Circuit Court for Cecil County
Case No. C-07-JV-18-000148

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 858

September Term, 2020

IN RE: G.P.

Graeff,
Zic,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: June 11, 2021

Appellant, A.L. ("Father"), appeals the termination of his parental rights to G.P., his minor son, who was born to A.H. ("Mother") in March 2015.[1] The Cecil County Department of Social Services ("the Department") took G.P. into its care in July 2017 and initiated CINA proceedings in the Circuit Court for Cecil County. At the time, Father was incarcerated in Delaware, and Mother had listed another individual on G.P.'s birth certificate as G.P.'s father. The juvenile court found G.P. to be CINA, and he was placed in foster care.[2] After the Department became aware of Father's identity, but before his paternity could be confirmed, the Department filed a Petition in the Circuit Court for Cecil County seeking the termination of Mother's parental rights ("TPR Petition"). Once Father's paternity was established, the Department added Father to the TPR Petition and sought the termination of his parental rights to G.P., whom Father had never met. On October 1, 2020, following a hearing, the court terminated Father's parental rights.

On appeal, Father presents the following questions for this Court's review, which we have rephrased slightly as follows:

1. Did the juvenile court err in finding that the Department made reasonable efforts towards reunification with Father?

[1] Mother initially opposed the termination of her parental rights, but she ultimately consented, subject to a post-adoption agreement.

[2] 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 Ann., Cts. & Jud. Proc. ("CJ") § 3-801(f) (2013 Repl. Vol.).

2. Did the juvenile court abuse its discretion in finding clear and convincing evidence that there were exceptional circumstances to terminate Father's parental rights?

3. Did the juvenile court err in failing to admit evidence of Father's family as a resource?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

G.P. was born to Mother in March 2015. Mother, who was involved with B.P. at the time, listed B.P. as G.P.'s biological father on G.P.'s birth certificate. B.P. was involved with G.P. for approximately one year following G.P.'s birth.

In July 2017, the Elkton Police Department, while investigating prostitution occurring at the Knights Inn in Cecil County, discovered that G.P. was being exposed to Mother's prostitution, and he was being neglected by Mother. The police informed the Department of Mother's neglect, and on July 17, 2017, the Department investigated the allegation. It contacted Mother and G.P. at the Knights Inn and observed that G.P. was "filthy," with stains on his clothes, brown smudges and dirt on his face, a sticky substance on his hands, and red bumps and bite marks covering his body. G.P. appeared to be developmentally delayed, he could speak only in one-word responses, and his responses were unclear. Mother advised that she did not want to speak with the assessor for the Department or the detective. She gave G.P. to another resident of the Knights Inn and went to a nearby Taco Bell to get food for G.P.

Upon Mother's return, the assessor for the Department informed her that they were taking G.P. to investigate the allegations of neglect. When asked about G.P.'s father,

Mother stated that G.P.'s birth certificate listed B.P. as the father, but G.P.'s father actually was another individual. She explained that B.P. had forced her to list him as G.P.'s father. Mother refused to provide any information regarding G.P.'s father's true identity, other than his last name. Mother informed the assessor that her grandmother, S.H., might be willing to take G.P. S.H., however, refused to take G.P. Mother then contacted D.P., her aunt, and D.P. agreed to take G.P.

D.P. immediately took G.P. to Urgent Care, and he received treatment for bug bites. The next day, D.P. took G.P. to Union Hospital, where he was diagnosed with a staph infection. On July 24, 2017, after G.P. had been in D.P.'s care for approximately one week, D.P. contacted the Department, advising that she could no longer care for G.P. On July 25, 2017, the Department removed G.P. from D.P.'s care and placed G.P. with a foster family.

On August 15, 2017, at an adjudication and disposition hearing, the court found G.P. to be a CINA. G.P. continued to reside with a foster family, and the court held review hearings frequently to determine a permanency plan for G.P.[3]

In the "wintertime" of 2018, Mother contacted Father's mother, W.L., to notify her that she had a grandson. Mother requested that W.L. inform Father that he had a son. W.L. did so, and on May 6, 2018, Father wrote to the Department, notifying them that he might

[3] The permanency plans initially recommended that G.P. be returned to his natural parents at some point in the future, but on October 23, 2018, it changed to adoption by a non-relative.

be G.P.'s biological father. He advised that he was unaware that he had a son until recently, he wanted to be involved with G.P., he currently was incarcerated in Delaware on an eight-year sentence, and he expected to be released in 2022. He requested a DNA test to confirm his paternity. Father stated that W.L. might be a resource for G.P. Upon receiving Father's letter, the Department advised him that, because B.P. was listed as the father on G.P.'s birth certificate and was currently listed as the father in the ongoing CINA proceedings, the Department could not order a DNA test or involve Father in the ongoing CINA proceedings.[4]

B.P. contacted the Department in June 2018, expressing a willingness to care for G.P., and he signed a service agreement to that effect. B.P. was not sure if he was G.P.'s father, however, and he requested a DNA test to establish paternity. While the paternity test was pending, the Department treated B.P. as G.P.'s father, and B.P. began to visit with G.P. regularly. In September 2018, B.P. received the paternity test, which revealed that he was not G.P.'s father. B.P. stopped visiting G.P., and he was removed from the CINA proceedings following an order disestablishing his paternity.

Following B.P.'s removal from the proceedings, the Department contacted Father and informed him that he would receive a paternity test. On November 1, 2018, prior to Father's paternity test, the Department filed a TPR Petition in the juvenile court so that

[4] Although CJ § 3-822(e)(2) authorizes the juvenile court to "[m]ake a finding of paternity in accordance with Title 5, Subtitle 10, Part VI of the Family Law Article," this Court has held that CJ § 3-822 "is not a mechanism by which a Department of Social Services can initiate a paternity inquiry as a means of terminating the parental rights" of a presumed parent. *In re B.C.*, 234 Md. App. 698, 718 (2017).

G.P. could be adopted by the foster family with whom he had been living. In January of 2019, several months after the Department filed the TPR Petition, Father received his paternity test, and in March of 2019, the results of the test established Father's paternity. Accordingly, Father was made a party to the TPR Petition and was served with the TPR Petition and a corresponding Show Cause Order.[5] On March 15, 2019, Father filed a Notice of Objection ("Objection") to the termination of his parental rights.

On March 22, 2019, at a hearing on the TPR Petition, the Department requested a postponement so that Father could obtain counsel. The juvenile court agreed to postpone the case.

On August 23, 2019, counsel for the parties returned to court.[6] Father's counsel requested another postponement because the Department failed to provide discovery, and counsel for the Department confirmed that, following B.P.'s removal from the case, and following Father's addition, it had failed to send discovery to Father. The court granted the postponement and reset the hearing for October 25, 2019.

On October 25, 2019, counsel returned to court, and Mother's counsel requested another postponement, stating that time was needed to determine whether the Indian Child

[5] The court signed an order establishing paternity in June 2019.

[6] Because Father was incarcerated in Delaware, he was unable to attend the proceeding. Mother also did not attend the proceeding.

Welfare Act ("ICWA") applied to the case.[7] The court reset the hearing for January 24, 2020.

Prior to dismissing counsel, however, the court heard the Department on its motion in limine, which it had filed on August 19, 2019. The Department argued, and counsel for G.P. agreed, that the potential placement resources of Father's relatives were not relevant to the TPR Petition because a TPR proceeding involves only the parties, i.e., the parents, the child, and the Department.

Mother's counsel argued that the court should consider W.L.'s testimony. Father's counsel noted that he "did not join in the motion one way or the other," but he argued that, in either the CINA proceedings or the TPR Petition, "somebody needs to hear [W.L.] and look at the ICPC study."[8] The Department responded that the TPR Petition was "about the fitness of the parents," not W.L.

The court concluded that the issue of W.L.'s resources as a placement option was not relevant to the TPR Petition, but rather, it was relevant only to the CINA proceedings.

[7] The Indian Child Welfare Act of 1978 ("ICWA"), 25 U.S.C. §§ 1901–1963, "establishes 'minimum Federal standards for the removal of Indian children from their families.'" *In re Adoption of C.D.K.*, 629 F. Supp. 2d 1258, 1261 (D. Utah 2009) (quoting ICWA § 1902). "The ICWA defines an Indian Child as 'any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.'" *Id.* (quoting ICWA § 1903(4)).

[8] The Interstate Compact for Placement of Children ("ICPC"), Md. Code Ann., Family Law ("FL") §§ 5-601–611 (2019 Repl. Vol.), "requires a state to get approval from the 'appropriate public authorities' in another state before sending a child to that state for 'placement in foster care or as preliminary to a possible adoption.'" *In re R.S.*, 242 Md. App. 338, 347 n.7 (2019) (quoting FL § 5-604(a), (d)), *aff'd*, 470 Md. 380 (2020).

Accordingly, the court granted the Department's motion and stated that it would not "consider evidence related to the potential suitability of the paternal grandmother" as a placement resource.

Counsel returned to court on January 24, 2020. Because G.P.'s status as an Indian Child under the ICWA was still undetermined, as several tribes had yet to respond to the Department's inquiry concerning his potential Native American heritage, counsel for all parties and the court agreed to postpone the case until March 13, 2020. On that date, however, the Department had yet to hear from one last tribe, which caused the court to postpone the hearing on the TPR Petition once more.

On August 28, 2020, more than three years after the court found G.P. to be a CINA, and when G.P. was five years old, the court held a hearing on the Department's TPR Petition. Father, who was still incarcerated in Delaware, appeared remotely via Zoom. Mother did not appear at the hearing.

The Department initially noted that it had determined that the ICWA did not apply, and G.P. was "not an Indian child as that term is defined under the ICWA statute." The Department then noted that Mother had electronically filed a consent to the termination of her parental rights the morning of the hearing, subject to a post-adoption agreement between Mother and G.P.'s foster parents. The court accepted Mother's consent to the termination of her parental rights and dismissed her counsel from the proceedings.

The court then proceeded with the determination whether exceptional circumstances warranted the termination of Father's parental rights. The court admitted records from the

CINA proceedings, which detailed, among other things, G.P.'s wellbeing with his foster family.

The Department then called Nicole Eder, a foster care worker with the Department, as its sole witness. Ms. Eder testified that she was assigned to G.P.'s case in September 2017, which was approximately 2 months after the Department first placed G.P. in foster care. She explained that B.P. initially visited with G.P., but once the paternity test showed he was not the father, his visits ceased.

With respect to Father, Ms. Eder testified that the Department was aware of Father prior to Father sending his first letter, but she stated that the Department had no way to get in touch with Father until he sent his first letter. Ms. Eder replied to Father's first letter, but because B.P. was still listed as the father and had not yet had his paternity disestablished, she was unable to provide Father with any information. She was waiting on the results of B.P.'s paternity test before following up with Father, and once B.P.'s paternity was disestablished, she arranged for Father to take a paternity test. Once Father's paternity was established, she sent him monthly updates regarding the CINA proceedings and G.P.'s wellbeing. Ms. Eder also sent Father a service agreement, but Father never signed or returned that document.

Counsel questioned Ms. Eder with respect to the steps the Department takes when dealing with incarcerated parents, and the following exchange occurred:

> [Counsel:] Okay. Now, when the Department deals with incarcerated parents, I mean, what is it that you're able to do normally?

> [Ms. Eder:] Not much, to be honest. I mean, we're able to send update letters and just keep them up-to-date with the case. But as far as a service agreement goes, we base it on when -- upon their release for them to work on the tasks on the service agreement.
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> [Counsel:] So the service agreement that you sent to him, I mean, did it have anything that he could really do now?
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> [Ms. Eder:] Probably not, no. I mean, the only thing that I would think that possibly he may be able to do now is parenting classes, but we typically don't recognize them as sufficient for the service agreement.
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> [Counsel:] You mean the ones that are offered in jail?
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> [Ms. Eder:] Yes. That's correct.

Ms. Eder testified that G.P. had been in a foster home since July 2017, three years at the time of the hearing. She visited G.P. monthly, and he had grown a lot over the past three years. G.P. had met all of the "milestones" for his age, and he was up to date on his medical appointments. His foster mother had advocated on behalf of G.P. and secured an IEP, i.e., a special education plan. The foster parents also allowed G.P. to visit with W.L. and D.P.

When questioned by Father's counsel, Ms. Eder stated that, since Father was not a party to the CINA proceedings, she had no way of ordering a paternity test for Father. Ms. Eder conceded that the Department filed the TPR Petition after B.P.'s paternity was disestablished but before Father's paternity was established, even though the Department was aware that Father might be G.P.'s father. Counsel attempted to question Ms. Eder regarding the contact the Department had with W.L. and whether an ICPC study had been

done, but the court, pursuant to its earlier ruling on the Department's motion in limine, did not allow Ms. Eder to testify regarding the results of the ICPC study.

Counsel for G.P. did not call any witnesses, but she noted that she would be withdrawing an earlier objection to the TPR Petition that she had filed on G.P.'s behalf. Counsel proffered that G.P. had grown tremendously while in the care of his foster parent, and he had become a part of his foster family.

Father testified on his own behalf. He first learned about G.P. "back in 2018," and as soon as he found out, he contacted the Department. Father confirmed that Ms. Eder advised that, until B.P.'s paternity was disestablished, Father could not receive any information. Once his paternity was established, he was served with the TPR Petition, and he immediately filed an objection. Father gave the Department the names of W.L., his mother, as well as his brother, so that they could be used as resources for G.P. Father testified that his parental rights should not be terminated because "[a]s soon as [he] found out that [he] had a son, [he] did everything that [he] could to reach out to the courts to let them know that [he] had family that was willing to take care of [his] son and that could give him a loving, stable environment to grow up in."

In closing, the Department noted that, "since the mother has consented, it's really – it's a question of what can be done when a father is incarcerated." Counsel noted that the facts of the case were not in dispute, but he requested that the court provide several weeks for counsel to provide memoranda on the issue.

G.P.'s counsel argued that, although Father's incarceration was "not a disability," it was a "critical factor" that the court needed to consider. Counsel also noted that G.P. had no relationship with Father, and his foster family "was the only family [G.P. has] known."

Father's counsel argued that Father had attempted to become a party as soon as he discovered that G.P. might be his child, but that "he was not able to do it until the [c]ourt let him in." Counsel argued that Father did all that he could have done as an incarcerated individual.

The court held the matter *sub curia* pending submission of memoranda by counsel. On October 1, 2020, in a written Opinion, the court granted the TPR Petition and terminated Father's parental rights. The court noted that Mother had consented to the TPR Petition, and therefore, the Opinion was directed only toward Father.

Before discussing the statutory factors set forth in Md. Code Ann., Fam. Law ("FL") § 5-323 (2019 Repl. Vol.), the court noted that G.P. had been in foster care for 38 months and was doing well. It further noted that, due to Father's incarceration, there was "little to nothing that he could do," and because he would not be released until 2022, he wanted G.P. to be placed with W.L. until his release.

The court then analyzed the statutory factors set forth in FL § 5-323(d). When analyzing FL § 5-323(d), which requires the court to "give primary consideration to the health and safety of the child and consideration to all other factors needed to determine whether terminating a parent's rights is in the child's best interests," the court stated:

> The statute provides that the health and safety of the child is the overriding primary concern. In this case, the child is in need of a permanent,

> loving home. The natural father cannot provide a home at this time due to his incarceration, which will apparently continue into 2022. After he is released, the ability of the natural father can only be a matter of speculation. The father never provided any home for the child prior to the removal, and the father provided no evidence to the court as to any past history of caring for any child in any capacity. The father would need to be released from jail, and then demonstrate that he is willing and able to obtain a safe and stable home, steady employment, and the ability to provide proper love and care for a child. This would be difficult, at best, for anyone who has been in jail for the last eight years.
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> The child is now five years old, and has been in the same foster home for three years. He has never met the father. The foster home is the only stable home that the child has ever known, and the child is thriving there. Given these circumstances, the court finds that the health and safety of the child favors terminating parental rights so that the child can achieve permanency in a loving home with the family that has taken care of him for the majority of his life. The alternative is to keep the child in foster care for at least the next two years, in the hope that the father will be able to establish a stable home at some point after his release from jail, and that he will also be willing and able to care for the child at that time. There is no evidence in the record that would suggest that such a future scenario will actually come to pass. The best interests of the child need to be evaluated today, based upon the facts that exist today, and not a self serving prediction that is not supported by the father's history to date.

When analyzing FL § 5-323(d)(1)(i), which requires the court to consider the "services offered to the parent before the child's placement, whether offered by a local department, another agency, or a professional," the court stated:

> This is not a case where the Department was providing services to the father prior to the removal. As noted above, [Father] was not aware that he might be a father until almost a year into the foster case. The fault for this, if any, must be laid at the feet of the mother, who clearly knew that the man on the birth certificate was not the true father. Under Maryland law, she must have filed a false Affidavit of Paternity for this to happen. In addition, she never informed the real father of the existence of his child, and continued to be evasive about the real father's whereabouts even after the child was brought into foster care.

The court also considered FL § 5-323(d)(1)(ii), which requires the court to consider "the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent." In considering that statutory factor, the court stated:

> The father has been and is still incarcerated in Delaware. He will not be released until sometime in 2022. Given this fact, there were no efforts that were available to facilitate reunion of the child with the father. Once the father was confirmed by DNA testing, the Department maintained contact with him, and with his relatives, and arranged for the child to have contact with the father's mother, and with other relatives of the father. The father was provided with regular updates on the child by the Department. The court finds that these efforts were reasonable in the circumstances.

The court then considered FL § 5-323(d)(2)(iv), which requires the court to consider

> 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.

With respect to that factor, the court said:

> There is no evidence upon which the court can make any finding that any services might be likely to bring about a lasting parental adjustment for the father, such that he could care for his child. It has now been 38 months since placement. If the father's prediction of release in 2022 turns out to be accurate, then the child will have been in care for five years at that point, and the father would still need substantial additional time to readjust to a normal life. It is often argued that the amount of time that a child is in foster care can not, by itself, support a termination of parental rights. However, it is a significant factor in this case, and must be considered. This provision, by its express terms, establishes a time frame under which a parent's efforts are to be judged. That time is 18 months. In this case, we are already more than twice the allowed period, and would be three times the standard by the expected release of the father from incarceration, at which point the father would still need more time to show that he could care for the child.

Following its analysis of all the relevant statutory factors, the court explained that exceptional circumstances warranted the termination of Father's parental rights. It stated:

> The key factor is clearly the current inability of the father to assume any care of the child due to his incarceration, which will not end until another two years. However, that is but one factor. [Father] had no relationship with the child prior to the child coming into foster care, and was completely unaware of the child's existence. Thus, there is no past or current relationship between [Father] and the child. [Father] has not provided this court with any plan for his possible assumption of the child's care in the future. His release from jail is not a sufficient basis for any court to conclude that he would be ready, willing and able to assume the care of any child at that point in time. [Father] has not provided any evidence of any past involvement in the care of any child. Lastly, there is the matter of the time that the child has been in foster care, which is already well beyond the statutory guidelines. To wait for [Father's] release would add two more years of foster care to the child's life, at a minimum, on the hope that [Father] can improve his life after release from jail. The court does not believe it is reasonable to require this child to wait in foster care for five (5) years just on the remote possibility that a father who he has never met will be able to assume his full time care.

The court then addressed the best interests of G.P., stating:

> [G.P.] is five years old, and is able to express his desire to be adopted, as proffered by his counsel, who has visited him regularly, and who has observed that he is thriving in the home of the current foster parents. This is a stable pre-adopt placement. Adoption will allow the child to achieve the permanency which is the goal of the child welfare system.

Ultimately, the court concluded that extraordinary circumstances existed that made continuation of Father's parental relationship with G.P. detrimental to the best interest of G.P., and the best interest of G.P. required termination of Father's parental rights so that G.P. could be adopted by his foster parents.

This appeal followed.

STANDARD OF REVIEW

As the Court of Appeals has recently explained: "'Maryland appellate courts apply three different but interrelated standards of review' when reviewing a juvenile court's decisions at the conclusion of a termination of parental rights proceeding." *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 47 (2019) (quoting *In re Adoption/Guardianship of Cadence B.*, 417 Md. 146, 155 (2010)). Those standards are as follows: "(1) A clearly erroneous standard, applicable to the juvenile court's factual findings; (2) a *de novo* standard, applicable to the juvenile court's legal conclusions; and (3) an abuse of discretion standard, applicable to the juvenile court's ultimate decision." *In re Adoption/Guardianship of C.A. and D.A.*, 234 Md. App. 30, 45 (2017).

"Legal conclusions of unfitness and exceptional circumstances are reviewed without deference." *In re C.E.*, 464 Md. at 47. Our function, however, when reviewing the findings of the juvenile court, "is not to determine whether, on the evidence, we might have reached a different conclusion." *In re C.A. and D.A.*, 234 Md. App. at 46 (quoting *In re Adoption No. 09598 in the Circuit Court for Prince George's County*, 77 Md. App. 511, 518 (1989)). Instead, our function is to decide "whether there was sufficient evidence—by a clear and convincing standard—to support [the court's] determination that it would be in the best interest of [the child] to terminate the parental rights of [the parent]." *Id.* (quoting *In re Adoption No 09598*, 77 Md. App. at 518)).

DISCUSSION

I.

Efforts Toward Reunification

Father contends that the court erred in finding that the Department made reasonable efforts towards reunification with Father. He argues that "[a]lthough 'reasonable efforts' is determined on a case-by-case basis," to be reasonable, the Department must actively pursue reunification. Here, he asserts that the Department "refused to engage with [him] until his paternity was confirmed," and although the evidence indicated that he "would be released from incarceration shortly after the TPR trial," the Department "made little attempt to work with [him] directly and did not directly provide any services or inquire as to the status of any services [he] was receiving from other providers."

The Department contends that the court properly considered the statutory factors set forth in FL § 5-323(d)(1), "which required the court to evaluate services that the Department could provide to a man incarcerated in Delaware, but did not require a finding of reasonable efforts." The Department asserts that, in a TPR proceeding, "[t]he statutory framework does not require a finding of reasonable efforts," but rather, it "assists the juvenile court in determining whether a parent will, within a reasonable time, be able to care for a child without endangering the child's welfare."[9] It argues that the court "properly

[9] Pursuant to FL § 5-324(b)(1), the juvenile court must, "[i]n a separate order accompanying an order granting guardianship of a child," make a finding as to "whether reasonable efforts have been made to finalize the child's permanency plan." Here, G.P.'s primary permanency plan prior to the TPR proceeding was adoption by a non-relative, and

found it was impossible and futile to provide services to a parent who has been incarcerated out-of-state since 2015."

G.P. further notes that, at the TPR hearing, Father requested that W.L. and his brother be "next of kinship [sic], so that way they could file for guardianship of [G.P.]" G.P. asserts that Father recognized the futility of reunification efforts, and his "focus was not on reunification," but rather, on placing G.P. with W.L. until he was released from incarceration.

As Father notes, "[p]arents have a fundamental right under the Fourteenth Amendment of the United States Constitution to 'make decisions concerning the care, custody, and control of their children.'" *In re C.E.*, 464 Md. at 48 (quoting *Troxel v. Granville*, 530 U.S. 57, 66 (2000)). This right is protected by a "presumption . . . that it is in the best interest of children to remain in the [parent's] care and custody." *In re C.A. and D.A.*, 234 Md. App. at 48 (quoting *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 495 (2007)). This right, however, is not absolute, and the State may petition for guardianship of the child "[w]hen it is determined that a parent cannot adequately care for a child, and efforts to reunify the parent and child have failed." *In re C.E.*, 464 Md. at 48.

"[A] juvenile court has the authority to terminate parental rights upon a finding of clear and convincing evidence that (1) the parent is unfit to remain in the parental

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the secondary permanency plan was placement with a relative for custody and guardianship. Accordingly, by the time of the TPR proceeding, the court was not required to make a finding regarding reasonable efforts made to achieve reunification, as reunification was not G.P.'s primary or secondary permanency plan.

relationship with the child or (2) exceptional circumstances exist that would make continuation of the relationship detrimental to the child's best interest." *Id.* at 49. When making a determination as to the existence of unfitness or exceptional circumstances, the juvenile court must consider the statutory factors set forth in FL § 5-323(d). *Id.* As the Court of Appeals has explained, the FL § 5-323(d) factors are divided into four categories:

> (1) the services that the Department has offered to assist in achieving reunification of the child with the parents; (2) the results of the parent's effort to adjust their behaviors so that the child can return home; (3) the existence and severity of aggravating circumstances; (4) the child's emotional ties, feelings, and adjustment to community and placement and the child's general well-being.

Id. at 51. Together, consideration of these categories and their various factors guide the juvenile court's determination of "whether the parent is, or within a reasonable time will be, able to care for the child in a way that does not endanger the child's welfare." *Id.* at 52 (quoting *In re Rashawn H.*, 402 Md at 500).

Father's first contention on appeal involves the court's finding with respect to the first category, the services offered by the Department to assist in achieving reunification of G.P. with Father. In that regard, FL § 5-323(d)(1) provides, in pertinent part, as follows:

> (d) Except as provided in subsection (c) of this section, in ruling on a petition for guardianship of a child, a juvenile court shall give primary consideration to the health and safety of the child and consideration to all other factors needed to determine whether terminating a parent's rights is in the child's best interests, including:
>
> > (1)(i) all services offered to the parent before the child's placement, whether offered by a local department, another agency, or a professional;

> (ii) the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent; and
>
> (iii) the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any[.]

As noted by the Department, FL § 5-323(d)(1) does not, by itself, require the court to make a finding regarding "reasonable efforts," but rather, it requires the court to consider the services the Department offered. *See also In re Rashawn H.*, 402 Md. at 500 ("The court is required to consider the timeliness, nature, and extent of the services offered by [the Department] or other support agencies, the social service agreements between [the Department] and the parents, the extent to which both parties have fulfilled their obligations under those agreements, and whether additional services would be likely to bring about a sufficient and lasting parental adjustment that would allow the child to be returned to the parent."). The Court of Appeals has explained, however, that

> [i]mplicit in that requirement is that a *reasonable* level of those services, designed to address both the root causes and the effect of the problem, must be offered—educational services, vocational training, assistance in finding suitable housing and employment, teaching basic parental and daily living skills, therapy to deal with illnesses, disorders, addictions, and other disabilities suffered by the parent or the child, counseling designed to restore or strengthen bonding between parent and child, as relevant. Indeed, the requirement is more than implicit. FL § 5-525(d), dealing with foster care and out-of-home placement, explicitly requires [the Department] to make "*reasonable efforts*" to "preserve and reunify families" and "to make it possible for a child to safely return to the child's home."

In re Rashawn H., 402 Md. at 500 (emphasis added). Accordingly, although FL § 5-323(d)(1) does not explicitly contain a reasonableness requirement, the services offered by the Department must be reasonable. *See id.*

The Court has made clear, however, as Father acknowledges, that there are limits to what the Department is required to do. *Id.* The Department

> is not required to allow children to live permanently on the streets or in temporary shelters, to fend for themselves, to go regularly without proper nourishment, or to grow up in permanent chaos and instability, bouncing from one foster home to another until they reach eighteen and are pushed onto the streets as adults, because their parents, even with reasonable assistance from [the Department], continue to exhibit an inability or unwillingness to provide minimally acceptable shelter, sustenance, and support for them.

Id. at 501. Indeed, "children have a right to reasonable stability in their lives and . . . permanent foster care is generally not a preferred option." *Id.*

Here, the circuit court conducted a thorough analysis of the FL § 5-323(d) factors. It found that "there were no efforts that were available to facilitate reunion of the child with the father," as Father was incarcerated out-of-state. Nevertheless, "the Department maintained contact with [Father], and with his relatives." It also arranged for G.P. to have contact with the Father's mother and other relatives, and it "provided [Father] with regular updates on [G.P.]"

The court's finding that "there were no efforts that were available to facilitate" reunification of G.P. with Father was not clearly erroneous. The circuit court's finding was consistent with our holding in *In re C.A. and D.A.*, 234 Md. App. at 54, where this Court stated that "any provision of services toward reunification would have been futile given that Father was incarcerated the entire time [his] children were in foster care." In that case, as in this case, "no amount of services would have alleviated the primary obstacle to

Father's ability to care for [G.P.], namely his incarceration[.]"[10] *Id.* at 55. The circuit court's findings in this regard were not clearly erroneous.

II.

Exceptional Circumstances

Father contends that the court abused its discretion in finding that exceptional circumstances warranted the termination of his parental rights. He argues that the court "focused almost entirely on [G.P.'s] bond [with] the foster parents and did not find that creating a bond with Father would be detrimental."

The Department contends that the court "appropriately exercised its broad discretion in terminating [Father's] parental rights because there [was] clear and convincing evidence of exceptional circumstances" that "made the continuation of the parental relationship contrary to G.P.'s best interests." It notes that "permanency is a critical factor" in the best interest of the child analysis, and the court acted within its discretion in terminating Father's parental rights, which provided G.P. "with the opportunity for stability and security" by permitting G.P. to be adopted by his foster parents, "the only parents he has known," who "have planned and cared for him since he was two."

G.P. contends that "the juvenile court did not abuse its discretion in finding clear and convincing evidence that there were exceptional circumstances to terminate Father's parental rights." In support, G.P. argues that "[t]he amount of time in care, bond with his

[10] Although Father asserts that the evidence showed that he would be released from incarceration "shortly after the TPR trial," the record does not support that assertion. Father still had at least two years left to serve on his sentence.

foster family, the impact of removal on G.P.'s well-being and . . . Father's failure to have any relationship with G.P.[] because of his own actions resulting in his incarceration[,] and his inability to provide care in the near future all contribute to establish a basis for exceptional circumstances."

The Court of Appeals has explained that, to justify the termination of parental rights, "the focus must be on the continued parental relationship, not custody," and "[t]he facts must demonstrate an unfitness to have a continued parental relationship with the child, or exceptional circumstances that would make a continued parental relationship detrimental to the best interest of the child." *In re Rashawn H.*, 402 Md. at 499. Additionally, the exceptional circumstances "must be established by clear and convincing evidence," and although the court has "near-boundless discretion" with respect to the child's best interest in a custody proceeding, in a TPR proceeding, the court's discretion is guided by statutory factors set forth in FL § 5-323(d). *Id.* The primary consideration, however, is "the safety and health of the child." *Id.* at 500 (quoting FL § 5-323(d)).

As this Court has explained, "[i]n addition to being mandatory considerations prior to a termination of parental rights, the factors outlined in FL § 5-323 also serve 'as criteria for determining the kinds of exceptional circumstances that would suffice to rebut the presumption favoring a continued parental relationship and justify termination of that relationship.'" *In re C.A. and D.A.*, 234 Md. App. at 50 (quoting *In re Rashawn H.*, 402 Md. at 499). Additional relevant criteria include:

> [T]he 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; 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.

Id.

Here, unlike in *In re Adoption/Guardianship of Alonza D.*, 412 Md. 442, 468 (2010), relied upon by Father, the circuit court did not focus "primarily on the length of time [the children] had been in foster care . . . to support a finding of exceptional circumstances." Although it properly considered that fact in its analysis, it also considered, as a key factor, Father's inability to care for G.P. due to his incarceration, as well as the fact that Father had no past relationship with G.P., had not provided a plan to care for G.P. in the future, and likely would be unable to care for G.P. immediately upon his release from incarceration. In light of these facts, the court did not err or abuse its discretion in concluding that exceptional circumstances warranted the termination of Father's parental rights, and a continuation of the parental relationship would be against G.P.'s best interest.

III.

Exclusion of Evidence

Father's third and final contention is that the court erred by excluding evidence of his family's resources. In support, Father argues that, pursuant to FL § 5-525(c), "there is a clear preference for placing a child with the parent's relatives before putting the child up for adoption or placing the child in any sort of long term foster care," that he had provided information regarding his mother and brother as potential placement resources, and the

court's ruling excluding evidence of his family's resources "precluded [him] from mounting an adequate defense as well as diluting the Department's burden of showing by clear and convincing evidence why termination of parental rights should be granted."

The Department contends that his claim that family resources were available is unpreserved for review because Father failed to make any proffer regarding the evidence he wanted to present. In any event, the Department and G.P. argue that Father's claim is without merit. They assert that the court properly excluded the evidence because Father's family's resources were not relevant during the TPR proceedings. Moreover, they note that W.L. "initially advised the Department that she could not be a resource" for G.P., G.P. had no relationship with his paternal grandfather, and Father's brother was unwilling to provide a permanent home for G.P.

We address first the Department's contention that this issue is not preserved for review. Md. Rule 5-103(a) provides that "[e]rror may not be predicated upon a ruling that . . . excludes evidence unless the party is prejudiced by the ruling" and "the substance of the evidence was made known to the court by offer on the record or was apparent from the context within which the evidence was offered." *Accord Peterson v. State*, 444 Md. 105, 124–25 (2015) (quoting Md. Rule 5-103(a)(2)).

Here, the Department filed a motion in limine, arguing that "anything related to possible placement with a relative [of Father] is not relevant in a TPR proceeding." Mother argued that W.L.'s testimony was relevant "due to the reasonable efforts not made by the Department in regard to [Father] throughout th[e] entire case." Father's counsel stated

that he "did not join in the motion one way or the other," but he noted that, in either the CINA proceedings or TPR proceedings, evidence of Father's family's resources needed to be evaluated, but he did not know which was the more appropriate proceeding. No proffer was given regarding the substance of the testimony sought to be introduced. Accordingly, we agree that the issue is not preserved for review. Even if the issue were properly before us, we would conclude that it lacks merit.

To be sure, permanency is important, and the Department "must make '[e]very reasonable effort' to ensure that every child who has found himself in foster care obtain[s] permanency within twenty-four months of placement." *In re Adoption of Jayden G.*, 433 Md. 50, 92 (2013) (quoting Md. Code Ann., Cts. & Jud. Proc. § 3-823(h)(4)). Here, however, Father's family's resources did not offer permanency. At the August 28, 2020 TPR Petition hearing, Father stated that his intention was only for W.L. to care for G.P. while he was incarcerated. Father's own testimony established that he was not seeking permanency for G.P., but rather, he was seeking temporary guardianship by W.L. By this time, however, G.P. had already been in foster care for several years.

Moreover, as the juvenile court properly noted when ruling on the Department's motion in limine, the placement of a minor child with relatives is a matter more appropriately addressed by CINA proceedings, and the appropriate focus of TPR proceedings is the fitness of the parents. *See In re Cross H.*, 200 Md. App. 142, 152 (2011). Accordingly, testimony regarding W.L.'s suitability and resources was not relevant to the TPR proceeding, as that proceeding dealt with whether the court should terminate Father's

parental rights. Because Father's family's resources were not relevant in the TPR proceedings, the court did not err in excluding such evidence.

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