Circuit Court for Montgomery County
Sitting as a Juvenile Court
Petition Nos. 06-Z-16-31
06-Z-16-32

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 774

September Term, 2017

IN RE: ADOPTION/GUARDIANSHIP OF

L.M. AND T.T.

Kehoe,
Shaw Geter,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: April 9, 2018

Appellant T.T.[1] ("Father") and R.M. ("Mother"), together, are the biological parents of two boys -- T.T., born on May 29, 2013, and L.M., born on May 5, 2014. After the Department investigated allegations of abuse within Father's and Mother's home, and both parents continued to violate an order of protection pertaining to T.T. and L.M., the juvenile court granted the Department's request to have the two children placed into foster care. Father participated in various services over the course of approximately 32 months until the Department recommended, and the juvenile court granted, that the permanency plan for the children be changed from reunification with Father to adoption by a non-relative. After a trial on Father's parental rights ("TPR trial"), the Circuit Court for Montgomery County, sitting as a juvenile court, issued its determination terminating Father's rights. Father now appeals the juvenile court's decision.

On appeal, Father presents one issue for our review, which we have reworded as follows: Whether the juvenile court abused its discretion in terminating Father's parental rights. For the reasons discussed below, we hold that the juvenile court was within its discretion to terminate Father's parental rights.

BACKGROUND AND PROCEDURAL HISTORY

The Department of Health and Human Services and Child Welfare Services (collectively, "the Department") became involved with Father and Mother in December 2013. At that time, at least three of Mother's biological children -- eleven-year old

[1] One of Father's sons has the same initials as Father; we use the name "T.T." to refer only to Father's child throughout the remainder of this opinion.

daughter R.R., five-year old son R.J., and seven-month old son, T.T.[2] -- were living in an apartment with Mother, Father, and Father's mother and Father's sister. Mother was also pregnant with L.M. at the time, who was born the following May of 2014. Only T.T. and L.M. are the biological children of Father. Both Mother's older daughter, R.R., and son, R.J., had special physical and mental needs. R.J. suffered from several physical and cognitive disabilities, including Down syndrome, verbal delays, and a heart condition requiring him to have a pacemaker and take medication. The Department's involvement with the family in 2013 occurred following Mother's call to police after eleven-year old R.R. did not come home the night before. R.R. was located at her school. She explained that she had lost track of time at a friend's house the night before and was afraid that she would be beaten if she went home. R.R. disclosed that both Mother and Father regularly beat her, and that she was made to lie on the floor where she was beaten with a belt, which caused bruises and welts.

Both Father and Mother ultimately admitted having used physical discipline on both R.R. and her developmentally disabled brother, R.J. Father was advised that he was not permitted to use physical discipline with children who were not his biological children, and both Father and Mother agreed to stop using physical discipline with any of the children in the home. The Department referred the family for therapy, and the case was closed as a result of their agreement not to use physical discipline.

[2] Mother also had an older son who was not biologically related to Father; therefore, prior to the birth of L.M., Mother had a total of four children. It is not clear if Mother's older son resided in the apartment at the time of the December 2013 investigation.

In April 2014, however, the family came to the attention of the Department once again. The second investigation occurred after the Department received a report on April 1, 2014 alleging physical abuse of R.J. indicated by severe bruising on the backs of his legs. Family Crimes Division detectives investigated, and R.R. disclosed that her brother's injuries were the result of Father beating R.J. with a belt on March 10, 2014 after R.J. misbehaved at the Learning Center. An investigator asked Mother about the incident and, after she was shown a photograph of R.J.'s injuries, she admitted that although she was not home when the beating occurred, she had observed scabs on R.J. the next morning. The investigator noted that "five significant bruises" were still present on the backs of his legs more than two weeks after the alleged incident.

During the investigation, R.R. asserted that Father had stopped giving R.J. his heart medication months earlier, and Mother admitted that she had not had a day off from work to schedule an appointment with R.J.'s cardiologist. She explained that she had asked Father to take him since he was not working at the time, but he refused. Mother disclosed that she was afraid of Father, and that Father had been physically violent with her in the past. Father admitted to using physical discipline on R.J, despite his severe disabilities and the Department's prior notice to him that he was not permitted to use physical discipline with non-biological children. Additionally, in the presence of detectives, Father "grabbed and twisted [Mother's] arm while she was holding the baby" and "push[ed] [Mother] into the wall with [T.T.] in her arms." As a result of these allegations and the physical abuse the detectives observed, the Department assisted

Mother in applying for and receiving a protective order.[3] Mother sought shelter for herself and the children at a domestic violence shelter.

Soon after, in early May 2014, Mother gave birth to Father's second biological child, L.M. Later that month, Mother agreed that the Department would supervise any contact Father had with T.T. and L.M. In June 2014, Father also agreed to having only supervised time with the children and to attend the Abused Persons' Program, as recommended by the Department. On June 30, 2014, R.R. and her older brother returned to the domestic violence shelter to find Mother, after staying with relatives. Mother had vacated the shelter, however, with the other three children, on June 23, 2014. The shelter contacted the Department. Mother and the three children were later found at her former home with Father in violation of the protective order and both parents' agreement for Father to have only supervised access to the children.

At a pretrial and settlement hearing immediately following mediation on July 24, 2014, the juvenile court sustained the facts of the First Amended Child in Need of Assistance (CINA)[4] Petition. At the Adjudication/Disposition that same day, the court found the children to be children in need of assistance, that Mother was unable to give proper care and attention to the children without the assistance of the Department, and

[3] The final protective order against Father was granted on behalf of Mother and her children by the District Court on April 18, 2014.

[4] A "child in need of assistance," or "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 care and attention to the child and the child's needs." Md. Code (2006, Repl. Vol. 2013), Cts. & Jud. Proc. Art. ("CJP"), § 3-801(f). The term "CINA" refers to "a child in need of assistance." § 3-801(g).

that Father was unable to care for the children. Father was ordered to maintain stable housing, participate in supervised visits with T.T. and L.M. a minimum of once per week, participate in the Responsible Father's program, complete the Abused Persons' Program offenders' group, undergo a psychological evaluation, abide by the protective order, and stay away from Mother's home. The Court continued the children in Mother's care under an Order of Protective Supervision.

In an order dated September 25, 2014, however, the juvenile court granted the Department's request for an Emergency Change in Placement based on Mother's and Father's violations of the Order of Protective Supervision. Both T.T. and L.M. were placed in a foster home together, where they continued to reside throughout the proceedings that followed. Over the course of the next two and a half years, Father participated in multiple Permanency Planning hearings, as well as supervised visitation with T.T. and L.M. (hereinafter "the children") and various court-ordered services.[5] At the Permanency Planning hearings between September 2014 and June 2016, the Department continued to recommend reunification of Father and the children. The juvenile court adopted the Department's recommendations, and at each hearing, continued to monitor Father's progress in various court-ordered programs and during supervised visits with the children. The Department changed its recommendation to adoption by a non-relative, however, at the Permanency Planning hearings of November 2 and 4 of 2016, and the court adopted its recommendation.

[5] We review these facts in more detail in our review of the juvenile court's analysis and decision.

A Termination of Parental Rights (TPR) trial was scheduled for April 24-25 of 2017 before the Circuit Court for Montgomery County sitting as the juvenile court. Mother was served on December 20, 2016, and although she initially objected to the proceedings, she ultimately consented to the termination of her parental rights on the record on February 1, 2017. Father was served on December 21, 2016 and he opposed the Department's Petition in a Notice of Objection filed on January 4, 2017. At the TPR trial -- then pertaining only to Father's parental rights -- several witnesses testified for the State, including the children's foster parents and various service providers that were involved with the children's case. In its thirty-five page memorandum opinion, dated May 30, 2017, the juvenile court issued the following determination:

> Taking all of the above into consideration, the Court finds by clear and convincing evidence that [Father] is unfit, that [Father] poses an unacceptable risk to his children's future safety and security and appears incapable of meeting their needs, and that it is in [L.M.'s] and [T.T.'s] best interest that the parental rights of . . . [Father] be terminated.

We discuss the juvenile court's findings of fact in greater detail below.

DISCUSSION

On appeal is Father's challenge to the trial court's decision to terminate Father's parental rights at the conclusion of the TPR trial. The Court of Appeals summarized the three-part standard of review that we apply in child custody cases, including TPR proceedings, in the following way:

> In sum, we point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Secondly,] [i]f it appears that the [court] erred as to

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

In re Yve S., 373 Md. 551, 586 (2003) (quoting *Davis v. Davis*, 280 Md. 119, 126 (1977) (Emphasis omitted) (Alterations in original).

Under the final phase of our review for abuse of discretion, "we will only disturb a court's ruling if it "'does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.'" *See In re Adoption of Jayden G.*, 433 Md. 50, 87 (2013) (quoting *King v. State*, 407 Md. 682, 697 (2009)). As the Court noted in *In re Yve S.*,

> Such broad discretion is vested in the [court] because only [the trial judge] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [the juvenile court] is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.

373 Md. at 586 (quoting *Davis*, 280 Md. at 125).

Maryland Code (1984, Repl. Vol. 2012), Fam. Law Art. ("FL"), § 5-323 governs the involuntary grant of guardianship. Subsection (b) provides the general framework of the trial court's analysis:

> If, after consideration of factors as required in this section, a juvenile court finds by clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the

> best interests of the child such that terminating the rights of the parent is in a child's best interests, the juvenile court may grant guardianship of the child without consent otherwise required under this subtitle and over the child's objection.

FL § 5-323(b).

We have previously explained that "[p]arents have a 'constitutionally-based right to raise their children free from undue and unwarranted interference on the part of the State, including its courts.'" -- *In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 734 (2014) (quoting *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 495 (2007)). We discussed this presumption in *Jasmine D.*:

> This right creates "a presumption of law and fact—that it is in the best interest of children to remain in the care and custody of their parents." [*Rashawn H.*, 402 Md. at 495]. That presumption, however, has limits, and the right of a parent to make decisions regarding the care, custody, and control of their children may be taken away where (1) the parent is deemed unfit, or extraordinary circumstances exist that would make a continued relationship between parent and child detrimental to the child, and (2) the child's best interests would be served by ending the parental relationship.

Id. (citing *Rashawn H.*, 402 Md. at 495).

Our law presumes that, absent extreme circumstances, it is in a child's best interest to remain in the care and custody of his or her parents without the burden of uncertainty or impermanence. *See id.*; *see also In re Adoption of Jayden G.*, 433 Md. 50, 84 (2013) (noting that "[w]hen reunification with a parent is not a viable option, under the CINA and TPR statutory framework, the adoption of the child is viewed -- in terms of

permanency -- as the next best thing").[6] Pursuant to FL § 5-323, there are two fundamental findings the trial court must make before taking away a parent's fundamental right to raise his or her own child -- first, a finding of either "unfitness" or "exceptional circumstances," and second, a finding that it is in the child's best interest to terminate the rights of the parent. *See* FL § 5-323(b); *see also Jasmine D.*, 217 Md. App. at 734. The second finding is made after considering all of the factors enumerated under FL § 5-323(d). *See In re Adoption of Jayden G.*, 433 Md. 50, 94 (2013) ("A finding of parental unfitness overcomes the parental presumption, but it does not establish that termination of parental rights is in the child's best interest. To decide whether it is, the court must still consider the statutory factors under FL § 5–323(d).").

A. The Juvenile Court's Findings of Fact Were Not Erroneous.

The juvenile court provided a detailed explanation of its findings of fact based on the evidence presented at trial. We review pertinent portions of the trial court's factual findings below:

> The identity of both parents has been known to the Department since the inception of the case. [. . .] Thus, the provisions of Md. Code Ann., Fam. Law Art. § 5-323(c) are not applicable in this matter.
>
> The family first came to the attention of the Department in December 2013. The Department conducted an abuse investigation . . . based upon a report that [R.R.] . . . had spent a night out of the home because she was afraid she would receive a beating for wearing inappropriate clothing to school.

[6] In addition, the Court of Appeals in *Jayden G.* provided that "Maryland's CINA and TPR statutory framework requires that "[e]very reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement." *Id.* (citing CJP § 3-823(h)(3)).

> The report alleged [R.R.] was the recipient of regular beatings in the home at the hands of [Mother] and [Father].
>
> * * *
>
> In April 2014, the family once again came to the attention of the Department when a report was made alleging the physical abuse of R.R. (12 years old) and R.J. (5 years old) who has [Down syndrome], verbal delays and a pacemaker. [Father] admitted to using physical discipline on [R.J.]. In addition [Father] "grabbed and twisted [Mother's] arm while she was holding the baby, yelling 'give me my son back, you're not going anywhere with my child,' while simultaneously pushing [Mother] into the wall with [T.T.] in her arms. [Mother] went on to detail to social workers a history of domestic violence she experienced at the hands of [Father].
>
> * * *
>
> [O]n July 24, 2014, the Court sustained the facts of the First Amended [CINA] Petition by agreement of all parties. The sustained allegations were as follows: in mid-December . . . all of the siblings had been disciplined inappropriately by Mother and [Father] (made to stand with a heavy pot held overhead, beaten with extension cords/belts which left marks); [R.R.] and [R.J.] had special physical and mental health needs . . . .
>
> * * *
>
> The Department noted in both its § 3-816.2 reports that [Father] continued to be in Mother's home in violation of the Protective Order, that he had difficulty visiting consistently, missing 7 out of 12 visits during the first reporting period, and that he struggled with interaction with the children at visits. The Department was concerned about the effect the inconsistency might have on the children. At the § 3-816.2 hearing in January 2015, [Father] was ordered to maintain stable housing, participate in supervised visits, sign releases, complete APP,[7] undergo random urinalysis, complete a psychological exam, and abide by the protective order.

[7] "Abused Persons Program."

The juvenile court noted that Father showed some brief improvement in his attendance of supervised visits during the period leading to the July 28, 2015 Permanency Planning Review Hearing report.

> [T]he Department recommend[ed] that [Father] participate in a Lourie Center parenting assessment, and that through counseling he might gain greater insight into what brought his children into care. [Father] expressed little insight concerning the children's developmental levels. Neither his mother nor sister demonstrated insight concerning the physical discipline [that] brought the children into care. This concerned the Department, as [Father] expressed the desire to rely upon these relatives should the children be returned to his care. The Department reported the [T.T.] and [L.M.] continued to do well in the foster home, all of their physical and emotional needs were met, and that foster mother worked well with Infants & Toddlers in helping [T.T.'s] attention, focus, and helping him regulate his behavior.
>
> At the Permanency Planning hearing on August 7, 2015, the Court found that the children were thriving with their foster parents and that removal would be harmful to them, and that it would be in the children's best interests to maintain the plan of reunification. The Court ordered, among other things, that [Father] maintain stable housing, participate in a parenting capacity assessment through the Lourie Center, and continue to abide by the Protective Order.

Father's attendance declined, however, during the period ending with the Department's December 24, 2015 report.

> [T]he Department . . . had significant doubts about reunification as the children had been in foster care for 15 months and neither parent was able to be a safe and appropriate caregiver. As a result, the Department asserted that it may . . . be in the children's best interest to be adopted by their foster family. [Father] attended 11 out of 20 visits, continued to struggle with how to appropriately engage the children, demonstrated difficulty managing the visits and anticipating and responding to cues if the routine was altered,

> had difficulty keeping [T.T.] safe on the changing table or the children safe in booster seats, and struggled to implement age-appropriate activities with the children. . . . [T]he Lourie Center report noted a "striking . . . lack of reciprocal interaction or emotional engagement" between [Father] and the children. Meanwhile, the children continued to do well and remain connected to their foster family. The Department had invited [Father's] relatives . . . to meet to discuss being relative placement resources and to complete background checks, but received no response. The Department continued to be concerned about the past excessive physical discipline, and told [Father] he would have to obtain his own housing if reunification was to continue to be a viable plan and to present a plan for night-time daycare during his work hours. The Department noted, "[Father] has been unable to verbalize a concrete plan for how the care of the boys would be managed on a daily basis [. . .]."

The juvenile court explained that, despite the Department's concerns, it had continued to recommend a plan for Father's reunification with the children at the January 6, 2016 hearing. The court ordered the plan, and required Father to secure stable housing and participate in parenting coaching. The court continued:

> In May 2016, the Department maintained significant doubts about a plan of reunification, remarking that the children had been placed out of the home . . . [for] 20 consecutive months. The Department forecasted that at the next hearing it would be asking to change the plan to Adoption in three months, noting that no relatives had presented themselves as resources. [Father] had attended 5 out of the 18 scheduled visits during the reporting period, and did not "consistently comprehend, see the benefit of, or utilize the parenting strategies suggested to him . . . [he] continues to have minimal interactions with [T.T.] and [L.M.]" and had been discharged from parenting education because of attendance issues. Of the visits he did attend, [Father] was described as relying "on a set idea of how things should proceed and continues to have difficulty anticipating the needs of the boys and how to engage them in meaningful and interactive activities." [. . .] The Department expressed concern during

this reporting period that [Father] had regressed to a belligerent posture towards the Department . . . . After a meeting with [Father] [on] April 14, 2016, [Father's sister] contacted the Department, asserted that she wanted to be a resource. However, [his sister] failed to present herself by the submission of the Report at the end of May.

At the Permanency Planning hearing of June 6, 2016, the Department continued to recommend a plan of reunification, which the Court adopted. [. . .] Twenty-one months after the removal of the children, [Father] had made no progress toward understanding the needs of his children and obtaining stability.

At the Permanency Planning hearing of November 2 and 4, 2016, the Department recommended a change in permanency plan to adoption by a non-relative, which the Court adopted. The Department observed that the children had been placed out of the home for 24 months. [Father] had been inconsistent in his participation in services, especially those involving the children (visits, limited parenting knowledge and abilities, insight regarding the children) all of which impacted "the depth of his attachment to them." At a Family Involvement Meeting on September 14, 2016, [Father], his sister . . . , and other relatives had been present but no alternative plan had been developed. [. . .] [His sister's] life and housing appeared to be intertwined with [Father], who had resided with her since before the children were placed, and she showed no understanding or insight with regard to appropriate parental discipline. Although she denied being a proponent of the pot-holding disciplinary technique, she endorsed [Father's] use of a belt as "normal" discipline. After [Father's] family became involved with the Department, [Father's] attendance became more consistent, although, by the time of the November 2016 hearing, he had attended less than 50% of the visits over the 2 years that the children had been in care.

By the time of the March 2017 Permanency Planning Review hearing . . . , [Father] had attended nearly all visits during the reporting period, continued to reside with his sister and mother, and his sister asserted that she could provide stable housing for the children. All the while, [T.T.] and [L.M.]

> remained fully integrated and maintained a strong bond with their foster families, and their foster parents continued to be fully engaged with the children's treatment providers.
>
> It must be presumed, as [Father] was present at many [c]ourt hearings and represented throughout the pendency of the CINA matter, that [he] had full knowledge of all the facts and circumstances of the CINA matter . . . He has been represented throughout this guardianship matter by the same counsel, filed an objection and is presumed to know the allegations and relief requested in the Department's guardianship petition. [. . .] [Father] . . . was advised at a Permanency Planning hearing that should he continue to not progress, it was likely that the Permanency Plan would change to Custody and Guardianship by a Non-Relative or Adoption. Having participated in every hearing, [Father] may not claim ignorance of the facts and circumstances in the CINA Court Reports and Court Orders: namely, that efforts towards reunification were not successful with Mother nor with him; that placement with a relative (including his suggestion of his sister . . .) was not viable; and that the only alternative for permanency for the children was adoption.

The juvenile court then reviewed the testimony it received during the TPR trial at the end of April 2017, noting that the Department called expert and fact witnesses, and Father did not testify.

> The Department first called as an expert Julia Wessel, LCSW-C, a clinician with the Lourie Center for Children's Social and Emotional Wellness, who provides outpatient psychotherapeutic services for children . . . . Ms Wessel . . . completed a Child Placement Consultation Team Evaluation on December 10, 2015. At the time of the evaluation, [T.T.] was 30 months old and [L.M.] was 19 months old. Although [Father] cooperated with the evaluation, he participated in the evaluation "to clear [his] good name," was puzzled by accusations of maltreatment of children, rationalized the use of harsh physical punishment, and minimized his own actions [and] responsibility. [Father] appeared unable to provide a stable, emotionally and physically safe home environment and to respond appropriately to unforeseen changes that

might arise. Notably, he was confident, though vague, about the concrete details of organization, housing, education, or childcare for [T.T. and L.M.], and was unable to anticipate any particular challenges, asserting that his mother and sister would assist with childcare although both had full-time employment. Ms. Wessel observed . . . [Father] was unable to read [T.T.'s] cues. [Father] was more engaged with [L.M.]. It should be noted that at this time, [T.T.] presented with many behavioral and emotional challenges, whereas [L.M.] was a much easier child to manage.

[T.T.] had experienced an infancy "that was disorganized, disrupted, and quite possibly traumatic" and needs a parent who can "recognize and respond to his special needs and collaborate with . . . specialists to support his development."

* * *

Ms. Wessel testified that [T.T.] and [L.M.] presented as either having been exposed to childhood trauma and abuse or having been raised in an environment of trauma. [. . .] [Father] also presented as incapable of managing the children's distress which is of particular concern because [T.T.] and [L.M.] are both special needs children. She further testified that [Father] had a sense of ambivalence regarding his relationship with the boys and was not sure whether he wanted to get them back; did not think the boys would miss their foster home were they to be removed; and was unable to reflect on the impact the instability the boys experienced had on them. Ms. Wessel went on to describe [Father] as appearing disinterested in being a parent.

* * *

Departmental Social Worker Elizabeth Freeze testified concerning her oversight of the case . . . and her experiences with [Father]. Ms. Freeze stated that by November 2016, [Father] had participated in approximately half of the available visits . . . , the majority of the participation occurring in the months leading up to the hearing. She described [Father's] interaction with the children as being similar to that of an uncle and not a father. In fact, she stated that the boys reacted to [Father] in the same way they reacted

> to her. This suggests a lack of parent-child bond . . . . Of note was [Father's] inability to accept responsibility for his past inappropriate behavior toward the children and to move on and stop focusing on . . . the original CINA investigation. Ms. Freeze observed that the children were very attached to their foster parents, siblings and the foster extended family and friends . . . . Ms. Freeze opined that more was required than mere consistency of visits. She stated that in order for her opinion to change [Father] would need to show a deeper bond with the boys; interest in their lives; understanding regarding their developmental delays and how to address them; empathy, sympathy; the ability to anticipate and act upon any safety issues; and an ability to make plans for being responsible for the care of the boys. [. . .] In short, Ms. Freeze was talking about [Father's] inability in November 2016 . . . to show an interest in his children [that] extended beyond his visits with them. At that hearing, . . . [Father] attempted to abdicate his role as parent to his sister . . . who, in turn, failed to tender a promised plan for the children's care to the Department. [. . .] He continued to fail to request information concerning the children's special needs and current development. [. . .] [Father] has failed, repeatedly, to establish that he has the capability to be the kind of caregiver who can safeguard his children's emotional well-being.
>
> The Department presented Kerry LaRosa, an expert social worker who provided parenting coaching to [Father] for . . . five sessions from February 2016 to April 2016. [. . .] Ms. LaRosa stated that she did not notice any improvement on the part of [Father]; she had to provide him with the same type of prompting repeatedly. Due to [Father's] inconsistent attendance of sessions, parenting coaching was terminated resulting in Ms. LaRosa being unable to assist [Father] in improving his interactions with the children. Ms. LaRosa testified that [Father] failed to anticipate safety issues. She recalled instances of the children running to the parking lot and her having to chase them down to maintain their safety.

Finally, the court described the relationship between the children and their foster parents, and the commitment demonstrated by their foster parents to improve the boys' situation:

> It was abundantly clear through [the foster parents'] testimony that they love [T.T.] and [L.M.] and consider them to be their children. [Ms. Freeze] testified that the foster parents' love and affection for [T.T.] and [L.M.] is more than reciprocated by the children. It should be noted that, although the mere passage of time is not a paramount consideration in these cases, two and a half years in the lives of a 3 year old and a 4 year old is an eternity . . . . The attachment and bonding that occurs in the context of the repeated interactions with the foster parents, foster siblings, extended family community, church and school, is a preeminent concern for the Court.[8]
>
> The foster parents have demonstrated an unwavering commitment to [the children] which abided during the children's initial placement and challenges. Their steadfast commitment continues to be the foster parents' core value which allows them to nurture and stabilize these children in the face of all their challenges such as [L.M.'s] pending autism testing. Each foster parent testified that the intention is to adopt, if the opportunity arises; but, whether or not that happens, they harbor an unwavering intention to be there for [the children] no matter what.

B. The Juvenile Court's Analysis Properly Applied & Considered the Factors Required by FL § 5-323.

Subsection (d) of FL § 5-323 instructs the trial court that "in ruling on a petition for guardianship of a child, a juvenile court shall give primary consideration to the health

[8] Father argues on appeal that the juvenile court should not have considered the length of time the children were in foster care as a primary basis for its decision. It is true that the court may not presume that it is in a child's best interest to terminate a parent's rights merely because of the length of time the child has lived in foster care. *See In re James G.*, 178 Md. App. 543, 604 (2008). The court may consider the length of time the child has been in foster care and the child's adjustment to the foster family, however, along with many other factors in its determination of the best interests of the child. *See Jayden G.*, 433 Md. at 102 (explaining that a child's emotional ties to the foster family are part of the reality of the child's circumstances and a relevant consideration in determining the child's best interest).

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 . . . ." FL § 5-323(d). Relevant to this guiding portion of the statute, the trial court provided the following findings:

> [Father] has cared for neither [L.M.] nor [T.T.], in the sense that the Court has not returned either child to his care, nor has the Court made any Family Law § 9-101 finding[9] that neither child would be subject to abuse or neglect if either were in his care. The events and family environment depicted in the [First] Amended Petition and the Adjudication/ Disposition Order are quite disturbing. [Father] was the primary cause of the children's trauma brought about by instability, inappropriate discipline, exposure to domestic violence, physical abuse and neglect. He has shown no insight concerning his participation in that narrative, no motivation to augment his understanding of how his children came into care, no curiosity concerning his children's needs and developmental levels, and no ability to anticipate his children's safety and other needs during visits. His plan to place the children with [his sister] demonstrates [Father's] inability to understand his children's needs, how to meet their needs and how to keep them safe.

Subsection (d) of § 5-323 provides a list of specific factors to be considered in the court's analysis. These factors may be summarized as relevant to (1) the services provided by the State; (2) the results of the parent's and the State's efforts to change the circumstances, conditions, or conduct of the parent; (3) the parent's history of abuse of

[9] The court's reference to a "§ 9-101 finding" pertains to FL § 9-101, governing the child custody or visitation in any such proceeding where "the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding." FL § 9-101(a). If such abuse or neglect is found, to permit the court to grant custody or unsupervised visitation, the court must make a specific finding "that there is no likelihood of further child abuse or neglect by the party." *See* § 9-101(b). A similar finding -- "whether return of the child to a parent's custody poses an unacceptable risk to child's future safety" -- is required by subsection (f) of FL § 5-323 if the court finds an act listed in subsection (d)(3)(iii), (iv), or (v) exists. *See* § 5-323(f).

the child or another minor in the home, if any; (4) and the effects of the placement outside of the parent's care and the severance of the relationship between the parent and child. The trial court analyzed each of the relevant factors in sequence.

First, the court considered "all services offered to the parent before the child's placement," as well as "the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent; and . . . the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any." FL § 5-323(d)(1). The court noted that, prior to placement of the children in foster care, "[t]he Department attempted to work with the family . . . in December 2013, investigated [R.J.'s] bruising in April 2014, helped mother with obtaining a [p]rotective [o]rder . . . , created a safety plan signed by [Father] in June 2014," and held a family involvement meeting with the family on July 1, 2014. Further, despite Father's participation in the "myriad of services offered to [Father]" after placement, the court explained, "he failed to demonstrate an understanding of what he had learned from those services, as he continued throughout the case to demonstrate an inability to . . . anticipate the children's needs and make a plan for their care."

Regarding the timeliness of services, the court emphasized the Father's lack of progress in court-ordered services throughout the children's placement. The State presented evidence that, even after both parents consented to Father having only supervised access to the children, Father and Mother repeatedly violated the Order of Protective Supervision until the Department requested an Emergency Change of Placement in September 2014. At the January 2015 hearing, after the children were in

foster care, the Department noted that Father had missed more than half of the twelve sessions provided. Father did not improve his attendance of visits with the children until the period ending in July of 2015, at which time the Department recommended a parenting assessment at the Lourie Center.

The Lourie Center Team completed its evaluation in December 2015. The court considered the Center's finding that Father showed little interest in improving his relationship with the children, and the trial court found that he "was unable to reflect on the impact [of] the instability the boys experienced." Once outside parenting coaching was court-ordered,[10] Ms. LaRosa provided five parenting sessions with Father, but those services were terminated due to Father's inconsistent attendance. In addition, Father failed to incorporate the guidance offered in those sessions from week to week, as Ms. LaRosa testified that she had to provide him with the same type of prompting repeatedly. A paramount goal of the sessions were to improve Father's ability to maintain a safe environment for the boys and to learn to split his attention between them; he failed to make any significant progress in these areas. For example, Ms. LaRosa had to chase after the boys in the parking lot to maintain their safety.

Finally, the court found that Father did not satisfy his obligations to the Department in that Father "showed up for services, but his subsequent behavior evidenced little understanding and application of lessons taught during those services." The court considered Ms. Freeze's testimony that Father "was not receptive to doing

[10] Ms. Freeze's testimony indicated that she had previously discussed parenting counseling with Father, but he was not interested in it because it was not court-ordered.

anything that was not court-ordered," adding that although "[Father] participated in court-ordered services that involved concrete steps, he was not able to implement those lessons into action."

Next, the juvenile court considered relevant factors under FL § 5-323(d)(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 . . . ." This consideration involved the extent of Father's regular contact with the children, the Department, and "if feasible, the [children's] caregiver." *See* FL § 5-323(d)(2)(i). The court emphasized that its focus was on the "results of the effort, not the effort itself." The juvenile court explained that although it credited Father with putting forth some effort to complete what the Department asked of him and with "wanting to do what he needed to do to reunite with his children," it found that his efforts "never resulted in him presenting as a reliable, consistent and safe caregiver for the children." Instead, it found that Father was largely absent from the children's lives. He often participated in less than half of scheduled visits between hearings until after the Permanency Planning Hearing in June 2016, when the Department forecasted that its recommendation for reunification was likely to change. Regardless of his attendance, or lack thereof, it was the quality of the visits he attended that was particularly problematic for the court. Father failed to engage with the children and to keep them safe, and he refused to acknowledge the effect of his past conduct on the children. Although Father maintained contact with the Department, "at least since November 2016," the court found that the quality of the contact was "less than optimal due to [Father's] unwillingness to change." The court also noted that Father

did not "appear receptive to any proffered information from the Department about" his children's progress while in foster care.[11]

Within the court's consideration of Father's efforts to improve his circumstances, the court addressed whether there existed "a parental disability that makes the parent consistently unable to care for the child[ren]'s immediate and ongoing physical or psychological needs for long periods of time." *See* FL § 5-323(d)(2)(iii). The court pointed out that "[n]o evidence was presented that [Father] has a parental disability that makes him consistently unable to care for the children's immediate and ongoing physical and psychological needs." The court considered, however, Ms. Freeze's testimony that she "understood and considered the fact that [Father's] level of intellectual functioning might affect his ability to understand what was being asked of him" and that, to compensate for any such deficit, she "focused on a few things at a time, did not bombard him with services, and encouraged him to model her behavior during visits with the boys."

At the foundation of Father's argument that the juvenile court's findings relevant to subsections (d)(1) and (2) were erroneous is his argument that the court should have found that the Department failed to adequately assess and accommodate Father's needs. Father argues, "[t]he record in this case is clear that the Department knew that [Father] had cognitive limitations, including reading and math difficulties, and that nothing was

[11] An additional factor to be considered is "the parent's contribution to a reasonable part of the child[ren]'s care and support, if the parent is financially able to do so." *See* FL § 5-323(d)(2)(ii). The court noted that "[n]o evidence has been presented that [Father] either had the capacity to provide support or that he provided support during the pendency of the case."

done to provide services tailored to his needs." Father cites *In re Adoption/Guardianship No. J9610436 and J9711031*, 368 Md. 666 (2002) (hereinafter *Case No. J9610436*) as "instructive" because, there, the Court found that the TPR should not have been granted until Father was offered services designed to benefit parents with his cognitive disabilities.

In this case, unlike in *Case No. J9610436*, Father presented no evidence that he suffered from a particular cognitive or intellectual disability. The juvenile court in this case did not find that Father had "a parental disability" that renders him "consistently unable to care for the child[ren]'s immediate and ongoing physical or psychological needs for long periods of time," and its decision to terminate Father's rights was not based on this particular factor. *See* FL § 5-323(d)(2)(iii). In other words, although the court referenced Father's "borderline intellectual functioning," it did not find that Father had a cognitive disability that would prevent him from parenting. Moreover, unlike the Father in *Case No. J9610436*, in this case, Father presented no evidence that the Department failed to provide him with available services that were designed to be helpful for any particular condition or deficit that he experienced. *See id.* at 682–83 ("The record does not reflect that [the Department] sought to utilize services that might be available through the Developmental Disabilities Administration, even though it was relying in its drive toward termination on the fact that[,] in the opinion of its workers, petitioner was disabled by reason of mental impairment. (Their term, not ours)."). The record indicates

that Father was resistant to participating in additional services that were offered to him, including services designed to assist adults with cognitive disabilities.[12]

Finally, with respect to whether Father had the ability to become a caregiver with whom the children's best interests would be served, the juvenile court discussed its consideration of whether additional services would result in "lasting parental adjustment so that the child[ren] could be returned" to Father "within an ascertainable time not to exceed 18 months." *See* FL § 5-323(d)(2)(iv). The court found that, even without considering the extended length of time the children had already been in foster care, "it would not be in the children's best interests to extend the foster placement period to enable [Father] to receive additional services." Additionally, the court noted Ms. Freeze's testimony that, after repeated efforts on her part to talk to Father about providing a safe surrounding, "he never acknowledged what she was telling him or saw it as a safety concern."

Pursuant to subsection (d)(3)(i), the juvenile court considered "[w]hether . . . the parent has abused or neglected the child[ren] or a minor and the seriousness of the abuse or neglect.[13] *See* FL § 5-323(d)(3)(i). The court found that Father had seriously neglected both T.T. and L.M., exposing them to ongoing violence in the home and other

[12] Ms. Freeze testified that she attempted to refer Father to the Division of Rehabilitative Services, which administers a vocational and rehabilitative program, and an independent living program.

[13] Subsection (d)(3) also contemplates three other areas related to abuse in subsections (ii) to (iv). *See* FL § 5-323(d)(3)(ii)–(iv). The juvenile court found that these circumstances either did not apply or that there was insufficient evidence in the record to determine whether Father's conduct rose to the level described in the statute.

trauma. The court recounted that "[f]rom the inception of the CINA case, [Father] promoted an atmosphere of domestic violence, intimidation and fear in the home." In addition to Father's violence towards the children's mother, there is ample evidence in the record that Father was physically abusive towards the children's severely disabled, five-year old half-brother, even after committing to refraining from the use of any physical discipline in the home. Even after the Department made it clear to Father that his sister was not an appropriate caregiver, he continued to present her as a resource for their care while he was away at work in the future.[14] The court found, and the record sufficiently supports, that Father showed "diminished insight with regard to what brought the children into care and his authorship of those circumstances." With the deficits in his

[14] Father argues on appeal that the juvenile court erroneously concluded that Father intended to abdicate his parental role to his sister -- a finding that was erroneously based on testimony that was not before the court at the TPR trial. The court's discussion of Father's sister, however, addressed the possibility of her as a relative placement for the children in light of law requiring courts making permanency determinations to consider relatives before non-relatives, citing *In re Richard H.*, 128 Md. App. 71, 75 (1999) for this proposition. The court found it prudent, particularly in light of its determination that the children were thriving in their non-relative placement, to include its finding that Father's sister would not have been an appropriate relative placement. Critically, the record supported the court's conclusion that Father's sister believed that Father's severe physical discipline of the children's disabled half-brother to be acceptable. Nevertheless, the court's primary consideration of Father's sister as a caregiver in its analysis of § 5-323(d) factors focused on his sister as a supplemental resource for childcare -- a possibility that Father suggested to the Department numerous times. In fact, Father's suggestion of his sister and mother as a resource -- even after the Department expressed concern about his sister as a caregiver to the children -- constituted Father's entire "vague" plan for childcare when he was at work. Thus, there was more than adequate evidence before the court to support its conclusion that Father intended to rely on his sister for childcare in some way if the children were placed with him, and the court properly discussed whether her potential role as a caregiver would be in the children's best interest.

children's mental and emotional development in mind, the court added that his past conduct "does not bode well for [Father's] ability to keep the children physically safe and emotionally healthy in the future."

Finally, the juvenile court discussed the fourth relevant consideration under FL § 5-323(d), which pertains to the children's adjustment to their environment and the impact of terminating Father's parental rights on the children's well-being in the future. *See* FL § 5-323(d)(4). The first of these considerations relates to "the child[ren]'s emotional ties with and feelings toward the child[ren]'s parents . . . and others who may affect the child[ren]'s best interests significantly." *See* FL § 5-323(d)(4)(i). The court found that, the children likely feel positively about their father, given the evidence that they might at least think of him as fondly as an uncle. Regarding the children's adjustment to their community, home, current placement, and school, *see* FL § 5-323(d)(4)(ii), the court explained that "the children are well-adjusted and firmly entrenched in their community, thanks to the foster parents' nurturance and commitment," and they are "treasured members of [their foster] family." Although L.M. was not old enough to attend school at the time, the court found that T.T. "has some school involvement, and he has adjusted in accordance with his development and limitations." The court noted that the children had spent most of their lives with the foster family, and that Father's family had little to do with the boys until the Department indicated that it was preparing to change its recommendation to adoption by a non-relative.

The juvenile court pointed to similar evidence pertaining to "[t]he children's feelings about severance of the parent-child relationship," and the "[t]he likely impact of

terminating parental rights on the child[ren]'s well-being." *See* FL § 5-323(d)(4)(iii)–(iv). The court emphasized Ms. Freeze's testimony that "the boys treated [Father] as an uncle," that "the foster parents are, at least in the children's minds, their parents," and "separation from them would prove to be yet another trauma to the boys." The court found that Father "has never been the primary caregiver . . . nor has he ever demonstrated an ability to do so." In contrast, "the children are thriving in their placement, bonded with the foster parents, and have the consistency, care and nurturing which has enabled them to thrive." The court added that "the termination of parental rights may somehow be a loss for the children in some notional, unquantifiable way," but it found ultimately that "[t]he children's well-being is best served by their current foster parents."

On appeal, Father's primary contention is that many of the circuit court's findings of fact, which the court applied in its consideration of factors under FL § 5-323(d), were erroneous. First, Father argues that the services provided by the Department to Father in order to help him change his circumstances and conduct were untimely or were not sufficiently tailored to suit Father's cognitive limitations. For similar reasons, Father disagrees with the juvenile court's finding that, even with additional services, Father would not be able to make sufficient progress in the foreseeable future.

The record reflects, however, that the Department attempted, repeatedly, to facilitate Father's progress in changing his conduct and his commitment to parenting, to help Father develop a bonded relationship with his children, and to teach Father how to maintain the children's safety and well-being. In addition, the Department focused on helping Father develop an understanding of his sons' special developmental and

emotional needs. In his claim that the Department's provision of services to Father was not timely, he points to each span of time between the date of the children's placement and the date on which new services were offered to, and sometimes court-ordered for, Father. Further, Father claims that the Department delayed in reaching out to his family members as resources.

The trial court found, however, that it was Father's inconsistent attendance and lack of commitment to learning to provide a safe environment for the children that delayed his progress in the services that were offered to him and extended the children's placement in foster care. The trial court noted that after Father finally made some progress in attending visits -- as noted in the Department's July 28, 2015 report -- the Department recommended that Father participate in a Lourie Center parenting assessment and counseling to gain greater insight into the reasons the children were placed in foster care. The juvenile court ordered Father to participate in those services at the hearing the following month.

At the Permanency Planning Review hearing the following December, however, the court found that Father still could not demonstrate that he could be a safe and appropriate caregiver. Although the Department had invited Father's relatives to meet to discuss becoming placement resources and to complete background checks, the Department received no response. Father had attended little more than half of the 20 visits offered during that time period, failed to make progress in learning to keep the children safe, and the Lourie Center report noted the "striking . . . lack of reciprocal interaction or emotional engagement" between Father and the children. Nevertheless, the

Department continued to recommend a plan for reunification, and Father began parenting coaching with Ms. LaRosa in February 2016. The counseling was discontinued, however, after only five sessions because of Father's inconsistent attendance. The trial court emphasized testimony from Ms. Freeze that indicated Father was not receptive to doing anything that was not court-ordered, offering the example that "he refused to engage in therapy until it was court-ordered and even then, only engaged in it for 12 weeks, although his therapist recommended additional therapy." At the sessions he attended, Ms. LaRosa noticed little to no improvement in Father's ability to keep both boys safe and she recalled having to chase the children down in the parking lot to maintain their safety.

Even into May of 2016 -- more than eighteen months after the children's placement outside of the home -- Father failed to keep the boys safe during supervised visits and generally did not incorporate and apply instructions for doing so during subsequent visits. Father never acknowledged the role of his conduct in creating the circumstances that brought his children into foster care. He still could not explain concrete plans for the children's care while he was at work, except to say that his mother and sister (both of whom were also employed) would keep them. The trial court found that the Department had expressed concern that its recommendation would change in the near future if Father did not begin to demonstrate greater progress. After a meeting with Father on April 16, 2016, Father's sister contacted the Department to volunteer to be a resource, but she "failed to present herself by the submission of the [r]eport at the end of May." Moreover, the Department had already indicated to Father that his sister was not

an appropriate caregiver, as it appeared that she may have been involved in the inappropriate physical discipline of other minors in the home and that she demonstrated little insight regarding Father's past use of inappropriate physical discipline. Despite Father's lack of progress and inconsistent efforts to participate in the services offered and to change his circumstances as recommended by the Department, the Department continued to recommend that the court extend the time for Father to improve so that reunification might be possible. More than two years passed before the Department finally changed its recommendation from reunification to adoption by a non-relative.

Father now argues that his lack of progress was the result of the Department's failure to adequately assess the need for services and tailor those services according to Father's intellectual limitations. The trial court found that neither Father nor the State presented evidence that Father had "a parental disability that makes him consistently unable to care for the children's immediate and ongoing physical and psychological needs," but that "[t]here was some testimony, although not from an expert in psychology or psychiatry, that alluded to [Father's] borderline intellectual functioning." The court added that Father did not acknowledge any intellectual limitation, but that "Ms. Freeze testified that in formulating the case plan . . . she understood and considered the fact that his level of intellectual functioning might affect his ability to understand what was being asked of him." To help accommodate any limitations, "she focused on a few things at a time, did not bombard him with services, and encouraged him to model her behavior during visits . . . ." Based on the trial court's consideration of the Department's efforts over the entire thirty-two month period, it did not find any failure of the Department to

"provide appropriate services in a timely manner." The weight of the evidence in the record supports the trial court's conclusion.

Most of the progress the Department noted during the entire span of the children's placement was in the months leading up to the November 2016 hearing, and after "the Department forecasted that reunification was not likely." Despite both boys' signs of emotional and developmental problems, Father remained uninterested in their progress outside of his visits with them, and he failed to demonstrate any insight into his past inappropriate conduct. Father had an obligation to demonstrate that he could provide a safe and stable environment for the boys, particularly in light of his past violent conduct. As the court explained, Father's mere presence at some visits with the children or at other court-ordered services was not enough to demonstrate that he was fit to care for the children's needs and that it was in the children's best interest to be placed in his custody.

Regarding Father's ability to improve, the trial court considered evidence of Father's past failure to derive the desired benefit from services, and noted testimony of his service providers who tried, repeatedly, to convince him that their guidance was intended to assist him in providing a safe surrounding for the children. The trial court found that Father would not "undergo a parental transformation sufficient to alter the trajectory of this case" and that the evidence did not indicate that Father "could ever be ready for reunification, especially within the foreseeable future." The record is replete with evidence supporting the trial court's conclusion. We hold that the juvenile court's findings of fact were not erroneous and that it properly and sufficiently considered the relevant factors pursuant by FL § 5-323(d).

C. The Juvenile Court Did Not Abuse Its Discretion By Terminating Father's Parental Rights.

Based on the juvenile court's analysis of the relevant factors under FL § 5-323(d), the court determined that Father "is not a fit parent for [L.M.] and [T.T.] and likely will not take the steps to become a fit parent in the foreseeable future." Additionally, the court found that Father "is unsuitable also because under these exceptional circumstances -- of children who need to grow in an environment which will minimize the incursion of past trauma -- [Father] has proven that he cannot provide a stable, secure and safe home for the children." The court found that, not only was Father the "author" of the children's tragic circumstances, but he failed repeatedly, after considerable efforts by the Department over the course of more than two years, to acknowledge his role in his children's placement in foster care, and the conduct that contributed to their past trauma. Without such an acknowledgment, the juvenile court properly avoided the risk that history might repeat itself. *See In re Dustin T.*, 93 Md. App. 726, 731 (1992) ("[A] parent's past conduct is relevant to a consideration of his or her future conduct . . . .").

The evidence presented at the TPR trial before the juvenile court supports, overwhelmingly, the court's determination that Father is not fit to care for and parent T.T. and L.M., and that the termination of Father's parental rights is in the best interest of the children. Further, the exceptional circumstances of each child's special needs -- requiring a particularly nurturing and supportive environment -- provides an additional basis for terminating Father's parental rights and permitting the children to benefit from the permanency of an adoptive home that will attend to their progress. Father failed to

demonstrate that he was committed to the children's development and well-being. Father also failed to show that he would incorporate guidance offered by service providers for implementing the ordinary responsibilities of parenting and understanding the special needs of his two sons. Moreover, the weight of the evidence supported the trial court's conclusion that Father was not likely to change in the foreseeable future. We hold that the evidence before the juvenile court supported its finding that Father was unfit to care for the children and that terminating his parental rights was in the children's best interest. Therefore, the court did not abuse its discretion in terminating Father's rights. Accordingly, we affirm.

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