

Circuit Court for Baltimore City
Case No. T20350003

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 854

September Term, 2023

In Re: L.D.

Arthur,
Leahy,
Shaw

JJ.

Opinion by Shaw, J.

Filed: March 29, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On December 15, 2020, Appellee, the Baltimore City Department of Social Services, filed a petition in the Circuit Court for Baltimore City seeking guardianship of Appellee child L.D. with the right to consent to adoption or long-term care short of adoption.¹ Father J.D. filed a notice of objection to the petition on January 20, 2021,² and Appellant, Mother J.W. filed a notice of objection on March 10, 2021. Following a series of hearings, Father withdrew his objection, and the juvenile court granted the Department's petition over the objection of Mother, finding that the termination of parental rights was in the best interest of L.D. Mother timely appealed and presents the following questions for our review:³

¹ The grant of this petition terminates the parental rights of the parents. *See* Md. Code Ann., Fam. Law § 5-320(a)(2) (“(a) A juvenile court may grant guardianship of a child only if: (2) in accordance with § 5-323 of this subtitle, the juvenile court finds termination of parental rights to be in the child’s best interests without consent otherwise required under this section or over the child’s objection.”). For the purposes of this opinion, we shall use guardianship and termination of parental rights interchangeably.

² On May 16, 2023, Father withdrew his objection to the Department’s petition and entered a conditional consent to the petition. This opinion, therefore, only addresses Mother’s appeal of the termination of her parental rights.

³ We have rephrased Mother’s questions for clarity. Mother’s questions verbatim are:

1. Did the court err [in] terminating [M]other’s parental rights where clear and convincing evidence did not support exceptional circumstances that showed maintaining the parental-child relationship was detrimental to the child’s best interests?
 - A. Were specific findings supported by insufficient evidence and or belied by substantial contradicting evidence?
 - B. Were the lower court’s findings insufficient for not finding or articulating how any exceptional circumstances would make continuance of a parent-child relationship

1. Were the court's factual findings supported by sufficient evidence?
2. Did the court err in concluding that exceptional circumstances existed to warrant terminating Mother's parental rights in L.D.?

For reasons to follow, we answer the first question in the affirmative and the second question in the negative and affirm the judgment of the circuit court.

BACKGROUND

In February 2018, a few weeks before giving birth to L.D., Mother sought residential treatment at Johns Hopkins Bayview Medical Center in the Center for Addiction and Pregnancy (CAP) in Baltimore City, where she was prescribed methadone due to her substance abuse. Prior to her participation in the CAP program, Mother resided in Virginia which she referred to as her "main, stable home" in her notice of objection.

On March 2, 2018, L.D. was delivered at Johns Hopkins Bayview Medical Center prematurely and she was born with methadone in her system. Shortly afterwards, L.D. experienced withdrawal symptoms and morphine was administered to ease her condition. Mother tested positive for methadone and marijuana at the hospital after giving birth. L.D. remained in the Neonatal Intensive Care Unit (NICU) for over a month to address her methadone withdrawal symptoms. Mother returned to the CAP Program after giving birth. She was later transferred to outpatient care due to her continued drug use. Mother was subsequently discharged from the program, as she continued to test positive for heroin, fentanyl, cocaine, clonazepam, and marijuana.

detrimental to L.D.'s best interest, and failed to include any parental-child bonding evaluations, or L.D.'s perspective?

On April 9, 2018, the Department filed a petition in the Circuit Court for Baltimore City alleging that L.D. was a child in need of assistance (“CINA”). An Emergency Shelter Care Hearing was held, and at its conclusion, the magistrate recommended granting the Department limited guardianship and that L.D. be placed in shelter care. The circuit court judge accepted the magistrate’s recommendations and ordered the Department to provide care and custody for L.D. in shelter care. Mother requested that L.D. be placed with family in Virginia, however, L.D.’s placement in Virginia with Mother’s grandmother was denied,⁴ and her aunt in Virginia declined placement. Following L.D.’s hospital discharge, she was placed in a foster home.

A Contested Adjudication Hearing was held on August 2, 2018. At the conclusion of the hearing, the magistrate recommended that L.D. be declared a CINA and that limited guardianship be awarded to the Department. The circuit court judge agreed and issued an order on September 11, 2018.⁵ Thereafter, the court held additional hearings to assess and monitor the progress of L.D., the Department’s efforts and her parents’ involvement.

Two years later, on December 15, 2020, the Department filed a petition for guardianship with the right to consent to adoption or long-term care short of adoption for L.D. Mother and Father filed Notices of Objection. The Termination of Parental Rights (TPR) hearing commenced on March 17, 2022, as a virtual hearing. The Department called Mother as its first witness. On direct examination, Mother testified that she resided in

⁴ The placement was denied because Mother was residing in the home.

⁵ Mother and Father did not attend the hearing.

Salisbury with her significant other and her daughter H.D. She testified that she was employed by a cleaning service and had worked there for eight months. She provided no employment documentation. When asked what financial support she gave the Department for L.D., Mother testified that she was unaware that she could make financial contributions, but that she provided L.D. with clothes, shoes and gifts on her birthday and Christmas.

On cross-examination, Mother testified that shortly after L.D. was born, she enrolled in an in-patient substance abuse program at Chrysalis House⁶ located in Crownsville with H.D. She stated that she was removed from the program after being there for almost a year because she relapsed. She then moved to Salisbury because her aunt, grandmother, significant other and L.D.'s Father resided there. During the hearing, Mother experienced a medical issue, Father's phone lacked power and thus, the hearing was continued.

When the hearing resumed on April 4, 2022, the Department called Brenda Harriel as a witness. Ms. Harriel is the coordinator of the Juvenile Section of the Court Medical Services Division, and the court accepted her as an expert in the field of parental fitness evaluations, adult and family dynamics, and skills pertaining to child interviewing and interactions. Ms. Harriel testified that she evaluated L.D.'s foster parents in September 2021 and a copy of her report was admitted into evidence. She testified that the court requested a bonding evaluation between the foster parents and L.D. and the birth parents and L.D., however, neither Mother nor Father appeared for their evaluations. She testified

⁶ The Chrysalis House provides substance use and mental health treatment services for women eighteen years of age and older, while allowing their children to live on-site during their mother's program of recovery.

that L.D.’s foster parents had fostered six children previously and many of those children had been reunited with their birth families. She stated that L.D.’s foster parents had the capacity and interest in continuing to care for the social, emotional, educational, material and moral wellbeing of L.D. During the hearing’s recess, Mother was arrested for an open warrant⁷ and the hearing was again postponed. The next hearing date scheduled for April 5, 2022, was also postponed due to Mother’s absence.

On December 14, 2022, the hearing resumed, after several additional postponements.⁸ Dr. Ruth Zajdel, a clinical psychologist, was accepted as an expert in children’s relationships, psychological evaluation of children and adults, parental fitness and bonding study assessments of biological parents and foster parents, evaluating secure attachments and providing related treatment recommendations. Dr. Zajdel serves as a contract employee at the Baltimore City Circuit Court’s Medical Services Office. She testified that she was asked to perform a parental fitness evaluation and bonding study for L.D. and her foster parents, and L.D. and her biological parents. According to her, L.D.’s biological parents did not appear for their appointments. Dr. Zajdel testified that she conducted a bonding evaluation with L.D.’s foster parents on October 13, 2021, and her report was admitted into evidence. Dr. Zajdel affirmed the opinion in her report, which stated:

⁷ At the time of the arrest, Mother was pregnant with her third child and needed medical attention. She was sent to the hospital and later transferred to central booking.

⁸ A hearing was held on November 30, 2022, where Mother made a Motion for Mediation. Mediation was unsuccessful and the TPR hearings continued.

[L.D.] has been in the care of [Ms. P] and [Ms. W] (foster care providers) since her discharge from the hospital after birth. Their current bonding evaluation suggests that [L.D.] is securely bonded to both caregivers. [L.D.] appeared to take pleasure in all of her interactions with [Ms. P] and [Ms. W] and clearly utilized them as a secure base. [L.D.] was observed seeking out physical affection from [Ms. P] and [Ms. W] several times and chose to spend a majority of the session actively engaged with her caregivers or in close physical proximity to them. [L.D.] also appeared content when her caregivers offered her praise and looked to both of them for reassurances in an unfamiliar environment. For their part, [Ms. P] and [Ms. W] were both nurturing and compassionate during all of their interactions with [L.D.], demonstrated a deep understanding for the child, were both able to engage with her in an age-appropriate manner, and were loving and nurturing throughout the session.

The Department then called Dawn Blades, a Child Protective Services (CPS) supervisor in Worcester County, as a witness. The Department showed Ms. Blades a CPS investigative summary where Mother was indicated for neglect of H.D. in 2020. Ms. Blades testified that she reviewed and signed off on the document. The summary was then admitted into evidence over Mother's objection. It stated:

[Mother] made the choice to consume alcohol to the point of intoxication while her 5 year old daughter, [H.D.], was in her care. [Mother] reports she was the individual solely responsible for the care and supervision of [H.D.] and that she was unable to do so effectively due to her level of intoxication. [Mother] stated that her prescribed medication heightens the effect alcohol has on her. [Mother] further admitted that she called a friend, [Mr. R], to give she and [H.D.] a ride home and was aware that [Mr. R] was acting strangely. Even with these concerns, [Mother] allowed [Mr. R] to drive both she and [H.D.], which resulted in [Mr. R] getting pulled over and charged with a DUI. Additionally, this is the second time [H.D.] has been in a vehicle with an intoxicated driver in the past two months, the first incident was on June 11, 2020 while [Mother] was driving under the influence. Given the reasons listed above, [Mother] failed to provide proper care and supervision of [H.D.] and placed her at substantial risk of harm by allowing [H.D.] to ride in a vehicle with an impaired driver.

The TPR hearing was subsequently postponed several more times and began again, approximately a year later, on March 29, 2023, and May 10, 2023. At the hearing, the Department called Emma Williamson, a family services case worker assigned to L.D.'s case from November 16, 2018, to December 10, 2020. She testified that when she received the case, L.D. was in foster care and she did not know where L.D.'s parents were located. Ms. Williamson stated that she did not have contact with L.D.'s parents for the first few months of her assignment and that she continued to attempt to contact Mother, but did not hear from her until April 2019. She stated that she scheduled a family involvement meeting with Mother to discuss L.D.'s case and drafted a service agreement which Mother signed. Ms. Williamson testified that she had limited contact with Mother after the meeting until Mother was discharged from the Chrysalis House and moved to Salisbury. Ms. Williamson stated that Mother contacted her before the COVID-19 pandemic and informed her that she had been going through a lot and that she had recently relocated. Ms. Williamson testified that Mother requested visitation and the Department offered her virtual visits with L.D. supervised by her foster parents due to the COVID-19 pandemic. She stated that Mother did not attend most of the virtual visits. Ms. Williamson further testified that between February 2020 and December 2020, Mother did not inquire regarding L.D.'s medical and therapy appointments.

The Department's next witness was Keith Oliver, a case worker for L.D. from December 12, 2020, to October 10, 2022. He testified that he made contact with Mother four months after being assigned L.D.'s case. He had incorrect contact information for

Mother but eventually received her correct information from L.D.'s foster parents. When he spoke with Mother, he inquired about her interactions with L.D. Mother expressed that she had not had visits with L.D. in quite some time and that the visits were inconsistent. Mr. Oliver offered Mother in-person visits at a mall in Baltimore County. He testified that Mother was consistent with the in-person visits and would travel from Salisbury once a month to see L.D., but that she did cancel some of the visits. Mr. Oliver testified that he completed a home health inspection at Mother's residence and that there were three things that prevented Mother from passing the inspection: a hole in the front porch, non-working fire detector and peeling paint. He stated that Mother later sent evidence that the issues were remedied. He testified that Mother did not ask to attend L.D.'s medical or therapy appointments and that she was not granted unsupervised visits with L.D. while he was assigned to the case.

The Department's final witness was Towanda Harrell Anderson, who was assigned L.D.'s case in November 2022. Ms. Harrell Anderson testified that she had contact with Mother primarily through text messages. She stated that she scheduled monthly in-person visitations at the Chuck E. Cheese in Annapolis to accommodate Mother and Father since they lived on the Eastern Shore. She testified that Mother's attendance at the visits was "pretty consistent." She stated that L.D. enjoyed the visits because she was able to see her siblings and that Mother would bring her gifts. When asked whether L.D. knew that her biological siblings were her siblings, Ms. Harrell Anderson stated, "she knows that they are [Mother's] children." During the visits, L.D. would ask Ms. Harrell Anderson when she would return to her foster parents' home.

Ms. Harrell Anderson also testified that based on her observations during at-home visits, L.D. thrived in her placement with her foster parents. Ms. Harrell Anderson testified that when she would drive L.D. back from visits with Mother, L.D. would get excited as they approached her foster parents' home. She stated that L.D. was excited to return home to see her cat and that she referred to the other children in her foster parent's home as her siblings. She testified that L.D. referred to her foster parents as "mommy [foster parent's first name]" and that she referred to Mother as "mommy [Mother's first name]."

Mother testified in her case in chief and stated that she always wanted L.D. to be reunited with her and her siblings and that she did not want the court to grant the Department's petition. She stated that she was currently enrolled in the Focus Point program and the B&J Health Services maintenance program. She stated that she meets with her counselor at Focus Point and that she is expected to abstain from illicit substances and complete random drug tests. She stated that she is enrolled in the maintenance program at B&J services because she was put on pain medication for a knee injury and became addicted to it. Mother testified that she is not using illicit drugs. She testified that she currently lives with her seven-year-old daughter and eight-month-old daughter in a rental home and that she planned to find a new home in Salisbury in May.

During cross-examination, Mother stated that she remained in Baltimore after L.D. was born. She testified that she resided with her grandmother in Virginia and L.D.'s father's mother after being discharged from the CAP Program and before making the transition to the Chrysalis House in Crownsville in the beginning of 2019. While at the

Chrysalis House, she had supervised visits with L.D. on Sundays. She testified that she was removed from the program due to using cocaine after staying sober for eleven and a half months. When asked whether she considered herself sober, Mother stated, "I consider myself as sober as I can be right now, yes." The Department then asked Mother about her current treatment plan:

[The Department]: Are there any other substance abuse programs that you participate in?

[Mother]: I would have no more time to participate in any more substance abuse programs. I do sometimes go to meetings so when I can, I do, but I have a new baby so it's a little harder, but I go to church and we go to church and that's the best method for me.

[The Department]: If you – [Mother's name], for sobriety, sobriety means refraining from all substances. Would you agree with that statement, ma'am?

[Mother]: I refrain from all illicit substances, yes.

[The Department]: But would you agree with me that sobriety means you refrain from alcohol, medical marijuana, all of those substances that could trigger a relapse, would you agree with that?

[Mother]: Complete sobriety is for - yes, but you have to be ready and if you're not ready, that triggers the relapse so you take a step down and a step down and a step down, it takes time.

[The Department]: So –

[Mother]: Being an addict, I would know a lot about this.

[The Department]: So you're not completely sober?

[Mother]: I am on maintenance and I am coming - supposed - I am coming down, they put a hold on it because of all of this going on but I am trying to come off of maintenance but it's harm reduction, I have a lot going on, I am facing losing my daughter right now, it's harm reduction. Everybody knows about it.

At the conclusion of the hearing, and after closing arguments by the Department and Mother’s attorney, Father made a Motion to Withdraw his objection and he entered a Post-Adoptive Contract Agreement.

The court issued its written opinion on June 6, 2023, granting the Department’s petition. It concluded:

Considering the respondent’s strong relationship with her foster parents, the severely limited nature of respondent’s relationship with mom, the willingness and ability of those foster parents to provide for the respondent and mom’s seemingly unable or unwillingness to make meaningful progress towards reunification over the course of five years, the Court finds that there is clear and convincing evidence of exceptional circumstances that show it is not in the best interest of the respondent to maintain her parent-child relationship as the mom.

Mother noted a timely appeal.

STANDARD OF REVIEW

This Court applies three different, but interrelated standards of review: “(1) a clearly erroneous standard, applicable to the juvenile court’s factual finding; (2) a de novo standard, applicable to the juvenile court’s legal conclusion; and (3) ‘when the appellate court views the ultimate conclusion of the [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [juvenile court’s] decision should be disturbed only if there has been a clear abuse of discretion.’” *In re B.C.*, 234 Md. App. 698, 707–08 (2017) (citing *Davis v. Davis*, 280 Md. 119, 126 (1977)). An abuse of discretion exists “where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles,” and when the court’s decision is “well removed from any center mark

imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *In re Andre J.*, 223 Md. App. 305, 323 (2015); *In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. 30, 45 (2017).

“In reviewing the juvenile court’s decision [to terminate parental rights,] our function . . . is not to determine whether, on the evidence, we might have reached a different conclusion. Rather, it is to decide only whether there was sufficient evidence—by a clear and convincing standard—to support the chancellor’s determination that it would be in the best interest of [the child] to terminate the parental rights of the natural [parent].” *In re B.C.*, 234 Md. App. at 707–08. “[T]he trial court’s determination is accorded great deference, unless it is arbitrary or clearly wrong.” *In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. at 46.

DISCUSSION

It is well-established that parents have a fundamental right to raise their children. *See In re Adoption/Guardianship of C.A. and D.A.*, 234 Md. App. at 47. However, a parent’s fundamental right to raise his or her child is not absolute. *In re Yve S.*, 373 Md. 551, 568 (2003). That right “must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect.” *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 497 (2007).

“When the State seeks to terminate parental rights without the consent of the parent, the standard is whether the termination of rights would be in the best interest of the child.” *In re Abigail C.*, 138 Md. App. 570, 586 (2001). It is generally presumed that it is in the best interest of children to remain in the care and custody of their parents. *In re Yve S.*, 373

Md. at 582. “That presumption, however, ‘may be rebutted upon a showing either that the parent is ‘unfit’ or that ‘exceptional circumstances’ exist which would make continued custody with the parent detrimental to the best interest of the child.’” *In re Adoption/Guardianship of L.B.*, 229 Md. App. 566, 589 (2016) (citations omitted). “Because the trial court’s decision may forever deprive the parent of his or her fundamental parental rights, this Court must make express findings of fact respecting all of the applicable statutory factors of FL § 5–323.” *In re B.C.*, 234 Md. App. 698, 707 (2017). “If, based on these factors, the court finds by clear and convincing evidence that the child’s best interests are served by a termination of parental rights, the court may terminate said rights.” *In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. at 49.

I. The court’s factual findings were supported by sufficient evidence.

Mother argues the court made three specific factual findings relevant to several of the required factors under Md. Fam. Law § 5-323(d) that were clearly erroneous and not supported by substantial evidence. Appellees, the Department and L.D., argue that the court made sufficient factual findings and the court did not err.

First, Mother contends that the court’s finding that “Mother purposely elected to remove herself from Baltimore” and chose to reside in Salisbury while L.D. remained in foster care in Baltimore was erroneous. Mother contends that she “relocated” back to Salisbury rather than “mov[ing]” to Salisbury and that there was no evidence introduced to suggest that she resided anywhere other than Salisbury before temporarily attending the CAP Program in Baltimore.

When asked why she went to Salisbury on cross-examination, Mother stated:

Well, because that's -- my aunt lives there -- my grandmother had started staying with my aunt part time. I -- my significant other, who was just a good friend at the time, he was working at Hudson House, which is a treatment facility down here. He was a tech for the treatment facility.

So as far as my sobriety and being close to my family and being close -- you know, my daughter being close to her father, it was the best fit for me at the time. And that way I stayed in Maryland so I could have the option of getting my daughter would it ever come to that option again, which I was hoping -- and I still hope that it does.

In its opinion, the court stated:

The record reflects that when scheduled virtual or in-person visits failed to materialize, it was attributable to Mom or Dad. There is no indication in the record before the Court that either BCDSS or Respondent's foster parents ever failed to make Respondent available for these scheduled visits. Mom argued at trial that her efforts to attend the in-person visits were hampered by the physical distance between her and Respondent, but the Court must note that Mom chose to move to Salisbury *only after* her child was placed in the home of a foster care family *in Baltimore City*.

As mentioned previously, Mom repeatedly argued that the physical distance between Respondent and Mom was a major contributor to this inconsistent contact. At least as it concerns in-person visitation, that is probably true. However, Mom's argument fails to account for the reason this physical distance exists: Mom chose to move to Salisbury only after her child was committed to the custody of BCDSS. Mom did not provide a reason why it was necessary to relocate to Salisbury. She did not have, (and indeed still does not have), a permanent residence in the region. At the time she relocated, she had no family in the area outside of one or two relatives. Her older daughter was living in Virginia with a relative, not Salisbury. The evidence before the Court, then, shows that Mom voluntarily created this distance to suit a whim or preference, not out of any kind of necessity.

Contrary to Mother's assertion on appeal, the record reflects that Mother previously acknowledged living with her grandmother in Virginia. In fact, she requested that L.D.

initially be placed with her grandmother in Virginia, a placement that was denied because Mother lived there. Also, prior to her Chrysalis House admission, she was not living in Salisbury, but rather in Virginia.

During the hearing, Mother explicitly testified that she made a conscious decision to go to Salisbury because “it was the best fit for [her] at the time.” She stated “I stayed in Maryland so I could have the option of getting my daughter. . .” In our review of the record, including Mother’s testimony, we hold the court’s findings in this regard, were clearly supported by the evidence and were not erroneous.

Next, Mother contends the court erroneously found that she failed to meaningfully engage and communicate with the Department. Ms. Williamson, who was first assigned to L.D.’s case in November 2018, testified that she did not have contact with L.D.’s parents for the first few months that she was assigned to the case and that she continued to attempt to contact Mother and did not hear from her until April 2019. Ms. Williamson stated that she had limited contact with Mother after the April meeting until Mother was discharged from the Chrysalis House and relocated to Salisbury. Mr. Oliver, who was the second case worker assigned to L.D.’s case, testified that he made contact with Mother four months after receiving the case. He stated that he remembered going through three phone numbers before receiving the correct number for Mother from L.D.’s foster parents. Ms. Harrell Anderson, who was assigned to L.D.’s case in November 2022, testified that she had contact with Mother primarily through text messages and the monthly in-person visitations. The court found:

Mom argued in both her opening and closing arguments that BCDSS failed to meaningfully engage with Mom. To be sure, from 2018 to 2023, there were several periods where there was little to no communication between Mom and the agency. However, the dearth of communications does not reflect a failure of the agency to engage with Mom. Rather, it reflects a failure of Mom to engage with the agency. Shortly after Respondent was removed from her care, Mom left Baltimore and moved to Salisbury without providing BCDSS with an updated address. The same thing happened in April 2020 when she left Chrysalis House and moved back to Salisbury. Mom failed to give any kind of notice of this move. Ms. Williamson and BCDSS had no idea where Mom was or the best way to contact her until Mom herself deigned to initiate contact. Mom further frustrated efforts at reunification by failing to provide BCDSS with documents critical to reunification, like information regarding the status of her living situation or written consent authorizing access to her medical records.

The Court finds that from 2018 to 2023, Mom has been, at best, inconsistent in maintaining contact with BCDSS, Respondent's foster parents, and Respondent herself.

The Court has already discussed Mom's repeated failures to stay in consistent contact with BCDSS. Mom would sometimes go weeks or months without contacting BCDSS. Moreover, Mom often failed to inform BCDSS about changes to her address and contact information, which frustrated the agency's ability to contact Mom.

Mom's contact with Respondent and her foster parents has arguably been more consistent: [Mrs. P] testified that Mom usually contacted her several times a month to inquire about Respondent's status.

Mom, however, has struggled to maintain consistent contact with Respondent herself. Her attendance at both virtual and in-person visitations has been spotty. [Mrs. P] testified that, while virtual visitation was weekly, Mom on average would appear for only two scheduled virtual visits a month. Similarly, Mr. Oliver testified that the in-person visits were to occur monthly, but Mom would sometimes go several months without attending these visits.

Again, based on the totality of the record, we hold that the court's factual findings are fully supported by the evidence presented. L.D.'s assigned case workers testified that

while there was some communication with Mother, it was not consistent. There were periods of time when Mother failed to update her contact information with the Department, failed to initiate contact and failed to maintain communication with the Department as required by the service agreements that she signed on June 3, 2018, and May 14, 2019.⁹ These lapses in communication were not attributable to the Department and they undermined the Department’s efforts to engage with Mother and to have her more fully interact with L.D.

We next address Mother’s contention that the court erroneously found that Mother’s past substance abuse issues “either exist in the present or cast an unacceptable pall over L.D.’s best interests.” Mother contends that there was no evidence in the record to suggest she had engaged in substance abuse within the past several years at a minimum.

We do not agree. The record indicates that Mother has struggled with abuse issues for many years with minimal success. We note, initially, the circumstances surrounding the birth of L.D. and Mother’s early termination from the CAP program. There was also testimony from Mother about her substance abuse issues, including that she was removed from the Chrysalis House in 2020 due to drug use. Later, a Worcester County CPS investigative summary revealed that Mother was under the influence of alcohol in a vehicle

⁹ The Department’s Service Agreement dated June 3, 2018, stated that parent is responsible for “maintain[ing] regular contact with agency” and “keep[ing] your address current with the clerk of the court.” The Department’s Service Agreement dated May 14, 2019, stated, “Mother and [the Department] have agreed that mother will maintain regular contact with the agency and provide current contact and resident information.”

with her five-year-old daughter H.D twice in the summer of 2020. Mother stated the following regarding her sobriety at the May 2023 hearing:

[The Department]: If you – [Mother’s name], for sobriety, sobriety means refraining from all substances. Would you agree with that statement, ma’am?

[Mother]: I refrain from all illicit substances, yes.

[The Department]: But would you agree with me that sobriety means you refrain from alcohol, medical marijuana, all of those substances that could trigger a relapse, would you agree with that?

[Mother]: Complete sobriety is for - yes, but you have to be ready and if you’re not ready, that triggers the relapse so you take a step down and a step down and a step down, it takes time.

[The Department]: So –

[Mother]: Being an addict, I would know a lot about this.

[The Department]: So you’re not completely sober?

[Mother]: I am on maintenance and I am coming - supposed - I am coming down, they put a hold on it because of all of this going on but I am trying to come off of maintenance but it’s harm reduction, I have a lot going on, I am facing losing my daughter right now, it’s harm reduction. Everybody knows about it.

The court in its opinion, found that:

Certainly, there were periods where Mom was clearly making progress in this regard, like her stay at Chrysalis House, but she failed to maintain this progress. Mom broke months of sobriety when she chose to use cocaine in March 2020. Then, only a few months following that relapse, the Worcester [sic] Department of Social Services indicated her for neglect after she got drunk and placed her other daughter in a car with a drunk driver. Even in her testimony to the Court, while Mom claimed she was not using illicit substances, she was unable to claim she was not consuming alcohol or marijuana. The Court finds this particularly disturbing because Mom’s abuse of these very substances is the reason why BCDSS took custody over Respondent and why Worcester [sic] County indicated Mom for neglect of [H.D.]. Substance abuse does not have to be illicit for it to put a child in

danger. Mom’s failure to grasp this fact more than five years after Respondent was taken from her care is distressing, to say the very least.

As we see it, the court’s factual findings regarding Mother’s substance abuse issues were not clearly erroneous. The findings were based on the record, including Mother’s own testimony that she was not completely sober but rather, “I am on maintenance and I am coming down, they put a hold on it because of all of this going on but I am trying to come off of maintenance but it’s harm reduction, I have a lot going on.”

II. The court’s findings were sufficient to conclude that exceptional circumstances existed to warrant the termination of Mother’s parental rights.

Md. Code Ann., Fam. Law § 5-323 (b) states that “[i]f, 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.” “[T]he factors under FL Section 5–323(d) serve both as the basis for a court’s finding (1) whether there are exceptional circumstances that would make a continued parental relationship detrimental to the child’s best interest, and (2) whether termination of parental rights is in the child’s best interest.”¹⁰ *In re Adoption of Ta’Niya C.*, 417 Md. 90, 116 (2010). “An exceptional

¹⁰ “Other criteria relevant to an exceptional circumstances determination include: the length of time that the child has been with his adoptive parents; the strength of the bond between the child and the adoptive parent; the relative stability of the child’s future with the parent;

circumstances analysis must turn on whether the presence – or absence – of particular facts and circumstances makes continuation of the parental relationship detrimental to the child’s best interests.” *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 231 (2018). Our Supreme Court in *In re Adoption/Guardianship of Rashawn H.* stated the following regarding the court’s role in TPR cases:

The court’s role in TPR cases is to give the most careful consideration to the relevant statutory factors, to make specific findings based on the evidence with respect to each of them, and, mindful of the presumption favoring a continuation of the parental relationship, determine expressly whether those findings suffice either to show an unfitness on the part of the parent to remain in a parental relationship with the child or to constitute an exceptional circumstance that would make a continuation of the parental relationship detrimental to the best interest of the child, and, if so, how. If the court does that—articulates its conclusion as to the best interest of the child in that manner—the parental rights we have recognized and the statutory basis for terminating those rights are in proper and harmonious balance.

In re Adoption/Guardianship of Rashawn H., 402 Md. at 501.

Mother argues the trial court failed to make any specific findings in two areas related to exceptional circumstances: L.D.’s bond with her mother; and whether severing that bond would be detrimental to L.D.’s best interests. Appellees, the Department and L.D. argue that the court’s opinion contained a detailed analysis of the Family Law § 5-323(d)

the age of the child at placement; the emotional effect of the adoption on the child; the effect on the child’s stability of maintaining the parental relationship; whether the parent abandoned or failed to support or visit with the child; and, the behavior and character of the parent, including the parent’s stability with regard to employment, housing, and compliance with the law.” *In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. 30, 50 (2017) (citing *In re Adoption/Guardianship No. A91-71A*, 334 Md. 538, 562–64 (1994)).

statutory factors that supported its conclusion that there is clear and convincing evidence of exceptional circumstances that it is not in the best interest of L.D. to maintain her parent-child relationship with Mother.

In its opinion, the court carefully detailed each factor set forth under Md. Code Ann., Fam. Law § 5-323(d) and stated: “[h]aving considered each factor enumerated in § 5-323(d) of the Family Law Article, the Court finds, by clear and convincing evidence, that exceptional circumstances exist to overcome the presumption that Respondent’s best interests are served by the continuance of the parental relationship.” In our view, the court carefully followed the statutory requirements. The court held:

i. (d)(1)(i) ALL SERVICES OFFERED TO THE PARENT BEFORE THE CHILD’S PLACEMENT, WHETHER OFFERED BY A LOCAL DEPARTMENT, ANOTHER AGENCY, OR A PROFESSIONAL:

The Court, due to the nature of this case, cannot make any findings or conclusions regarding this factor. Respondent was removed from Mom’s care because of an emergency petition for shelter care filed a little over a month after her birth. Placement of Respondent, therefore, occurred at the same time BCDSS involved itself in Respondent’s case, and so no services could have been provided prior to placement.

ii. (d)(1)(i) THE EXTENT, NATURE, AND TIMELINESS OF SERVICES OFFERED BY A LOCAL DEPARTMENT TO FACILITATE REUNION OF THE CHILD AND PARENT:

The Court finds that, despite Mom’s arguments to the contrary, BCDSS made meaningful efforts to facilitate reunion between Mom and Respondent, despite Mom’s repeated failures to maintain consistent contact with the agency.

iii. (d)(1)(i) THE EXTENT TO WHICH A LOCAL DEPARTMENT AND PARENT HAVE FULFILLED THEIR OBLIGATIONS UNDER A SOCIAL SERVICES AGREEMENT, IF ANY

The Court finds that BCDSS substantially complied with the terms of the service agreements it entered with Mom. Mom, however, has failed to do the same.

iv. (d)(2)(i) THE EXTENT TO WHICH THE PARENT HAS MAINTAINED REGULAR CONTACT WITH THE CHILD, THE LOCAL DEPARTMENT TO WHICH THE CHILD HAS BEEN COMMITTED, AND IF FEASIBLE, THE CHILD'S CAREGIVER:

The Court finds that from 2018 to 2023, Mom has been, at best, inconsistent in maintaining contact with BCDSS, Respondent's foster parents, and Respondent herself.

v. (d)(2)(ii) THE PARENT'S CONTRIBUTION TO A REASONABLE PART OF THE CHILD'S CARE AND SUPPORT, IF THE PARENT IS FINANCIALLY ABLE TO DO SO:

The Court finds that Mom has made minimal contributions to Respondent's care and support since 2018.

vi. (d)(2)(iii) THE EXISTENCE OF A PARENTAL DISABILITY THAT MAKES THE PARENT CONSISTENTLY UNABLE TO CARE FOR THE CHILD'S IMMEDIATE AND ONGOING PHYSICAL OR PSYCHOLOGICAL NEEDS FOR LONG PERIODS OF TIME

The Court finds that Mom does not have a parental disability. The parties neither claimed Mom has disability, nor did they present evidence to support such a claim.

vii. (d)(2)(iv) WHETHER ADDITIONAL SERVICES WOULD BE LIKELY TO BRING ABOUT A LASTING PARENTAL ADJUSTMENT SO THAT THE CHILD COULD BE RETURNED TO THE PARENT WITHIN AN

ASCERTAINABLE TIME NOT TO EXCEED 18 MONTHS FROM THE DATE OF PLACEMENT UNLESS THE JUVENILE COURT MAKES A SPECIFIC FINDING THAT IT IS IN THE CHILD’S BEST INTERESTS TO EXTEND THE TIME FOR A SPECIFIED PERIOD

It is unclear if the above factor applies in the instant case because well over 18 months have passed since placement in April 2018. However, insofar as it concerns the likelihood of achieving placement 81 months from the present date, the Court finds that, given the length of time that Respondent has already been in her current placement and Mom’s limited progress during that time, it is unlikely that lasting parental adjustments could be achieved in the next 18 months to bring about reunification.

viii. (d)(3)(i) WHETHER THE PARENT HAS ABUSED OR NEGLECTED THE CHILD OR A MINOR AND THE SERIOUSNESS OF THE ABUSE OR NEGLECT

The Court finds that Mom has neglected both Respondent and Respondent’s sister, [H.D.]. With respect to Respondent, because of Mom’s substance abuse during her pregnancy, Respondent was born drug exposed on March 2, 2018, and the Court adjudicated her CINA on April 9, 2018. With respect to [H.D.], the Worcester [sic] County Department of Social Services indicated Mom fort neglect in July 2020 because, after voluntarily intoxicating herself, she chose to place [H.D.] in a vehicle with a drunk driver.

ix. (d)(3)(ii) WHETHER THE MOTHER, AT THE TIME OF ADMISSION AT THE HOSPITAL FOR DELIVERY, OR THE CHILD, AT THE TIME OF BIRTH TESTED POSITIVE FOR A POSITIVE TOXICOLOGY TEST; AND WHETHER THE MOTHER REFUSED THE LEVEL OF DRUG TREATMENT RECOMMENDED BY A QUALIFIED ADDICTIONS SPECIALIST, PHYSICIAN, OR PSYCHOLOGIST

The Court finds that, at the time of her birth, Respondent tested positive for methadone and marijuana. The Court also finds that, at the time Mom checked herself into the hospital to deliver Respondent, she tested positive for a panoply of drugs herself.

x. (d)(3)(iii) WHETHER THE PARENT SUBJECTED THE CHILD TO CHRONIC ABUSE, CHRONIC AND LIFE-THREATENING NEGLECT, SEXUAL ABUSE, OR TORTURE

The Court does not find that Mom subjected Respondent to chronic abuse, chronic neglect, sexual abuse, or torture.

xi. (d)(3)(iv) THE PARENT HAS BEEN CONVICTED, IN ANY STATE OR ANY COURT OF THE UNITED STATES, OF A CRIME OF VIOLENCE AGAINST A MINOR OFFSPRING OF THE PARENT, THE CHILD, OR ANOTHER PARENT OF THE CHILD; OR AIDING OR ABETTING, CONSPIRING, OR SOLICITING TO COMMIT A CRIME DESCRIBED

The Court does not find that Mom has been convicted of any crime of violence against Respondent or any other person described in this sub-factor. Nor does the Court find that Mom aided and abetted any crime of violence against Respondent or anyone else listed in this sub-factor.

xii. (d)(3)(v) WHETHER THE PARENT HAS INVOLUNTARILY LOST PARENTAL RIGHTS TO A SIBLING OF THE CHILD

The Court does not find that Mom has involuntarily lost the rights to any of her other children.

xiii. (d)(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

The Court finds that, while there is some evidence that emotional ties exist between Respondent and her biological family, these ties are not significant enough to have a meaningful impact on the best interests of Respondent.

(d)(4)(ii) THE CHILD'S ADJUSTMENT TO COMMUNITY, HOME, PLACEMENT, AND SCHOOL

The Court finds that Respondent has adjusted extremely well to her current community, home, and placement.

xiv. (d)(4)(iii) THE CHILD'S FEELINGS ABOUT SEVERANCE OF THE PARENT-CHILD RELATIONSHIP

The Court finds that not enough information was presented for it to form an accurate picture of Respondent's feelings regarding the severance of the parent-child relationship beyond what it has already found regarding Respondent's emotional ties with Mom and her biological siblings.

xv. (d)(4)(iv) THE LIKELY IMPACT OF TERMINATING PARENTAL RIGHTS ON THE CHILD'S WELL-BEING

The Court finds that terminating Respondent's rights would not have a meaningfully negative impact on Respondent's well-being.

Mother argues that the court did not have sufficient information to make a decision that a continued relationship would be detrimental to L.D. She points to the fact that L.D. did not provide testimony and that the court did not have a parental fitness and bonding evaluation performed by an expert.

We observe that “[t]he capacity of children of tender years to testify is a matter ordinarily within the sound discretion of the trial court.” *Wagner v. Wagner*, 109 Md. App. 1, 24 (1996). Here, the court found that L.D. was too young to be expected to testify. Its decision in this regard was not an abuse of discretion. We also observe that the court acknowledged that it could not assess L.D.'s emotional ties with Mother, due to Mother's

failure to appear for the parental fitness and bonding evaluations. In other words, because Mother did not choose to participate, the evaluations were not performed. Evaluations, however, were performed on the foster parents that indicated that L.D. had bonded with them and that both were fit. There was also testimony from the case workers that while L.D. may have enjoyed her limited visits with Mother, she always wanted to go home to her foster parents.

Mother, nevertheless, asserts that the court improperly terminated her parental rights. We hold the court did not err. The judge's decision was based on evidence that showed that Mother failed to address her substance abuse issues over the course of L.D.'s entire life, she failed to meaningfully provide for L.D., she failed to be present and significantly engage in L.D.'s upbringing, she did not parent L.D. nor did she show a desire to parent. This case spans a five-year period and the circumstances here were exceptional. The circumstances clearly established that continuation of the parental relationship would be detrimental to the best interests of L.D and termination was in the child's best interest. The court's failure to use the specific term "detrimental" does not negate its ultimate conclusion which was in accord with the statutory requirements. As the court stated:

In addition to Mom's failure to consistently attend visits with Respondent and address her substance abuse issues, Mom further frustrated progress towards reunification by failing to maintain consistent contact with BCDSS, failing to update her contact information so BCDSS could effectively contact her, and failing to provide requested documentation to BCDSS, like consent to view her medical records or information regarding her living situation. While Mom testified that she is currently participating in drug treatment programs, the Court was not presented with admissible evidence beyond this testimony, attesting to her present sobriety or her progress toward sobriety.

Considering Respondent’s strong relationship with her foster parents, the severely limited nature of Respondent’s relationship with Mom, the willingness and ability of those foster parents to provide for Respondent, and Mom’s seeming inability or unwillingness to make meaningful progress towards reunification over the course of five years, the Court finds there is clear and convincing evidence of exceptional circumstances that show it is not in the best interest of Respondent to maintain her parent-child relationship with Mom.

In sum, the court did not err or abuse its discretion.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**