Circuit Court for Dorchester County
Case Nos. C-09-JV-23-000079, C-09-JV-23-000080, C-09-JV-23000081,
C-09-JV-23-000082

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1032

September Term, 2024

IN RE: Kl.D., Kt.D., F.D., & T.D.

Nazarian,
Zic,
Kenney III, James A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: March 21, 2025

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R.B. ("Mother") and T.D. ("Father") are parents to four children who are before us in this case: Kl.D., Kt.D., F.D., and T.D. The four were found to be Children in Need of Assistance ("CINA"),[1] and in April 2024, the Circuit Court for Dorchester County terminated Mother and Father's parental rights to each child. The court reached its conclusions after finding by clear and convincing evidence that both parents were unfit and that severing the parental relationships served each child's best interests. The court grounded its findings in the parents' failure to comply with their agreements with the Dorchester County Department of Social Services ("DSS" or the "Department"), even though the Department had offered them numerous services, in each parent's inability to demonstrate that they would address their behavioral shortcomings meaningfully, and in the children's established bonds with their foster families. Mother and Father appeal and we affirm.

I. BACKGROUND

A. Factual Background

1. DSS became involved early in the children's lives.

[1] A Child In Need of Assistance is defined as:

> (f) . . . 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 (1974, 2020 Repl. Vol.), § 3-801(f)(1)–(2) of the Courts and Judicial Proceedings Article.

Mother has known Father since she was thirteen years old. The two dated for at least six years and have five children together.[2] Kl. was born on August 9, 2019. A month later, in September 2019, Kl. suffered a severe case of thrush. At the time, Mother was incarcerated. Father, who wasn't incarcerated, failed to follow up with her medical care. This inaction led to contact with DSS, which indicated him for medical neglect.

On July 18, 2020, Kt. was born. During most of Mother's pregnancy with Kt., Father was incarcerated and returned to the family's Cambridge home around August 2020. Shortly after that, Kl. fractured her arm and was rushed to a hospital. This time Mother failed to follow up with timely medical care for Kl. and DSS became involved again, indicating Mother for neglect.

On August 16, 2021, Mother and Father had their fourth child, F. F. was born as a substance-exposed newborn ("SEN")[3] after testing positive for marijuana, which again alerted DSS. The Department began providing in-home services to the family, including

[2] The parents' first born child, Kl.B., sometimes referred to as K.L.B., is not a party to this proceeding because a circuit court in Florida terminated Mother and Father's parental rights to Kl.B. in August 2020. Accordingly, the shorthand "Kl." in this opinion will refer only to Kl.D.

[3] A newborn is substance-exposed if that newborn:

> (1) displays a positive toxicology screen for a controlled drug as evidenced by any appropriate test after birth;
>
> (2) displays the effects of controlled drug use or symptoms of withdrawal resulting from prenatal controlled drug exposure as determined by medical personnel; or
>
> (3) displays the effects of a fetal alcohol spectrum disorder.

Md. Code (1999, 2019 Repl. Vol.), § 5-704.2(b)(1)–(3) of the Family Law Article ("FL").

transportation, help in applying for temporary cash assistance, medical assistance, food, cleaning supplies, and clothing for the children.

Kevonya Moment, the DSS in-home worker at the time, worked with the family. She met resistance initially—Mother and Father did not permit her anywhere past the kitchen of their home, and the parents were uncooperative. Because she couldn't interact with the family otherwise, Ms. Moment came close to terminating F.'s SEN case. Then, in November 2021, she received a referral to address F.'s weight issues and a heart murmur that required a specialist's intervention. Like Kl., the family had missed F.'s medical appointment with his cardiologist. Ms. Moment also learned that this was the second time that F. had missed a cardiologist appointment. When she attempted to speak with Father about the missed appointment, Father cursed at her. It was then that Ms. Moment requested police assistance with conducting an unannounced in-home visit.

On December 1, 2021, DSS indicated the parents for neglecting F. That same day, law enforcement arrested Mother and Father upon discovering that both had active warrants. DSS involved Lindsay Peake, a Child Protective Services ("CPS") worker at the time, due to the medical neglect of F. and the state of the home. Upon arriving at the home, Ms. Peake noticed other adults there in addition to Mother and Father, but she didn't know who they were. DSS learned later that two of the adults were the children's maternal grandparent, Candy Walker, and her then-boyfriend. DSS placed the children in Emergency Shelter Care.

Afterwards, Mother was incarcerated until January 7, 2022, and Father was

incarcerated until September 25, 2023. While Mother entered into an after-care plan with DSS once released, Father entered into his after-care plan with DSS while still incarcerated. Mother's plan required her to follow through with all court orders and comply with DSS's requests. The plan also required her to continue looking for housing, utilize community resources, and follow through with medical, mental, and substance abuse appointments. Father's after-care plan required him to comply with his mental health recommendations, cooperate with DSS, follow through with the children's medical appointments after they were returned to him, and maintain their safety and well-being otherwise.

Once Mother was released in January 2022, DSS returned Kl. and Kt. to her at their Cambridge home, whereas F. remained in Emergency Shelter Care. DSS continued to support the family. The Department helped Mother search for housing by taking her to visit potential homes. Ms. Moment provided Mother with photographs of homes with "For Rent" signs around Dorchester County. The Department also transported Mother to her urinalysis appointments at J.D. Collins and for an intake session at the Life Energy Wellness Center. That same month, on January 15, 2022, the Department petitioned the circuit court to declare F. a CINA, which it did, later, on February 7, 2022. The Department provided items to prepare for F.'s return and he did return to the Cambridge home under an Order of Protective Supervision ("OPS").

DSS nevertheless remained concerned with the state of the family home where Mother resided with the three children. On a visit they observed clutter tucked away in the living room and an emaciated dog locked in a bathroom. On one side of that bathroom's

door was an "Out of Order" sign, and on the other were dog feces and trash. Ms. Moment described Mother's and Ms. Walker's rooms as a "mess." When DSS informed Mother that she ought to clean the rooms, she complied. The rest of the house was littered with trash, diapers, and food. The clothes DSS found and disposed of were infested with cockroaches. The family also remained unreceptive to DSS's unannounced visits—it took the family about two months to start allowing DSS's workers to fully access the home.

On July 4, 2022, Mother gave birth to their fifth child, T. Mother was evicted later that month from her home in Cambridge.[4] DSS paid for Mother to stay with four of the children at a hotel—the Cambridge Inn. But when DSS attempted to locate her there that same month, it couldn't find her. What DSS did find was Ms. Walker and her then-boyfriend with F. and T. On July 18th, 2022, the Department attempted to transport Mother's children to a medical appointment but was unable to do so because it couldn't find Mother or any of the children. It would soon learn that Mother and the children had left the Cambridge Inn the day before, July 17th, and were at a different hotel in Baltimore City.[5]

DSS contacted the Baltimore City Department of Social Services to conduct a safety check on the family but didn't receive a response. On July 26, 2022, Ms. Moment and Martika Jefferson, a family support worker, went to the Baltimore hotel themselves. They

[4] There were varying dates provided for this eviction.

[5] At the TPR hearing, Ms. Moment testified that this hotel was in Ellicott City, but all other sources from the Department state that it was in Baltimore City. The juvenile court also identified this hotel as located in Baltimore City.

found Kl., Kt., T., and a nine-year-old alone with no adults present. Mother's friend arrived later, but neither Mother nor F. were there. Ms. Moment described the hotel room as "disgusting," with food and clothes in black trash bags, leading her to believe that the family had been living there for a month rather than a few days. There also were open alcohol bottles within the children's reach. Added to those concerns was T., a newborn at the time, lying face down on the bed with a bed cover up to her shoulder and severe thrush on her tongue. DSS provided new diapers, bottles, and clothing for the children. The Department then learned that Mother had been arrested for stealing a U-Haul truck. After issuing a missing person's report for F., DSS found him with another of Mother's friends. With all four children located, DSS placed them in foster homes, entrusting the older two to Stephanie Williams on July 26, 2022 and the younger two to Christy Sink that same day. The children also underwent medical evaluations, with Kl., Kt., and T. having their evaluations the following day, July 27, 2022, and F. having his on July 29, 2022. Only T. presented medical concerns—an oral thrush, a diaper rash, a failure to thrive, and blocked tear ducts.

Later that year, on September 13th, 2022, DSS petitioned the circuit court to terminate the OPS and obtain custody of F. DSS also petitioned the circuit court to declare Kl., Kt., and T. as CINA. That same month, on September 29, Mother informed DSS about her new residence in Salisbury. Having confirmed this residence, DSS completed service planning with Mother on October 4, 2022. The plan required Mother to complete her substance use disorder, mental health, and Fit-To-Parent evaluation, follow the resulting

requests and recommendations, and comply with random urine analyses. Mother told the Department that she would begin employment with Perdue Farms soon after and DSS asked her to provide her work schedule and paystubs. Mother also reported that she had missed her criminal hearing about the U-Haul truck that had been scheduled for September 30, 2022. While she informed DSS that her lawyer would resolve her issue of missing the hearing, a failure to appear warrant was issued for her. She then turned herself in and was arrested.

Then on October 25, 2022, a magistrate issued their Report and Recommendations declaring Kl., Kt., and T. as CINA, terminating the OPS, and granting DSS custody over those four children. The circuit court adopted those findings on November 4, 2022. The following year, on July 25, 2023, the circuit court held a Permanency Plan Review Hearing for the four children. There, the court changed the children's permanency plan from reunification to adoption by a non-relative and ordered DSS to file a petition for Guardianship of the children.

2. DSS supervises the parental visits.

During the times DSS had custody of the children, but before the Termination of Parental Rights ("TPR") proceeding, DSS facilitated visits between the parents and these four children and logged those visits in a report to the circuit court. Sophia Shockley, a DSS out-of-home services worker at the time, and Megan Yowell, an out-of-home placement supervisor at the time, prepared the report. However, those visits did not always go as planned. On August 2, 2023, Mother arrived late to a scheduled visit with F. and T.

DSS noted that she arrived with the children's grandparents, who were not scheduled to be there. On another occasion, Mother was a no-show to a scheduled visit at the Salisbury Zoo with Kl. and Kt. DSS found her and Ms. Walker, along with Ms. Walker's now-husband (now "the Walkers"), at a Dollar Store and offered her transportation, which Mother declined.

For the August 22, 2023, scheduled visit with the four children, Mother showed up again with the Walkers. Ms. Shockley noted several issues that day—Mother allowed the children to throw toys and objects; she opted first to photograph T. when T. cried before attempting to console her; Mother used inappropriate language in front of the children; she yelled loudly in the DSS parking lot; and she ignored DSS's requests to modify her behavior. Ms. Shockley added that there was a lot of yelling and screaming and pillows thrown. Mother tried to calm Kl. and Kt. but couldn't, as the girls were inconsolable, threw tantrums, and misbehaved.

Father was released from prison on September 25, 2023. Two days later, he contacted DSS about visiting the children. DSS informed him that he had to visit alone, without Mother, given that Mother had confirmed the pair's domestically violent history. He expressed his disagreement with this plan through numerous texts and phone calls. DSS advised him to contact his attorney to address this and, in the meantime, that he was to meet with a DSS worker to review a service plan, a step which, once completed, would permit him to see the children.

The Department scheduled a visit with both parents for September 29, 2023, but

neither showed up. Father missed another scheduled visit on October 4, 2023, despite three attempted notices via text message. It was during this period, on October 5, 2023, that DSS petitioned the circuit court for guardianship of Kl., Kt., F., and T. Five days later, on October 10, Father arrived at the Department and signed the service plan which stated, among other things, that he would attend mental health treatment, substance abuse treatment, anger management, and parent training. DSS provided him with a packet of community resources that could provide those services, and he agreed to sign consent forms to release his progress to DSS once he had chosen providers for those services.

On October 16, 2023, three days before his next visit, Father asked to visit the children with Mother. When the day of that visit came, he and Mother were both at DSS, but since they were not supposed to see the children together, each parent had two children with them at a time in different rooms. DSS had security outside each room to ensure the children's safety. The following month, Father again requested that he and Mother be present together during supervised visits.[6]

On November 15, 2023, both parents had another visit at DSS. The Department requested urine screens from them; Mother assented and Father refused, stating that he already had to undergo those screens with his probation officer and that his attorney informed him that additional screens were unnecessary. DSS noted in its report in December that although Mother had agreed to submit to a urine screen, she still had not

[6] Although not stated expressly, it appears that DSS ultimately permitted joint parental visits for a time.

done so by the time DSS submitted the report to the circuit court. During that November visit though, the parents were to play a game of Twister with the children. DSS workers saw Father whisper into Kl. and Kt.'s ears, then hand Kl. a watch. Kt. became upset until she received the watch, thinking it was hers to keep. Kl. threw her shoes, and so did F., thinking it was a game. After refusing to put her shoes back on, Kt. began screaming as F. and T. watched, and the visit with Kl. and Kt. ended. Father protested—he wanted the visit to continue—but DSS refused, fearing that the two daughters' behavior would escalate if they remained and that the parents should remain with F. and T. instead. Father then said he would be contacting his lawyer. Later, Kl. and Kt. informed a DSS worker that "Daddy told us to be bad so that we could stay longer."

Mother called DSS on November 21, 2023, stating that she did not want to be in the same room as Father. She added, this time via text message, that Father wanted nothing to do with the children. Father then contacted DSS and left a message using "foul language." He called again and expressed how Mother's earlier communications were untrue and that he was with her at that very moment. Mother texted DSS seven days later that "the visits are fine together btw."

So the visits continued. DSS held a supervised visit for both parents and the four children on November 29, 2023. Although this visit was supposed to be one where the parents played a game with the children, only Mother involved herself; Father refused to play and just observed. The visit ended five minutes early because of Kl.'s and Kt.'s agitation, temper tantrums, and disobedience.

On December 25, 2023, Officer David Whipple from the Cambridge Police Department received a call related to domestic violence in Cambridge. When he arrived at the residence, he found Mother, Father, and the children's paternal grandfather. Mother had a red mark on her face, which she said Father had caused by punching her. The officer noticed a cut on Father's lip and a scratch on his arm. According to the paternal grandfather, Mother did not want Father to leave and assaulted Father with a fire extinguisher to prevent his departure. Officers arrested Mother and Father; Father yelled and was otherwise disorderly, and Mother resisted the arrest.

Given the incident on December 25, 2023, the parents could not visit the children together. DSS noted the next visit as February 14, 2024. Father was supposed to arrive at DSS at 9:00 a.m. but arrived instead with Mother after 10:00 a.m. DSS deemed Father to have forfeited that visit, given that his visiting time ended at 10:00 a.m., and this left him unhappy. The following month, March, Father was late again to a scheduled visit with F. and T. Ms. Shockley revealed that leading up to that visit, she received a phone call from Father, who stated that he and Mother were upset with each other and that Mother planned to take her tax money and kidnap the four children. An hour later, Father called again, stating this time that what he had said in the previous call was all false and that he was just angry. This was the last supervised visit DSS noted before the TPR hearing.

B. Procedural History

1. The circuit court issued several orders leading up to the TPR hearing.

On January 15, 2022, DSS petitioned the circuit court to declare F. a CINA. On February 7, 2022, the court found F. to be a CINA, and he returned to the Cambridge home under the OPS. Under that order, both parents had to participate in substance abuse evaluations, tests, and treatment; refrain from using devices not designed for heating to warm their home, such as an oven; attend all medical appointments; comply with medicine and feeding instructions; limit individuals in the home to four adults and three minors; and enroll the children in an early head start program. The order also required Mother to complete psychological evaluations and counseling, permit unannounced Department visits to the home, cooperate with in-home services workers, and not use threatening language toward Department staff.

The parents appeared for a CINA review hearing for F. on September 13, 2022. After finding the children in Baltimore City, DSS petitioned the court to terminate the OPS and to grant DSS custody of F. A magistrate found it contrary to F.'s welfare to keep the child in the same home as Mother. The magistrate also credited DSS's efforts to avoid removing F. The magistrate recommended that F. remain a CINA, that DSS retain custody over F. until the October 25, 2022 CINA disposition hearing, that Mother be permitted weekly visits with F., and that to the extent possible, DSS arrange video visits between Father and F. The circuit court adopted those Recommendations.

That same day, the magistrate also heard DSS's petition to declare Kl., Kt., and T.

CINA and issued a Report and Recommendations. The magistrate found that Mother and Father had neglected the children and that the parents were unable or unwilling to provide the children with the proper care and attention they needed. The magistrate recommended that DSS retain custody of the children until the October 25, 2022 hearing, allow Mother weekly visits, and that DSS arrange video visits between the children and Father. The circuit court adopted those Recommendations as well.

After the October 25, 2022 CINA disposition hearing, a magistrate issued another Report and Recommendations as to Kl., Kt., and T. The Department informed the court that it had tried to contact Mother, but she remained unresponsive and had yet to verify employment or completion of the evaluations and treatment. After finding the children as CINA due to parental neglect, the magistrate recommended that DSS retain custody; continue the same visitation schedule with both parents; that both parents complete the ordered evaluations and classes; and release those evaluations to the court, along with testing and participating information to the court and all parties. Both parents also were required to undergo a Fit-to-Parent Evaluation. On November 4, 2022, the circuit court adopted those findings.

Dr. Samantha Scott issued a report from the parents' Fit-to-Parent Evaluation on June 12, 2023. The doctor expressed "significant concern" over Mother's psychological functioning and whether Mother could provide a safe environment for the children. Dr. Scott noted that Mother had "marked challenges with impulse control, healthy decision making, insight and judgment, and her ability to manage tasks of independent living

without assistance." The report noted health concerns such as unaddressed epilepsy and potential cancer. The doctor also highlighted Mother's unprocessed trauma, aggressive and explosive behavior, daily marijuana abuse, and the ease with which the children could access her marijuana. The report also noted Mother's domestic violence history with Father, her difficulty completing tasks without significant assistance, poor insight and judgment, her uninterested disposition during visits with her children, her low frustration tolerance, and her authoritarian parenting style.

The doctor concluded that the children should not return to Mother's care and that DSS should be cautious about permitting unsupervised visits with Mother and the children. The doctor added that Mother would struggle to maintain her composure and offer all four children the attention required to keep them safe. And given her arrests and homelessness, the report opined that DSS may need to consider changing the children's permanency plan. The doctor recommended that Mother participate in continuous individual trauma-focused therapy, substance abuse treatment, treatment from a residential center specializing in co-occurring mental health disorders, additional medication, and seek a follow-up for her epilepsy and all other medical conditions and needs.

On July 25, 2023, the circuit court held a Permanency Plan Review Hearing for Kl., Kt., F., and T. The court changed their permanency plans from reunification with the parents to adoption by a non-relative. The court also ordered the Department to file a petition for Guardianship and termination of the parents' rights, and required DSS to refer Mother for services, assist with the siblings' visitations, provide transportation for the

family, and refer Mother and Father for education and anger management or domestic violence education. Finally, the court modified the parents' visitation schedule to change Mother's visits from weekly to bi-weekly supervised visits and monthly remote visits with Father until he was released from prison.

2. The circuit court holds the TPR hearing and terminates Mother and Father's parental rights.

On October 5, 2023, DSS petitioned the circuit court for guardianship of Kl., Kt., F., and T. The Department asked the court to terminate Mother and Father's parental rights to all four children under FL § 5-323. The TPR proceeding lasted two days, from April 25 to 26, 2024. Father appeared in person while Mother appeared remotely because she was in a detention center. Each child's case was separate, but the court consolidated them and heard the matters together.

Dr. Scott testified as an expert in clinical psychology. She opined that Mother not participating in a substance abuse treatment program due to her obtaining a medical marijuana card would not change the doctor's opinion that Mother still needed substance abuse treatment, ideally from a treatment center specializing in co-occurring mental health disorders. She expressed concern about disrupting the children's lives if the children were returned to Mother as well as Mother's lack of insight into what caused her problems and how her behavior affected her children. The doctor also testified that all four children were vulnerable, given the environment in which they were raised.

When asked whether her opinion on the parents' domestic violence would change if the doctor became aware that the relationship ended, the doctor said that it wouldn't. The

doctor also spoke to Mother's friend, Ciara Meadows, about Mother's parenting when forming the Fit-to-Parent evaluation and learned that Ms. Meadows was concerned about Mother's new boyfriend (not Father) because "he steals and in her words, it's just not right." Ms. Meadows also was unsure of Mother's parenting because she had only seen Mother parent under DSS's monitoring and was unsure of Mother's patience to watch the children alone.

The foster parents also testified. Ms. Sink, F. and T.'s foster parent, testified that the two children had bonded well with her. The children identified her as their mother and were happy overall. The only exception came one Thanksgiving where, after a visit with Mother and Father, F. called Ms. Sink and her husband by their first names. She added that after parental visits, F. seemed angrier, threw items, and used foul language—behavior he did not exhibit in her household. T., on the other hand, wanted to be held more after a visit with her biological parents.

Ms. Williams, Kl. and Kt.'s foster parent, testified that she saw a lot of improvement in the girls from the time they first moved in through the day of the TPR hearing. Like Ms. Sink, she testified that whenever the children returned from visits with their biological parents, they were unruly: Kl. would kick, curse, and yell, and Kt. would shut down. There would also be bedwetting. She had nonetheless seen a lot of improvement in the girls and had developed a strong bond with them, as Ms. Shockley also testified. Ms. Shockley noted that on some occasions, she had to call Ms. Williams to help her calm the girls after supervised visits with the parents.

Mother testified and admitted that she had not completed several programs, such as parenting, mental health, anger management, and substance abuse, and that she did not have stable employment, leading her to work side jobs. Although she had not attended any of the children's medical appointments since DSS's first involvement with her children, Mother contended that this was because she hadn't received notification about those appointments. As to her criminal history, she stated that her current charges stemmed from her removing an electronic monitoring device. She also had a traffic charge for refusing to produce a driver's license during a traffic stop and an assault case from the December 25, 2023 incident with Father.

Father testified that despite Ms. Shockley providing him a referral packet for employment, he had remained unemployed since being released from prison in September 2023. He also did not send any documentation about his urinalysis tests to DSS. With regard to mental health treatment, Father claimed that he was awaiting one treatment center's response, and the others had no openings for new patients. He stated that although he had not participated in an anger management program, he had been to two mental health intake appointments, although he didn't offer proof of attendance and declined to provide information regarding those services to DSS. Father added that he was not in substance abuse treatment because his parolee status and the risk of prison deterred him from consuming illicit drugs; he thought that a sufficient deterrent and found substance abuse treatment futile. With regard to his incarceration that ended in September 2023, Father said it was due to a probation violation. Father added that he was serving a nine-month sentence

at that time and appeared in court remotely that day. He characterized his relationship with Mother as "off and on."

After hearing the testimony and closing arguments for each child, the Department, and the parents, the case was submitted. The court issued individual written orders for Kl., Kt., F., and. T. on July 11, 2024 that considered the guidelines outlined in FL § 5-323. Although separate, the court made parallel findings in each case: that both parents were unfit, that continuing Mother's and Father's relationship with the children would be detrimental to each child's best interests, and that termination of both parent's parental rights was in the children's best interest.

Mother and Father appeal. We supplement the facts as appropriate below.

II. DISCUSSION

Mother and Father challenge the juvenile court's decision to terminate their parental rights.[7] We agree with the Department and the children that the juvenile court ruled

[7] Mother frames the Question Presented as a twofold inquiry:

> 1. Did the court commit error in terminating Ms. B's parental rights when she was improving with services and when it was against the best interests of the children to do so?
>
> 2. Did the court err in terminating Ms. B's parental relationship with her children when the department failed to make reasonable efforts towards reunification?

Father frames it as a single question:

> Did the juvenile court abuse its discretion in finding that the termination of Mr. D.'s parental rights and the severing of the parent-child relationship was in the children's best interests

Continued . . .

correctly.

"We use three distinct, but interrelated standards to review a juvenile court's decision to terminate parental rights." *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214 (2018). *First*, the "juvenile court's factual findings are left undisturbed unless they are clearly erroneous." *Id. Second*, we "review legal questions without deference, and if the lower court erred, further proceedings are ordinarily required unless the error is harmless."

> where he was making significant progress towards reunification and where the Department failed to provide reasonable efforts towards reunification?

The Department states the question as:

> Did the juvenile court act within its broad discretion when it found that Father and Mother were unfit to remain in a parental relationship with Kl.D., Kt.D., F.D., and T.D. and that continuing the parental relationship would be detrimental to the children's best interests?

Kl., Kt., and T.D. ask:

> Did the juvenile court properly award guardianship of Kl.D., Kt.D. and T.D. to the department after it determined that Mother and Father were unfit to parent the children considering Mother's ongoing substance abuse, both parents' failure to utilize mental health and substance abuse resources, their persistence in maintaining an abusive relationship with each other, and their inability to safely care of the children in the foreseeable future?

And F. phrases the question as:

> Did the juvenile court correctly grant the Guardianship Petitions and terminate parental rights of both parents where the parents, despite the Department's reasonable efforts, did not remedy the issues that led to F.D.'s neglect as an infant, including unaddressed mental health and substance abuse issues, repeated incarcerations, and housing instability?

Id. *Third*, if the juvenile court's ultimate conclusion is "'founded upon sound legal principles and based upon factual findings that are not clearly erroneous,' [it] will be 'disturbed only if there has been a clear abuse of discretion.'" *Id.* (*quoting In re Adoption of Ta'Niya*, 417 Md. 90, 100 (2010)).

In TPR cases, we consider two competing interests. We recognize first that "parents have a fundamental right to raise their children and make decisions about their custody and care." *H.W.*, at 215–16. Indeed, there is "'a presumption of law and fact—that it is in the best interest of children to remain in the care and custody of their parents.'" *Id.* at 216 (*quoting In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 495 (2007)). The second interest belongs to the State, *id.*, having the *parens patriae* responsibility to "protect children[] who cannot protect themselves[] from abuse and neglect." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 497 (2007). The transcendent standard is the children's best interests. *H.W.*, 460 Md. at 216.

A. The Juvenile Court Terminated Mother and Father's Parental Rights Correctly.

Under FL § 5-323(b), courts may terminate parental rights only after finding that a parent is unfit or that exceptional circumstances exist *and* that continuing the parental relationship is detrimental to a child's best interests:

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

> guardianship of the child without consent otherwise required under this subtitle and over the child's objection.

In this case, the court made both findings as to each of the four children. Section 5-323(d) provides the factors the court used to reach its decision in the TPR proceeding:

> [I]n ruling on a petition for guardianship of a child, a juvenile court shall give primary consideration to the health and safety of the child and consideration to all other factors needed to determine whether terminating a parent's rights is in the child's best interests, including:
> (1)(i) all services offered to the parent before the child's placement, whether offered by a local department, another agency, or a professional;
> (ii) the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent; and
> (iii) the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any;
> (2) the results of the parent's effort to adjust the parent's circumstances, condition, or conduct to make it in the child's best interests for the child to be returned to the parent's home, including:
> (i) the extent to which the parent has maintained regular contact with:
> 1. the child;
> 2. the local department to which the child is committed; and
> 3. if feasible, the child's caregiver;
> (ii) the parent's contribution to a reasonable part of the child's care and support, if the parent is financially able to do so;
> (iii) the existence of a parental disability that makes the parent consistently unable to care for the child's immediate and ongoing physical or psychological needs for long periods of time; and
> (iv) whether additional services would be likely to bring about a lasting parental adjustment so that the child could be returned to the parent within an ascertainable time not to exceed 18 months from the date of placement unless the juvenile court makes a specific finding that it is in the child's best interests to extend the time for a specified period;

(3) whether:
(i) the parent has abused or neglected the child or a minor and the seriousness of the abuse or neglect;
(ii) 1. A. on admission to a hospital for the child's delivery, the mother tested positive for a drug as evidenced by a positive toxicology test; or
B. upon the birth of the child, the child tested positive for a drug as evidenced by a positive toxicology test; and
2. the mother refused the level of drug treatment recommended by a qualified addictions specialist, as defined in § 5-1201 of this title, or by a physician or psychologist, as defined in the Health Occupations Article;
(iii) the parent subjected the child to:
1. chronic abuse;
2. chronic and life-threatening neglect;
3. sexual abuse; or
4. torture;
(iv) the parent has been convicted, in any state or any court of the United States, of:
1. a crime of violence against:
A. a minor offspring of the parent;
B. the child; or
C. another parent of the child; or
2. aiding or abetting, conspiring, or soliciting to commit a crime described in item 1 of this item; and
(v) the parent has involuntarily lost parental rights to a sibling of the child; and
(4)(i) the child's emotional ties with and feelings toward the child's parents, the child's siblings, and others who may affect the child's best interests significantly;
(ii) the child's adjustment to:
1. community;
2. home;
3. placement; and
4. school;
(iii) the child's feelings about severance of the parent-child relationship; and
(iv) the likely impact of terminating parental rights on the child's well-being.

These factors "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." *Ta'Niya C.*, 417 Md. at 116; *Rashawn H.*, 402 Md. at 499 ("[The statutory] factors, though couched as considerations in determining whether termination is in the child's best interest, serve also 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."). The juvenile court considers these factors against the individual circumstances of the parent and child:

> 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.

Rashawn H., 402 Md. at 501.

Both parents argue that the court erred in terminating their parental rights. We disagree. Although a "court may reach different conclusions under FL Section 5–323(d) regarding different children of the same parent," *Ta'Niya C.*, 417 Md. at 116, the juvenile court walked carefully through each factor, applied each to each parent and each child, and ample evidence supported each finding.

1. This record supported the court's decision to overcome the presumption to maintain the parental relationship.

The juvenile court identified the services under FL § 5-323(d)(1) that the Department offered to the family and the extent to which each parent took advantage of those services. These included "In-Home Family Preservation Services, family team decision-making meetings, medical support, Child Protective Services investigations, housing assistance, and safety checks." The record from the TPR proceedings supported these findings. Ms. Moment testified about her involvement with the family during that period, including daily meetings with the family and other caseworkers and assisting Mother with finding a home, which Ms. Moment did personally by showing Mother photographs of residences with "For Rent" signs around Dorchester County. DSS also provided temporary cash assistance, medical assistance, transportation, food, cleaning supplies, clothes, and other items for the children.

The Department was not required to find and pay for either parent's housing. *See Rashawn H.*, 402 Md. at 500. Nor was it required to find the parents employment. *Id.* The Department was required to provide reasonable services designed to address the root causes of the problems the parents faced, *id.*, and generally, the parents didn't accept them. When Ms. Moment first arrived at the home, Mother and Father didn't let the caseworker anywhere past the kitchen and remained otherwise uncooperative. Although both parents received in-home services plans, *see* FL § 5-323(d)(1)(iii), the juvenile court found that neither parent "made any real progress under the plans." Despite discussions with Mother about her mental health and substance abuse, she didn't complete the action items. The

Department provided her transportation to medical appointments whenever she requested, but she wouldn't go to follow-up appointments. Father signed a service agreement to comply with substance abuse treatment, mental health, parent training, and anger management, but didn't verify that he completed any evaluations or received treatment. Indeed, he refused to provide any information regarding the providers he claimed he had chosen for those services. And although DSS provided him with a referral for employment opportunities, he remained unemployed.

As to the parents maintaining relationships with each child and their caregiver, *see* FL § 5-323(d)(2)(i), the court found that both typically contacted the Department to ask about visitations rather than the welfare of the children. The record supports this finding: Ms. Shockley testified that Mother and Father only contacted the Department to request their visitation dates and didn't inquire about the children's health or education. The juvenile court also found that Father's contact with DSS related predominantly to visitation and that his communication was aggressive, displaying the tension the court noted between Father and DSS. Further supporting that tension was Father not showing up to at least one supervised visit and Ms. Moment's testimony that Father cursed at her. The court also found that Mother struggled with appropriate parenting during visits—such as when she opted to photograph T. while T. was crying before attempting to calm her. All told, the record supported these findings.

Additionally, neither parent explained why they couldn't provide financially for the children when not incarcerated. The court recognized that during the periods the parents

were incarcerated they couldn't provide for the children. *See In re Adoption/Guardianship No. J970013*, 128 Md. App. 242, 252 (1999) ("[I]ncarceration may indeed, under the facts of a particular case, be a critical factor in permitting the termination of parental rights, because the incarcerated parent cannot provide for the long-term care of the child."). But the Department provided references for employment prospects and neither parent could find or maintain reliable employment.

Mother and Father argue that the Department didn't make reasonable efforts toward reunification. *See* FL § 5-323(d)(2)(iv). We disagree. Although "the Department must offer a reasonable level of services to assist in reunification[,] [t]hese efforts need not be perfect, but are judged on a case-by-case basis." *H.W.*, 460 Md. at 233–34. Despite the Department offering to take Mother to her own appointments, she didn't complete her treatment plans, such as substance abuse treatment, opting instead to obtain a medical marijuana card. During most of the period that DSS was involved with the family, Father was incarcerated. Even still, the Department arranged virtual visits for him, and he testified to attending those very visits. Given both parents' reluctance to follow through with the treatment plans and the State's interest in protecting the children, the Department could not wait for the situation to change on its own. *See In re Adoption/Guardianship No. 10941*, 335 Md. 99, 107–11, 122 (1994) (holding that DSS need not offer reunification services to parent where parent had persistent and ongoing psychiatric problems rendering parent unfit and attempts at reunification would have been futile).

The court made several findings about the abuse and neglect of the children factor.

FL § 5-323(d)(3). The court found that the parents had neglected the children medically and that the Department had provided medical support for the children throughout. The Department was concerned that Kl. had suffered a fracture and Mother had failed to follow up with timely medical care. *See* FL § 5-323(d)(3)(i). Likewise, the parents failed to follow up with F.'s medical care. Mother tested positive for substances when birthing Kl., and F. was born as a SEN. *See* FL § 5-323(d)(3)(ii). The court highlighted that the Department had provided Mother recommendations and referrals to address her substance use disorder, and that she not undertaken any treatment. And the court did find that the parents had lost the rights to their firstborn child (a sibling to the four here) involuntarily. *See* FL § 5-323(d)(3)(v). Neither parent disputed this.

Finally, the court found that each child had adjusted well to their new settings and foster parents. *See* FL § 5-323(d)(4). Ms. Williams testified that she saw tremendous improvement in Kl. and Kt. and described the change from January 1, 2024, to the TPR hearing date, April 25, 2024, as "radical." Ms. Shockley added that she relies on Ms. Williams at times to assist her in calming the girls and that the girls had a strong bond with her. The record also supported the court's findings that the daughters were thriving and had "adjusted quite well" to their new environment. As to the two younger children, F. and T., the court found that F. had adjusted well to a home that is "stable and nurturing" and that T. was thriving in her new community. Ms. Sink testified that F. maintains a routine and is very familiar with his daycare provider. Both children also refer to Ms. Sink and her husband as "Mom and Dad."

The juvenile court's findings were not all negative. The court found, for example, that neither parent had been convicted of violence against each other or their children, despite the various reports of domestic violence between Mother and Father. *See* FL § 5-323(d)(iv). But in light of the record as a whole, this didn't change the outcome. We agree that the juvenile court considered and weighed the appropriate factors, that its conclusions were supported by clear and convincing evidence, and that the evidence was sufficient to overcome the presumption in favor of maintaining parental relationships.

2. Terminating Mother and Father's parental rights was in the children's best interests.

Our analysis does not stop there. "Unfitness or exceptional circumstances do not, by themselves, mandate a decision to terminate parental rights." *H.W.*, 460 Md. at 218. "Rather, they demonstrate that the presumption favoring the parent has been overcome. The decision to terminate parental rights must *always* revolve around the best interests of the child." *Id.* at 218–19. In this case, the juvenile court reached that decision after considering the evidence carefully and we agree with its conclusions.

Mother argues that allowing the children to be adopted by two different families is not in the children's best interests. But Ms. Williams had been in communication with Ms. Sink and did express a willingness to facilitate meetings among the four children. This testimony was not refuted and there was no testimony that those meetings could not occur without Mother's or Father's involvement. The juvenile court also found that the children enjoyed "far stronger bonds with the foster families, where they are thriving." We recognize that "[b]onding alone cannot be a dispositive factor—the juvenile court must

assess whether the continued relationship with a biological parent is detrimental to the child's best interests." *H.W.*, 460 Md. at 233. And that is what the juvenile court did.

The court relied on Dr. Scott's assessment of Mother. A sticking point was Mother's substance abuse treatment (or lack of it). The court highlighted the doctor's concern that Mother's extensive abuse and lack of treatment were detrimental to the children. Now, Mother argues that the juvenile court failed to account for the fact that she has obtained a medical marijuana card and that her marijuana use is now legal. She cites *In re Adoption of Rhona*, 784 N.E.2d 22 (Mass. App. Ct. 2003), to argue that the court relied on stale facts, specifically Mother's past illegal use of marijuana.

That argument is misplaced. In *Rhona*, the parent's most recent drug use was four years before the court's findings (in a Massachusetts juvenile proceeding that was the equivalent of a Maryland TPR proceeding). *Id.* at 26. In this case, there was no indication that Mother has stopped using marijuana or that she plans to. Quite the contrary: she informed Dr. Scott that she has no desire to quit using marijuana. She added that if her children were to find it around the house, they knew to return it to her with a lighter. And in any case, the issue, as far as the juvenile court was concerned and with which we agree, was not the legality of her marijuana use but her abuse of that or any substance. Indeed, Dr. Scott testified that Mother "[r]eceiving her medical marijuana card wouldn't have changed [the doctor's] opinion that [Mother] would still need substance abuse and cooccurring mental health treatment." And Mother's inability to demonstrate a likelihood of overcoming the substance abuse and her willingness to expose her children to drugs

bears on the children's best interests if returned to her. *See In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 722 (2011) ("[G]iven the well-known difficulty of overcoming drug addiction and the likelihood that addiction will persist if untreated, a court can infer that a parent will continue to abuse drugs unless he or she seeks treatment.").

We recognize that Mother has an extensive history of trauma, and the circuit court recognized and highlighted it as well. *See In re Abiagail C.*, 138 Md. App. 570, 588 (2001) (recognizing that while mother suffered sexual and physical abuse growing up and was impregnated at thirteen years old, trial court considered her trauma properly and was still correct in finding that termination of parental rights was in child's best interests). But Mother also failed to complete treatment programs or demonstrate an ability to provide a safe and stable environment for the children. As Dr. Scott acknowledged, Mother's lack of insight into these shortcomings made her children all the more vulnerable. As a result, we see no error in the court's ultimate conclusions about the children's best interests.

As for Father, the juvenile court highlighted how his lack of participation in the treatment programs rendered him unfit. Father disagrees. He argues that at the time of the TPR hearing, he was complying with his parole conditions, actively seeking employment, working to complete parenting classes, and had identified a mental health provider. But outside of his testimony, Father provided no evidence that he had completed any of the recommended programs, and the court found that he hadn't. He didn't submit a urinalysis to the Health Department or participate in substance abuse treatment. His "history of domestic violence issues, periods of incarceration, and unaddressed anger management

issues" weighed against him. DSS also noted how Father instructed Kl. and Kt. to misbehave during one supervised visit, encouraging their disobedience. Such facts were not in the children's best interests.

Father replies to the domestic violence finding that he and Mother were no longer in a relationship or living together. Yet at the TPR hearing, he testified that his relationship with Mother was "off and on." Even though Father no longer was incarcerated, he testified that he was still unemployed (and did not provide proof that he ever was employed), offered no proof of attending any mental health and counseling intake appointments, and is not attending any anger management class or program. Although courts can infer that a parent will continue to abuse drugs unless that parent seeks treatment, that "inference can shift to the parent the burden to produce evidence of sobriety, and if no such evidence is produced, the inference may satisfy the clear and convincing standard." *Amber R.*, 417 Md. at 722. And in Father's case, he eschewed substance abuse treatment altogether and regarded it as futile.

Viewed as a whole, the record supports the juvenile court's "concern[] about what the children would have been exposed to if they had remained with both parents and, what the parties have done to ameliorate such conditions in the future." We see no error in the juvenile court's analysis or conclusions and affirm the court's decision to terminate Mother's and Father's parental rights.

JUDGMENT OF THE CIRCUIT COURT FOR DORCHESTER COUNTY AFFIRMED. APPELLANTS TO PAY COSTS.