not spoken to R.P. for over three months. He had only spoken to R.P. once in the six months preceding the trial, and had not had an in-person visit with R.P. for sixteen months.

b. Bonding Study

On January 5, 2018, the court ordered Father to participate in a parent/child bonding study. The Department initially scheduled the bonding study for March 29, 2018, but needed to reschedule because R.P. was not available. The evaluation was rescheduled to May 9, 2018, but was cancelled because Father's fiancée went into labor two days prior to the appointment and remained on bed rest. Until that point, the Department did not know Father's fiancée was pregnant.

On May 25, 2018, the Department's social worker provided Father with contact information for Dr. Carlton Munson in order for Father to schedule the bonding study. The social worker contacted Father again on May 31 and June 19, 2018, to determine if he had scheduled the bonding study. Father informed her that he had not yet scheduled the appointment, but that he would have it done, before the next hearing in September 2018. On September 11, 2018, Father left a message with the Department stating that he would get the bonding study done, but provided no further information. The Department returned his call, leaving a message inquiring whether he had already arranged for the bonding study. Father did not reply.

On September 28, 2018, the Department sent Father a letter reminding him of the court order requiring that he complete a bonding study and again provided him with Dr.

Munson's contact information. The Department also provided Father with a copy of the bonding study application. A social worker sent Father a text message on October 4, 2018, asking if he had completed the bonding study, but received no answer.

On October 10, 2018, a social worker met with Father and provided him paperwork concerning the bonding study, again explaining to him that it needed to be completed as required by a court order. Father stated at that time that he "did not feel that he needed to complete a bonding study because [R.P.] was not bonding to him, so what was the point."

On November 28, 2018, the Department again sent Father a letter reminding him of his obligation to complete a bonding study, and again provided him with contact information for Dr. Munson and another copy of the bonding study application. A social worker contacted Father again on January 7, 2019, to determine if he had arranged for a bonding study and received no response.

On January 24, 2019, Father informed the Department that he had contacted Dr. Munson, but was unable to schedule a bonding study because Dr. Munson was "backed up in appointments." On May 1, 2019, Jenny Sibila, the Department's foster care supervisor for R.P.'s case, contacted Dr. Munson, who reported to her that Father never called him to schedule a bonding study. The Department then scheduled the bonding study for May 31, 2019, and sent Father a reminder letter on May 21, 2019. The Department arranged for Father's transportation to and from Dr. Munson's office, and the bonding study was completed on May 31, 2019, more than sixteen months after the court ordered that Father complete it.

c. Parenting Classes

On July 22, 2016, the court ordered Father to complete parenting classes. Father started a 10-week parenting class on December 5, 2016, but was removed from that class due to his absences. The Department reminded Father multiple times about the need to complete the parenting course. Father finally completed the parenting course on September 25, 2017.

On February 28, 2020, the court ordered Father to complete "intensive and extensive parenting effectiveness classes" in accordance with Dr. Munson's recommendations. On March 5, 2020, Father filed exceptions, arguing that the court erred in ordering that he enroll in parenting effectiveness classes, and in failing to grant Father overnight visitation. The court postponed a hearing on Father's exceptions multiple times. The Department was mostly unable to reach Father during this time. After a hearing on September 25, 2020, the court denied Father's exceptions. Despite the Department's multiple attempts, Father never enrolled in a parenting effectiveness course.

d. Home Safety Visits

The Department conducted a home safety visit on November 6, 2017. At that time, the Department noted that Father needed to install smoke detectors and generally child-proof the home. The Department also requested information to conduct a background check on the adult daughter of Father's fiancée, who was residing in the home at that time.

Another home visit was conducted on May 14, 2018. The Department believed Father's home was appropriate for visitation at that time, but noted that he did not yet have a bedroom set up for R.P. for overnight visitation.

On June 19, 2018, a social worker attempted to schedule another home visit, but Father indicated that he was unavailable because he was busy preparing for his upcoming wedding. On July 10, 2018, the worker was able to schedule a home visit for July 12. The worker arrived at the home on July 12 at the appointed time, but no one answered the door and Father did not answer his phone when she tried to call him.

On July 23, 2018, the Department conducted another home safety visit and noted that Father still did not have a bedroom for R.P. It was anticipated that the social worker and Father would work on Father's budget during that visit. However, Father did not know many of his expenses and his wife, who managed the household's finances, was not home at the time. The worker attempted to schedule another time to complete the budget, but Father informed her that his work schedule had changed and he would have to contact her when he knew his schedule for the upcoming week. Even after reminders, Father never provided available dates for a meeting.

On August 15, 2018, the social worker reached out to Father to inform him that he still needed to complete a budget. After not hearing back from Father, the Department suspended Father's visitation with R.P. until he contacted the Department. Father did not contact the Department until September 11, 2018. The Department attempted to schedule another home visit at that time, with no success.

The next home safety visit was originally scheduled for November 14, 2019, but Father rescheduled it to November 18. That morning, the social worker conducting the visit tried to text Father to confirm his availability, but received a response from someone else informing her that Father had left his phone in that person's car. After arriving at

Father's home for the appointment, she knocked on the door three times and rang the doorbell twice over the course of ten minutes. She could hear the sounds of an adult and a child inside the home, but no one answered the door.

On November 20, 2019, Father contacted the Department and agreed to a home visit the next day. As a result of that visit, the Department noted that R.P. had an appropriate bedroom and the home was suitable for visitation. However, because there were no working lights in the basement, the worker could not inspect the basement and informed Father that he would need to schedule another visit after the lights were fixed.

During the November 21, 2019 visit, more than two years after the Department's request, Father finally provided the information necessary to conduct a background check on his wife's adult daughter. However, the Department discovered that the social security number provided on the form was incorrect and attempted to contact Father on December 3, 2019, for the correct number. Father did not respond.

A social worker for the Department contacted Father on October 8, 2020, and Father informed her that he was no longer living with his wife, and had moved in with a coworker in June 2020. On October 15, 2020, the worker conducted a home safety visit of the coworker's home and recommended some changes, such as shortening the ceiling fan cord so R.P. would not be able to reach it and cleaning up the backyard to make it safe for children to play. The worker also requested information to conduct a background check on the roommate. Father provided the background check information the next day. On November 2, 2020, Father contacted the Department to inform them that the repairs had been completed, and scheduled a home visit for November 19, 2020. On November 19,

2020, Father informed the Department that he had moved back into his prior residence with his wife.

The Department contacted Father on February 9, 2021, to schedule a home safety visit. Father stated that he would call back when he knew his schedule for the following week. Despite the Department's multiple attempts, Father failed to make arrangements for the home safety visit.

e. Drug Testing

On July 22, 2016, the court ordered Father to submit to random drug testing. Father completed a urinalysis on January 26, 2017, which was positive for marijuana. At a meeting with a social worker on November 6, 2017, Father reported that he continued to use marijuana and the worker requested that he abstain. On December 20, 2017, the Department attempted to arrange for a random drug test, but Father informed the Department that he would be out of town until sometime after January 1, 2018. On February 1, 2018, Father completed a second drug test, which was negative for all substances.

The Department was concerned that Father was "under the influence" during a court hearing on September 6, 2019, and scheduled a hair follicle test for October 31, 2019. A urinalysis and hair follicle test was completed on November 4, 2019. The urinalysis was negative for all substances, but the hair follicle test was positive for marijuana, ecstasy, and

MDA.[3] In December of 2019, the Department requested that Father complete an additional hair follicle test, but received no response from Father. A drug test was scheduled for January 16, 2020, but Father was not home at the time and could not be contacted.

On February 28, 2020, the court ordered Father to participate in a substance abuse evaluation and to follow any treatment recommendations. The Department made multiple attempts to contact Father throughout 2020 to arrange for drug testing, but Father did not complete any further drug tests. Father was referred for a substance abuse evaluation on November 16, 2020, but he failed to complete it. During his psychological evaluation with Dr. Beverli Mormile on November 19, 2020, Father informed Dr. Mormile that he had used marijuana the day before the evaluation. Finally, on April 9, 2021, Father advised a social worker that he would not agree to any further testing.

The TPR Hearing

As previously noted, the three-day TPR hearing was held on June 15, 16, and 17, 2021. The Department presented extensive documentary evidence, including periodic reports from social workers employed by the Department, letters and text messages between Father and various other individuals, and three reports prepared by Dr. Carlton Munson. The Department presented testimony from three expert witnesses—Jenny Sibila,

[3] MDA is a Schedule I controlled substance chemically similar to ecstasy (MDMA) and sometimes found in ecstasy tablets. Md. Code (2002, 2012 Repl. Vol., 2020 Supp.), § 5-402(d)(12) of the Criminal Law Article; *Methylenedioxy-methamphetamine (MDMA)*, Nat'l Inst. on Drug Abuse (May 1, 2004), https://archives.drugabuse.gov/publications/nida-community-drug-alert-bulletin-club-drugs/methylenedioxy-methamphetamine-mdma.

Jennifer Sandruck, and Dr. Munson. The Department also presented testimony from Ms. W. and Alexis Meneses, the social worker assigned to the case. Father called Dr. Beverli Mormile as his expert, but Father declined to testify. We will summarize the testimony of the four expert witnesses below.

a. Jenny Sibila

Jenny Sibila, LCSW-C, testified on behalf of the Department as an expert in social work, with a focus on risk and safety assessments. Ms. Sibila worked for the Department as the foster care supervisor for this case. Ms. Sibila related the events of this case from its inception, especially focusing on the inconsistency of Father's visitation with R.P. She testified that Father's level of visitation had been insufficient to achieve the plan of reunification:

> [I]t's apparent that [Father] has maintained some contact with [R.P.] encouraged by the foster parent, [Ms. W.], but there again remain concerns about his ability to be a full-time parent to [R.P.]. [R.P. has] been in care for almost six years. [Father's] visitation rate with his daughter has been highly inconsistent. In fact, we've seen a decrease in engagement between [Father] and [R.P.] over the last several months. I think the last time they actually had contact with her was in March of 2021.
>
> This past summer, for three months he had no contact with the Department, the court, [R.P.] or the foster parent, [Ms. W.]. His lack of engagement with the Department reveals that he's not committed to the full-time care of his daughter. And the Department doesn't see any additional services that we could offer to improve his commitment of the parent-child relationship.

Ms. Sibila expressed that she would have safety concerns if R.P. were placed with Father, based on his lack of recent contact with R.P. and occasional drug use. She expressed concern that the "inconsistency that [Father has] demonstrated over the last five

and a half years" with visitation and remaining in contact with the Department indicated that Father would also be inconsistent in parenting R.P. Ms. Sibila concluded that Father's parental rights should be terminated so that R.P. can be adopted by Ms. W. and "achieve permanence."

b. Jennifer Sandruck

Jennifer Sandruck, LCSW-C, was admitted as an expert in social work with a concentration on adoptions. She worked for the Department in the adoptions unit, and was assigned to this case beginning in December 2018. Ms. Sandruck testified that she would visit with Ms. W. and R.P. monthly and had observed R.P. and Father together on a few occasions. She opined that Father's inconsistency in visitation was "very concerning" and that it was in R.P.'s best interests for Father's parental rights to be terminated because a disruption in R.P.'s attachment with Ms. W. "could cause distress to [R.P.] both physically and psychologically." Ms. Sandruck additionally stated:

> You know, when [Father's] visitation like it's very inconsistent, it's very confusing for a child. And it impedes the whole reunification process so that we can't move forward because there is no regular routing with him with visitation. And she -- it [a]ffects that relationship between [R.P.] and her dad."

c. Dr. Carlton Munson

On the second day of trial, Dr. Munson testified as an expert in clinical child welfare and psychopathology. Dr. Munson testified concerning the bonding studies he performed between Ms. W. and R.P. and Father and R.P. as well as his fitness to parent evaluation of Father. Because the admissibility of Dr. Munson's fitness to parent evaluation is central

to Father's appeal, we will address that evaluation and the manner in which it was admitted *infra*.

d. Dr. Beverli Mormile

On the last day of trial, Father called Dr. Beverli Mormile to testify as an expert in clinical psychology. Dr. Mormile testified about the psychological evaluation she conducted of Father on November 19, 2020, and her resulting conclusions and recommendations. She testified that Father's intelligence level is average to slightly below average, and that Father did not meet the diagnostic criteria for any psychological disorders. Dr. Mormile opined, "based on my evaluation, I did not find any barriers . . . that would prevent [Father] from being a part of co-parenting his child with his wife." On cross-examination by the child's attorney, Dr. Mormile testified that her evaluation did not reveal "any barriers that would prevent [Father] from calling [Ms. W.] to set up a visit."

Dr. Mormile also testified on cross-examination that she did not assess the level of attachment or bonding between R.P. and Father or Ms. W. because "if you were to take a child at [R.P.'s] age and put her in a different home, she would bond with the next person who was the caregiver." She agreed that it was important for Father to comply with court-ordered requirements for reunification "within reason." In her report, Dr. Mormile recommended that Father "improve his follow-through with the visitation." When asked if she still believed that regular visitation was important, Dr. Mormile answered, "Absolutely." She testified that visitation consistency is important because "it helps the child to know that that parent is still there." We acknowledge that she further opined:

> It helps the child to -- the frequency of that visit does not matter. If he saw her at Christmas and didn't see her again until her birthday, that is consistency. I saw you each time there was a significant event. And so the consistency, it is not how many times. It is did you see her in March? Yes. Now she knows she can depend on seeing you in April. I mean, it just depends on the situation. I don't think that there is a -- anyone can put a plan on it. Do you have friends that you haven't seen in awhile? Is there any love lost or diminished feelings because you haven't seen them in three months? Typically not.

The Juvenile Court's Findings

At the conclusion of the trial, the court summarized the history of the case, the evidence presented at the hearing, and rendered its findings and conclusions from the bench. The court analyzed all of the statutory factors set forth in Section 5-323(d) of the Family Law Article, discussing many of them in detail. The court focused particularly on subsections (1)(iii), "the extent to which a local department and parent have fulfilled their obligations under a social services agreement," (2)(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," (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," and (4)(iv), "the likely impact of terminating parental rights on the child's well-being." Md. Code (2005, 2019 Repl. Vol.), § 5-323(d) of the Family Law Article (FL").

After carefully reviewing how those factors affected its decision, the court found by clear and convincing evidence that Father was "unfit to have a continued parental relationship" with R.P. and that exceptional circumstances existed "that would make the continuation of the parental relationship detrimental to the best interests" of R.P.

Accordingly, the court granted the Department's TPR petition and entered a guardianship order.

Father then filed this timely appeal. We shall provide additional facts as necessary.

DISCUSSION

I. ANY ERROR IN ADMITTING DR. MUNSON'S FITNESS TO PARENT EVALUATION WAS HARMLESS

Father first argues that the trial court erred in admitting Dr. Munson's "Report of Fitness to Parent Assessment" (referred to periodically as the "Report").[4] Specifically, Father argues that the Report should not have been admitted under Rule 5-703 because the Department failed to prove that the Report was "of a nature reasonably relied upon by experts in the field." Father also argues that the testimony of all three of the Department's expert witnesses should have been stricken because they relied upon the Report.

Although the Department and R.P. both assert that the Report was properly admitted, they contend that any error in admitting the Report was harmless.

The Fitness to Parent Report

The report in question initially analyzes fifteen "fitness parent performance criteria." The vast majority of the fifteen criteria focus on biographical and historical information of the parent, such as family history, parenting experience, employment and financial resources, substance abuse, and legal and medical history. Most of the

[4] Dr. Munson authored three separate reports that were admitted as evidence: a bonding study for Father; a bonding study for Ms. W.; and the Fitness to Parent Assessment. Father only challenges the admission of the Fitness to Parent Assessment.

information related to these criteria was obtained by Dr. Munson by virtue of him interviewing Father. In the "intellectual functioning" and "psychological functioning" segments of the Report, Dr. Munson relied on testing such as the "Mini-Mental Status Examination" and "Personality Assessment Screener," tests that Father has not challenged on appeal. At the end of the Report, Dr. Munson concluded that Father "is not currently suitable to care for [R.P.]."

On the first day of trial, the court admitted the Report, over objection, under Rule 5-703,[5] as evidence relied upon by Ms. Sibila in forming her expert opinion.[6] After Dr. Munson's testimony on the second day of trial, counsel for the Department, being unsure if Dr. Munson's bonding studies and fitness to parent evaluation had been admitted into evidence previously, again requested that the reports be admitted into evidence. The court admitted all three reports, reasoning that, because Father's counsel had extensively cross-examined Dr. Munson about the contents of his reports, often referring to specific pages in

[5] Rule 5-703 provides, in pertinent part:

> (a) An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If the court finds on the record that experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.
>
> (b) If the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury over objection only if the court finds on the record that their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

[6] The court admitted the Report "not for the truth of what is contained in it, but as a document that the expert witness has considered."

the fitness to parent report, it was necessary to admit the Report so that it could be referenced in closing arguments.

The court began the final day of trial by addressing the confusion regarding Dr. Munson's reports. The court stated that its notes from the first day of trial indicated that all three reports were admitted into evidence without objection. The court stated:

> My notes indicate they were in. The record will confirm that or not. But if we have a couple of stair steps with regard to the doctor's exhibits, they go as follows: In the first instance, the exhibits were admitted without objection. That is to say, the exhibits are in, what is contained in the exhibits are evidence in the case and that includes the doctor's opinions that are set forth in the exhibits.
>
> Second stair step is to the extent during the trial the exhibits were, again, offered and considered by me, well, I initially excluded them as doubling up but, for clarity, that ruling I'm changing now because the exhibits were admitted without objection and I'm not going to change that ruling, revise it, or re-visit it. So I misspoke. It was an error. I was wrong to at the time the exhibits were offered say that we don't need them because the doctor is here to testify.
>
> At the end of the day, third stair step, when I was asked by [Department's counsel] to re-visit my ruling, [Department's counsel] began her remarks by saying, "judge, I'm pretty sure we admitted those before." [Department's counsel], you were correct. For that reason, I reverse that second stair step ruling because they are already in. Additionally, I think I have explained a sufficient basis, even if they have not been previously admitted for them to be admitted. But as to stair step number three, if I was wrong yesterday with regard to the evidence, they are in because they came in without objection, and I'm not going to reverse that prior ruling.

We initially note that the court was incorrect when it stated that the Report was in evidence without objection on the first day of trial. Our review of the record reveals that Father did object to the admission of the Report on the first day of trial, but the court admitted the document only for the purpose of identifying facts or data relied upon by Ms.

Sibila in rendering her expert opinion. Thus, the court was incorrect when it later concluded that the Report had been substantively admitted without objection on the first day of trial. Nevertheless, as we shall explain, any error in admitting the Report was harmless.

We typically review a trial court's decision to admit or deny evidence for abuse of discretion. *Johnson v. State*, 457 Md. 513, 530 (2018) (citing *Hopkins v. State*, 352 Md. 146, 158 (1998)). Relevant to this case, Rule 5-103(a) provides: "Error may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling." As the Court of Appeals stated in *Brown v. Daniel Realty Co.*:

> Thus, even if manifestly wrong, we will not disturb an evidentiary ruling by a trial court if the error was harmless. The party maintaining that error occurred has the burden of showing that the error complained of likely . . . affected the verdict below. It is not the possibility, but the probability, of prejudice which is the object of the appellate inquiry. Courts are reluctant to set aside verdicts for errors in the admission or exclusion of evidence unless they cause substantial injustice.

409 Md. 565, 584 (2009) (alteration in original) (citations and quotation marks omitted); *accord Lamalfa v. Hearn*, 457 Md. 350, 373 (2018).

The trial court, in an opinion that spans nearly seventy transcript pages, extensively reviewed the evidence upon which it relied. Among other evidence, the court expressly considered: the Department's internal file detailing all contacts with the parents and caregivers, as well as all support offered and provided to the parents; the testimony of all the witnesses; service agreements that Father signed or refused to sign; a table indicating all visits Father had with R.P. and all visits that he missed; prior court orders and reports

the Department periodically filed with the court; and Dr. Munson's two bonding studies.[7] The court did not substantively address the fitness to parent evaluation in its review of the evidence. Moreover, the court stated that Dr. Munson's reports—including the fitness to parent evaluation which is the focus of Father's appellate argument—did not affect the outcome of the case:

> It is my view that essentially the [Department's] three . . . expert witnesses provided consistent opinions with regard to [Father, R.P. and Ms. W.]. Even if I were to have granted [Father's] motion to exclude the entirety of Dr. Munson's testimony, if I pull out the reports, with which I'm intimately familiar, if I delete his testimony from my judicial brain, if I count none of the advocacy with regard to his findings and I'm left with everything else, [Father's counsel], I want you to know I reached by clear and convincing standard the same conclusion. I don't need to say how much I weigh his opinions, if at all. But I simply want the record to reflect that if I were to have granted your motion in its entirety, at the outset, during trial, and have countenanced your encouragement in your closing argument, the outcome of this case would have been no different.

Our independent review of the record supports the court's assertion as to the significance of Dr. Munson's reports. In its analysis, the court focused on Father's history of inconsistent visitation and failure to follow through with court orders and commitments: "It is what I call a father's parenting by convenience at times that greatly concerns the court." The court expressed particular concern about Father's failure to follow through with his *own* expert witness's recommendations:

> I find that the father's most recent action to be the emblem of his unfitness to have a continued parental relationship with [R.P.]. His TPR trial has been rescheduled a couple of times from January to March and March to June. These postponements provided [Father] with added time to get his house in order. [Father] was presumably provided with Dr. Mormile's report which

[7] Father does not challenge the admissibility of the two bonding studies.

> was authored in January of 2021, a week before the first trial date, and that report Dr. Mormile provided recommendations for a successful reunification between [R.P.] and [Father] and recommendations are no different from the Court ordered obligations that have been in place for the past five years. . . . Even if I were to give [Father] a pass for the previous five years of non-compliance, from January 2021 to now, [Father] has failed to follow any of his clinician's recommendations, comply with all Court ordered requirements related to efforts for reunification with his daughter. . . .
>
> Recommendation from his clinician, improved follow through with visitation. Well, since January of 2021, [Father] has visited [R.P.] one time. I find that to be the opposite of improvement. In fact, that is the lowest percentage of visitation for any reporting period.

In short, none of the evidence relied upon by the court in its analysis related to Dr. Munson's reports. Father does not argue how the admission of the Report affected the outcome of this case, and we fail to see any indication from the record that it did. In light of the court's clear statement that "the outcome of this case would have been no different" had the court excluded Dr. Munson's testimony and his reports—a statement we conclude is supported by the record—we hold that any error on the part of the court in admitting the fitness to parent evaluation was harmless.

The Expert Testimony

Aside from the admission of the Report, Father also argues that the court erred in failing to strike the testimony of the Department's expert witnesses because they relied on the Report in rendering their expert opinions. Because Father never objected to or moved to strike the testimony of Ms. Sibila and Ms. Sandruck, that argument has not been preserved for our review.

Father's argument regarding Dr. Munson's testimony is far from clear. He quotes extensively from the arguments he made at trial in his motion to strike Dr. Munson's

testimony, and the Department's response to the motion. However, the entirety of the argument on this issue in his appellate brief relates to whether Dr. Munson created the reports for use in the TPR proceedings. Father does not explain how that fact constitutes trial court error or affects our resolution of this case. Indeed, expert witnesses frequently testify based on tests and evaluations performed specifically for litigation.

Rule 8-504(a)(6) requires a party to present "[a]rgument in support of the party's position" within their appellate brief. An argument that is not presented with particularity, or that merely refers to argument made at trial, without more, does not satisfy Rule 8-504(a)(6). *Thompson v. State*, 229 Md. App. 385, 400–01 (2016). By failing to present sufficient argument in his appellate brief, Father has waived his challenge to the court's denial of his motion to strike Dr. Munson's testimony. *See, e.g.*, *Impac Mortgage Holdings, Inc. v. Timm*, 245 Md. App. 84, 117 (2020) ("His failure to present sufficient argument in his appellate brief means that Mr. Timm has waived his challenge to the court's summary judgment ruling, and we affirm the circuit court judgment on that ground."); *Uthus v. Valley Mill Camp, Inc.*, 243 Md. App. 539, 551 n.5 (2019) ("Uthus does not offer any substantial argument supporting his position that the characterization of his situation as a tenancy at sufferance would in any way change our analysis, and we will not attempt to make these arguments for him.").

Additionally, as previously discussed, the court noted that if it removed Dr. Munson's testimony and his reports from the evidence, the outcome would not have changed. Consequently, any error in denying the motion to strike is harmless.

II. THE COURT DID NOT ERR OR ABUSE ITS DISCRETION IN TERMINATING FATHER'S PARENTAL RIGHTS

Lastly, Father argues that the court abused its discretion by terminating his parental rights because "[t]here [was] no evidence that Father [was] unfit to remain in a parental relationship with his daughter and there [was] no evidence that exceptional circumstances exist[ed] that render[ed] a continuation of the parental relationship detrimental to the best interests of the child."

We review a court's decision to terminate parental rights using "three distinct, but interrelated standards." *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214 (2018).

> The juvenile court's factual findings are left undisturbed unless they are clearly erroneous. We review legal questions without deference, and if the lower court erred, further proceedings are ordinarily required unless the error is harmless. The lower court's "ultimate conclusion," if it is "founded upon sound legal principles and based upon factual findings that are not clearly erroneous," will be "disturbed only if there has been a clear abuse of discretion."

Id. (citations omitted) (quoting *In re Adoption of Ta'Niya C.*, 417 Md. 90, 100 (2010)).

Parents have a fundamental right to "raise their children free from undue and unwarranted interference on the part of the State." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 495 (2007). However, this right is not absolute. The fundamental right to parent must be balanced with the State's interest in protecting children. *H.W.*, 460 Md. at 216. "The grant of guardianship terminates the existing parental relationship and transfers to the State the parental rights that emanate from a parental relationship." *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 48 (2019) (citing

Rashawn H., 402 Md. at 496). The policies applicable to termination of parental rights and adoption in Maryland are delineated in the governing statutes:

> (1) timely provide permanent and safe homes for children consistent with their best interests;
>
> (2) protect children from unnecessary separation from their parents;
>
> (3) ensure adoption only by individuals fit for the responsibility;
>
> (4) protect parents from making hurried or ill-considered agreements to terminate parental rights;
>
> (5) protect prospective adoptive parents by giving them information about children and their backgrounds; and
>
> (6) protect adoptive parents from future disturbances of their relationships with children by former parents.

FL § 5-303(b). Above all, the "primary consideration" in determining whether to terminate a parent's parental rights is "the health and safety of the child." FL § 5-323(d).

Termination of parental rights cases are fundamentally different from child custody cases in multiple ways, which the court here recognized. Whereas in child custody cases there is no legal preference between two parents, in TPR cases there is a presumption in favor of maintaining the parental relationship. *Rashawn H.*, 402 Md. at 495. In order to terminate parental rights, a court must find by clear and convincing evidence that either (1) a parent is unfit, or (2) exceptional circumstances exist which would make a continued parental relationship detrimental to the best interests of the child. *Id.*

In determining unfitness or exceptional circumstances, the court is required to expressly consider the factors enumerated in FL § 5-323(d). *C.E.*, 464 Md. at 51. These factors are:

(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 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

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.

FL § 5-323(d). These factors look to "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." *Rashawn H.*, 402 Md. at 500. "In examining whether an exceptional circumstance exists, a juvenile court should look to whether there is a reason to terminate the parental relationship because the best interest of the child is not served through continuing the parental relationship." *C.E.*, 464 Md. at 54. In addition to the FL § 5-323(d) factors, the court may also consider other factors relating to TPR, such as a parent's "age, stability, and the capacity and interest of a parent to provide for the emotional, social, moral, material, and educational needs of the child." *H.W.*, 460 Md. at 220.

We turn to the instant case. At the conclusion of the TPR hearing, the court made findings of fact on each of the relevant FL § 5-323(d) factors. With regard to the services offered to assist reunification as provided in FL § 5-323(d)(1), the court found that the Department, among other things: "made appropriate referrals, contacted treatment/service providers[,] provided service and assistance, including transportation assistance, provided case management services, and conducted drug testing, held and attended meetings. Pretty thick file that supports that finding." The court further found that "[t]he Department continuously offered these services throughout the process," even when Father failed to cooperate.

In addressing Father's efforts to adjust his behavior to permit reunification with the child, the court found that Father failed to fulfill his obligations. The court noted that although Father had only signed the first service agreement, he was aware of the consequences of failing to meet those expectations, and nonetheless failed to fulfill many of those obligations.

Specifically, in analyzing the contact maintained between Father and R.P. as provided in FL § 5-323(d)(2), the court found that Father "was present at slightly over half of the scheduled visits with [R.P.]." In the court's view, "that figure is not indicative of a parent who wants to reunify with the child." The court further noted that "[t]here were lengthy periods of time where [Father] had no contact with [R.P.]," and that "[a] majority of the missed visits have come in the last year and a half." The court therefore concluded that Father's visitation with R.P. represented "a regrettable trend." As to Father's communication with the Department, the court mentioned the "lengthy periods of time where the Department was unable to communicate" with Father and that Father "repeatedly missed drug test appointments and home visits without . . . good reason."

Turning to FL § 5-323(d)(2)(iv), whether additional services could result in reunification within eighteen months, the court found that there was "nothing" in the record indicating that possibility. The court stated: "In fact, the record suggests that additional services would not change any aspect of the case. Father has been provided a number of services throughout this five and a half year process . . . and has failed to take advantage of them."

In Father's favor, the court found that none of the aggravating circumstances listed in FL § 5-323(d)(3) applied, although the court briefly discussed Father's prior criminal convictions, the last of which occurred in 2010, and concluded: "I want to specifically say and I find by clear and convincing evidence nothing of a negative nature in this case attributed to the father's prior criminal history."

As to FL § 5-323(d)(4)(i) regarding "the child's emotional ties with and feelings toward the child's parents . . . and others who may affect the child's best interests significantly," although the court found that Father and R.P. had a positive relationship, the court did not believe that their relationship was in the nature of a parent/child relationship. Instead, the court referred to Father's expert's observation that their relationship was "founded upon familiarity but not necessarily driven by the number of visits. Friends. She is friendly with her dad but she doesn't interact with him like she interacts with her full-time care giver, [Ms. W.]." In reaching this conclusion, the court also relied upon the testimony of Ms. Sibila, Ms. Muneses, and on Dr. Munson's bonding reports, reaching the ultimate conclusion that R.P. "is not significantly bonded with her Dad." On the other hand, the court found that R.P. had a "strong bond" with Ms. W. Indeed, in considering R.P.'s adjustment to community, home, placement, and school under FL § 5-323(d)(4)(ii), the court found that R.P. had "a strong and healthy attachment" to Ms. W. and had "strong relationships with friends in the neighborhood, at school, and at church."

Regarding FL § 5-323(d)(4)(iii), "[t]he child's feelings about severance of the parent-child relationship," the court noted that R.P. was six years old, and no evidence was

presented about her feelings on this issue or whether she could understand the concept at her age. The court considered FL § 5-323(d)(4)(iv), "the likely impact of terminating parental rights on the child's well-being," and found, based upon the Department's expert testimony, that terminating Father's parental rights would have a positive impact on R.P. by providing permanence.[8]

The court also considered "the capacity and interest of a parent to provide for the emotional, social and moral, material and educational needs of the child." The court noted, in Father's favor, that he had been continuously employed, completed a parenting class, and had made progress on his home inspections. However, the court primarily focused on Father's lack of diligence, spanning a period of years, in completing the tasks that he agreed to in the service agreement, that had been ordered by the court, and that had been recommended by his own expert witness:

> The factors I have highlighted, numerous visits missed, delayed scheduling of home visits and bonding study, missed drug test, failing to cooperate with the substance abuse evaluation and mental health evaluation [are] of terrific concern to the court and I counted them as clear and convincing evidence

[8] Father argues that terminating his parental rights was not necessary for achieving permanence. Father cites *In re Adoption/Guardianship of C.E.*, 460 Md. 572 (2018), to support this assertion. We note that the Court of Appeals granted reconsideration in *C.E.* and withdrew the opinion to which Father cites. After reconsideration, the Court of Appeals published a different opinion, *In re Adoption/Guardianship of C.E.*, 464 Md. 26 (2019), which does not support Father's argument. There, the Court stated that "the juvenile court overemphasized the bond between the Father and the child and failed to properly consider permanency and the ability of the father to successfully parent C.E in a stable environment." *Id.* at 56.

Here, the court did not overemphasize any one factor, and properly relied on the testimony of multiple expert witnesses in finding that terminating Father's parental rights would be in R.P.'s best interests because it would result in permanence.

> that the Dad in terms of the capacity and interest of a parent to provide for the emotional, social, moral and educational needs of a child, is in a different place than that which he professes to be. He has demonstrated a lack of capacity and interest of a parent to provide for those very important needs and issues.

The court then found that Father was not fit to remain in a parental relationship with R.P. and that exceptional circumstances existed such that the continuation of a parental relationship would be detrimental to the best interests of R.P.

Contrary to Father's assertion that there was "no evidence" indicating his unfitness to parent or the existence of exceptional circumstances, there is ample evidence in the record to support the court's factual findings based on a clear and convincing evidentiary standard. The court appropriately weighed the statutory factors, giving them "careful consideration." *See H.W.*, 460 Md. at 234 (quoting *Rashawn H.*, 402 Md. at 501). The court did not err in finding that Father was unfit and that exceptional circumstances existed which would make a continued parental relationship with Father detrimental to R.P.'s best interests. *See C.E.*, 464 Md. at 54 (determining whether exceptional circumstances exist requires consideration whether continuation of the parental relationship would be detrimental to the child's best interests). The court acknowledged that Father did make some efforts toward reunification. Nevertheless, the court concluded that the evidence, on the whole, demonstrated that Father failed to act with diligence, and his consistency with visitation and other obligations decreased dramatically over time. The court ultimately concluded, based on the statutory factors that inform both unfitness and exceptional circumstances, that R.P.'s best interests were "not served through continuing the parental

relationship." *See id.* at 50–53. We therefore hold that the court did not abuse its discretion in terminating Father's parental rights.

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