Circuit Court for Frederick County
Case No. 10-Z-17-030837

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1143

September Term, 2017

IN RE ADOPTION/GUARDIANSHIP OF G.S.

Beachley,
Fader,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, J.

Filed: March 26, 2018

The Circuit Court for Frederick County, sitting as a juvenile court, terminated the parental rights of D.M. ("Mother") to her son, G.S. Mother challenges that decision on two grounds. First, she claims that the services provided to her by the Frederick County Department of Social Services (the "Department") were not sufficiently tailored to her needs. Second, she contends that the juvenile court failed to consider the effect of a prior suspension of visitation.[1] We find no error in the juvenile court's judgment, and so affirm.

BACKGROUND

The Department's Involvement with Mother and G.S.

At his birth in September 2014, G.S. tested positive for exposure to opiates and cocaine, which Mother admitted using during pregnancy. The Department referred Mother for substance abuse treatment, but she failed to complete the program.

In December 2014, police officers found Mother unconscious in her bathroom. G.S.'s half-brother told a social worker that he had cared for G.S. while their mother was passed out. That same month, Mother's therapist—from whom she had been receiving outpatient treatment since 2008 for bipolar and polysubstance abuse disorders—informed the Department that Mother's attendance at therapy sessions was inconsistent. The

[1] Mother framed her questions presented as:

> 1. Did the Court err in finding that the services provided by the Department were appropriate to facilitate reunification when mother was never offered or given access to the proper psychological and/or psychiatric services to meet her mental health issues?
>
> 2. Did the Court err in terminating Ms. M.'s parental rights when it did not consider that her parental rights had already effectively been terminated when it suspended her visitation?

Department's Family Preservation Unit attempted to provide Mother with services, including home visits, assistance with mental health treatment, and transportation, but Mother failed to cooperate.

The Department filed a petition to have G.S. declared a child in need of assistance ("CINA")[2] in February 2015. Over the next several months, Mother's mental health deteriorated further. According to the Department, Mother claimed that unnamed people "were breaking into her apartment and putting bleach in [G.S.'s] tubes of Orajel and cocaine in his formula," accused Department personnel of stealing her phone and car-seat and of taking G.S. to an undisclosed location, and twice threatened someone with a knife. In late April, after a CINA hearing had to be postponed due to concerns over Mother's mental health, the Department took G.S. and his half-brother into custody. Soon after, the juvenile court granted the Department custody and ordered that both children be placed into foster care.[3]

The juvenile court declared G.S. a CINA in late May. The court ordered that Mother "shall enjoy reasonable supervised visitation with [G.S.] as arranged for by the Department" and required her, among other things, to complete a substance abuse program and participate in therapeutic and psychiatric services "as recommended"; to undergo "a

[2] A "child in need of assistance" is one who requires court intervention because the child has been abused or neglected, or has a developmental disability or mental disorder; and his or her "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. § 3-801(f).

[3] G.S.'s half-brother eventually went to live with his biological father in Texas.

psychological and psychiatric evaluation and follow all recommendations"; and to "obtain and maintain adequate housing and employment[.]"

Mother's mental health continued to decline throughout May and June of 2015. She continued to accuse others of "messing with [her] stuff"; neighbors reported seeing her mumbling to herself and attempting to force herself into their homes; and she showed up at a hospital in early June with abrasions and bruises on her face, claiming that she had blacked out for two days. Attempts to address Mother's mental health issues also continued during this period: (1) the Department made another referral for substance abuse treatment, where Mother completed an evaluation but was discharged after only a few weeks for failure to comply; (2) the Department made a referral for a psychological evaluation, which Mother did not complete; and (3) Mother continued to see her existing therapist, but only sporadically.

Mother was arrested for theft and violation of probation in late June 2015. The Frederick County Adult Detention Center placed her on suicide watch and the Circuit Court for Frederick County found her incompetent to stand trial. The court committed her to the Thomas B. Finan Center where she underwent psychiatric and psychological evaluation and received treatment to restore competency. When it discharged her in mid-November, the Finan Center diagnosed Mother with unspecified bipolar and related disorder, posttraumatic stress disorder, other specified attention deficit/hyperactivity disorder, substance abuse disorder, and "Other Specified Personality Disorder with mixed features, including antisocial, narcissistic and borderline traits[.]" The Finan Center, in consultation with Mother's Department social worker, Sara Fankhouser, referred Mother for intensive

outpatient substance abuse and mental health services. Although initially compliant, Mother increasingly missed sessions and eventually stopped attending altogether. In April 2016, the treatment center discharged Mother from the program for non-compliance.

After being out of contact for some time, Mother informed Ms. Fankhouser in late March 2016 that she was living with her mother in Pennsylvania. Approximately one month later, Mother's mother informed Ms. Fankhouser that she had removed Mother from the Pennsylvania home because of unsafe behaviors, including "hallucinations and delusions," "talking to herself," and "becoming violent" and "physically threatening."

After Mother returned to Maryland, Ms. Fankhouser made additional referrals for outpatient substance abuse and mental health treatment and requested again that Mother undergo a comprehensive psychiatric evaluation with a provider identified by the Department. Mother again failed to comply.

Mother was arrested once a month from April through July of 2016. Ms. Fankhouser made additional referrals for outpatient substance abuse treatment in September and November of 2016. Mother failed to complete either one.

In January 2017, the Department transferred Mother's case from Ms. Fankhouser to Caitlyn Wilson. Although Ms. Wilson offered to recommend services, Mother stated that she wanted to find those services herself. In March 2017, Mother began outpatient substance abuse and mental health treatment at Austin Addiction and Mental Health. Mother demonstrated at least some initial compliance, but Austin Addiction discharged her in June due to non-compliance and a need for a higher level of mental health care. Austin Addiction referred Mother to a different outpatient program to pursue that higher level of

mental health care, but Mother declined. Throughout her involvement with the Department, Mother rejected offers of assistance and ignored or declined referrals, often stating—as she confirmed multiple times during the July 2017 hearing (including while others were testifying)—that she preferred to seek providers on her own.

From approximately April 2015 through the July 2017 hearing, Mother lacked stable housing. In addition to the brief stay with her mother in Pennsylvania, her three-month period of inpatient treatment at the Finan Center, and her various periods of incarceration, Mother also experienced periods of homelessness. She was kicked out of a shelter for "violent behavior." The Department provided Mother with lists of housing options and a housing referral, but Mother never secured stable housing. In testimony, Mother acknowledged her lack of stable housing during this period of time, but claimed that she had options she would pursue if she regained custody of G.S.

Visitation and Mother's Interactions with Department Personnel

Mother's visitations with G.S. were characterized by unpredictability. Although visits were supposed to be weekly, they were interrupted by mother's periods of incarceration, inpatient treatment at the Finan Center, and various periods during which Mother was out of contact with the Department. Although initially she was pleasant, attentive, and cooperative with Department staff, as time went on she became increasingly hostile, aggressive, accusatory, and disruptive. While in a car during one visit, Mother had an outburst that made Ms. Fankhouser concerned for the safety of G.S. and herself. Ms. Fankhouser had to ask Mother to leave the vehicle. Ms. Fankhouser's supervisor directed that future visits be supervised by someone else where security could be present.

The new visitation supervisor testified that Mother threatened to slap her on a regular basis and once told her "to watch my back, because she could have me followed." Whenever told to do or not do something she did not like, Mother "would become verbally combative, yelling . . . , cursing . . . , and . . . throw[ing] items at the visitation window . . .; all of this in front of [G.S.]" In October 2016, the Department imposed restrictions on Mother's conduct during visitations, including prohibitions from cursing or threatening Department staff and a requirement that Mother remain in the visitation room with G.S. During a visit in early February 2017, Mother reacted poorly to being told that she could not wander into other rooms during the visitation. She screamed at the social worker to "stop being a bitch" and threatened to "kick [the social worker's] ass." Security had to intervene to escort Mother out of the building. When the social worker and G.S. later left the building, Mother was waiting outside, where she continued to curse and make threats.

After the February incident, the social worker obtained a temporary peace order against Mother. The juvenile court, on application from the Department, suspended visitation until "[M]other [could] demonstrate she can control her behavior," comply with her mental health treatment, and communicate civilly with social workers. Mother neither appealed from that order nor applied to renew visitation before her parental rights were terminated.[4]

[4] A Department social worker testified that the Department did not take the initiative to resume visitation because they first wanted to see three consecutive urinalysis results that demonstrated that Mother was both sober and taking her medication. The last two results before the hearing met those criteria.

Termination of Parental Rights

The juvenile court changed G.S.'s permanency plan from reunification with Mother to adoption by a non-relative in October 2016, approximately 18 months after first awarding custody to the Department. In January 2017, the Department petitioned the juvenile court to terminate Mother's parental rights. Mother objected.[5]

The court held a three-day hearing in July 2017 during which it took testimony from Mother, three social workers and a visitation supervisor, and G.S.'s foster mother. The court also took judicial notice of the record from G.S.'s CINA proceedings. At the conclusion of the hearing, based on a thorough review of the statutory factors and the record, the juvenile court found "by clear and convincing evidence that [Mother] is unfit to remain in a parental relationship with [G.S.]," and that "termination of [Mother's] parental rights is in [G.S.]'s best interest." The juvenile court summarized the facts surrounding the mental health, substance abuse, visitation, and other services that were provided by the Department, and found that they "were timely made, appropriate, and an endeavor to facilitate the reunification of the mother and the child." The juvenile court also found that "no additional services would bring about parental adjustment" allowing reunification within 18 months. In a subsequent written order, the juvenile court reiterated its findings that the Department provided reasonable efforts in support of reunification, Mother was an unfit parent, and termination of Mother's parental rights was in G.S.'s best interest. This appeal followed.

[5] G.S.'s father consented to the termination of his parental rights.

DISCUSSION

We review termination of parental rights decisions under "three different but interrelated standards": we defer to the juvenile court's factual findings, unless clearly erroneous; review the juvenile court's legal conclusions de novo; and review the juvenile court's ultimate decision for an abuse of discretion. *In re Adoption of Jayden G.*, 433 Md. 50, 96 (2013) (quoting *In re Adoption of Ta'Niya C.*, 417 Md. 90, 100 (2010)). When evaluating the juvenile court's findings of fact, we must give "the greatest respect" to the juvenile court's opportunity to view and assess the witnesses' testimony and evidence, *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 719 (2011), and we view the record in the light most favorable to the prevailing party, *In re Jayden G.*, 433 Md. at 88.

I. THE DEPARTMENT PROVIDED SERVICES SUFFICIENTLY TAILORED TO MOTHER'S NEEDS.

When a court is asked to terminate parental rights, it must balance the parent's liberty interest in raising his or her child with the State's obligation to protect children from those who would do them harm. *In re C.A. & D.A.*, 234 Md. App. 30, 47-48 (2017). Both the federal and Maryland constitutions grant parents a fundamental liberty interest in raising their own children. *In re Yve S.*, 373 Md. 551, 565-68 (2003). But a parent's right to raise his or her child is not absolute, and "must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 497 (2007). Indeed, the best interest of the child "is of transcendent importance," *id.*, and "trumps all other considerations," *In re Ta'Niya C.*, 417 Md. at 111; *see also* Md. Code

Ann., Fam. Law § 5-323(d) (requiring the court to "give primary consideration to the health and safety of the child"). So long as the court addresses each of the statutorily-mandated factors, finds that the parent is unfit or that exceptional circumstances exist, and determines that termination of parental rights is in the child's best interest, then the parent's rights and the health and safety of children "are in proper and harmonious balance." *In re Rashawn H.*, 402 Md. at 501.

Mother challenges the juvenile court's findings as to only two of the statutory factors, both of which relate to the services the Department offered her. Family Law § 5-323(d)(1)(ii) requires the juvenile court to consider "the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent[.]" Similarly, Family Law § 5-323(d)(2)(iv) commands the juvenile court to determine "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[.]" "Implicit in th[ese] requirement[s] is that a reasonable level of those services, designed to address both the root causes and the effect of the problem, must be offered . . . ." *In re Rashawn H.*, 402 Md. at 500. The statutory scheme also explicitly requires that the Department "make 'reasonable efforts' to 'preserve and reunify families' and 'to make it possible for a child to safely return to the child's home.'" *Id.* (referencing former § 5-525(d), now § 5-525(e)(1)).

The failure to provide services sufficiently adapted to the parent's specific needs is a failure to make "reasonable efforts" and grounds for denying a request for termination of parental rights. *In re Adoption/Guardianship Nos. J9610436 and J9711031,* 368 Md. 666,

693 (2002). "Reasonable efforts," though, does not mean all possible efforts, and there are limits to what the Department must do. Thus, "[t]he State is not obliged to find employment for the parent, to find and pay for permanent and suitable housing for the family, to bring the parent out of poverty, or to cure or ameliorate any disability that prevents the parent from being able to care for the child." *In re Rashawn H.*, 402 Md. at 500. The State "must provide reasonable assistance in helping the parent to achieve those goals," but the State is not responsible, and its duties to protect the children are not reduced, "if the parent, despite that assistance, remains unable or unwilling to provide appropriate care." *Id.* at 500-01. The Department can only make reasonable efforts to guide parents back to their children; the parents must choose to take the steps necessary to achieve that reunion themselves.

Here, the juvenile court conducted a thorough review of the facts surrounding the mental health services provided by the Department in support of its finding "that the services provided were timely made, appropriate, and an endeavor to facilitate the reunification of the mother and the child." The record, which reflects that the Department offered mental health and substance abuse services consistent with available professional recommendations, supports the juvenile court's finding.

Mother's argument to the contrary centers on the fact that the Department did not refer her to an inpatient mental health program. Notably, however, she does not identify any recommendation or request for such treatment that the Department ignored. Instead, she claims that her relative success in inpatient care at the Finan Center (and lack of success otherwise) should have caused the Department to realize that she needed further inpatient

treatment. However, she ignores that the Finan Center itself recommended an outpatient program when it discharged her. Moreover, her inpatient stay at the Finan Center was followed by only a brief period of relative stability that quickly deteriorated. And although Mother notes that Austin Addiction recommended that she receive a higher level of treatment when it discharged her, it also recommended an outpatient treatment program to provide that care. Mother refused that recommendation. The record thus reflects that the Department provided referrals consistent with the level of care indicated by the mental health professionals involved in Mother's case.[6]

Although this would be sufficient for us to affirm the juvenile court's order, we note two additional problems with Mother's complaint about the level of mental health services the Department offered. First, Mother refused to comply with the Department's multiple requests that she undergo a psychological evaluation with a specified provider to diagnose her mental health needs and determine what services were needed to address them. Although Mother underwent psychological evaluation at the Finan Center, the results of that evaluation were not useful to the Department in determining what services were necessary. In the absence of any professional assessment that Mother required inpatient care, and without her cooperation with the Department's efforts to assess properly her needs, her complaint about the Department's inability to do so rings hollow.

[6] In addition to an absence of any professional recommendations for additional inpatient mental health treatment, the record also does not reflect that Mother herself ever requested a referral for such treatment. Mother did request a referral for inpatient substance abuse treatment programs, which Ms. Fankhouser provided.

Second, and even more problematic, Mother often ignored the Department's referrals and insisted either that she did not need mental health treatment or that she preferred to find programs herself. And when she started recommended services, she generally did not complete them. Mother's situation is thus different in every respect from that of the father in *In re Nos. J9610436 and J9711031*, on which she relies. In that case, the Court of Appeals overturned the juvenile court's findings that the Department made reasonable efforts at reunification and that no additional services were likely to bring about an adjustment by the parent within a reasonable amount of time. 368 Md. at 693-95. There, the Department made only minimal efforts to provide services, there was no evidence of any non-compliance by the father with existing services, the father had "made extensive and extraordinary efforts to further reunification," and the father presented expert testimony of specific services likely to "bring about an adjustment that would permit reunification in the reasonable future." *Id.* at 694.

Instead, this case is more similar to *In re Adoption/Guardianship No. 10941*, in which the mother had severe mental health problems, refused to cooperate with the local Department, and refused to participate in an ordered psychiatric evaluation. 335 Md. 99, 106-10 (1994). In that case, the Court held that where "attempts at reunification would obviously be futile, the Department need not go through the motions in offering services doomed to failure." *Id*. at 117. Here, over the approximately three years of G.S.'s life, Mother demonstrated only sporadic and overwhelmingly unsuccessful attempts to adjust her life sufficiently "to provide [even] minimally acceptable shelter, sustenance, and support for" him. *In re Rashawn H.*, 402 Md. at 501. In spite of the many services offered

over the course of more than two years during which G.S. was in foster care, Mother did not demonstrate sustained improvement of her mental health issues, her substance abuse issues, or her housing situation.

Thus, even were we to "[a]ssum[e] without deciding that the Department failed to meet its statutory duty to facilitate reunification"—which, as discussed above, we do not—this is a case in which further attempts at reunification would have been futile and, therefore, unnecessary. *In re Adoption/Guardianship No. 10941*, 335 Md. at 117. The record provides no support for Mother's contention that any amount of reunification services would have been likely to result in reunification.

In sum, viewing the record in the light most favorable to the Department, the juvenile court's finding that the Department provided services reasonably tailored to Mother's needs is not clearly erroneous. The record indicates that notwithstanding Mother's persistent refusal to cooperate, the Department provided referrals for the services reasonably indicated by the evaluations available to it.

II. THE JUVENILE COURT DID NOT ERR OR ABUSE ITS DISCRETION IN ITS CONSIDERATION OF THE FACTS SURROUNDING THE SUSPENSION OF MOTHER'S VISITATION.

In her second argument, Mother contends that the juvenile court erred "in terminating [Mother's] parental rights when it did not consider that her parental rights had already effectively been terminated when it suspended her visitation." According to Mother, the Department's requirement that Mother participate in therapy and take her prescribed medication to reinstate visitation rights was improper because Mother was incapable of satisfying those conditions without inpatient mental health treatment. Thus,

she claims, by ending the only vestige of parental rights left to her and setting an impossible bar to reinstating visitation, Mother's parental rights as to G.S. were effectively terminated in February 2017.

As an initial matter, although Mother's primary complaint seems to be with the order to suspend visitation, she does not directly challenge that order, nor could she do so here. That order was entered in the CINA proceeding, not in this case, and she did not appeal from it when she had the opportunity to do so.[7] We decline to entertain a collateral attack on that order as part of this proceeding.

Moreover, the juvenile court did consider the events surrounding the suspension of visitation in February 2017, just not reaching the conclusion that Mother would like. The juvenile court observed that Mother had exhibited abusive behavior during visits going back to 2015. At times, her abusive behavior caused visits to be moved to community settings, required the presence of security, and ultimately forced a change in social workers. When a social worker obtained a peace order against Mother after one particularly threatening interaction, the court conditioned further visitation on Mother: (1) demonstrating "she can control her behavior"; and (2) complying with mental health treatment and communicating civilly with social workers. Mother never challenged this order or sought to reopen visitation.

In reviewing the statutory factors that it was required to consider, the juvenile court referenced this scenario multiple times. In doing so, the court recognized that the lack of

[7] An order suspending a parent's visitation is appealable under § 12-303(3)(x) of the Courts and Judicial Proceedings Article. *In re Billy W.*, 387 Md. 405, 426 (2005).

visitation between February 2017, when visitation was suspended, and July 2017, when the court terminated her parental rights, was not because Mother did not want to see G.S. But the court also noted that Mother's behavior was the cause of the suspension. We do not perceive any error or abuse of discretion in the juvenile court's findings related to visitation or in its consideration of the facts surrounding and arising out of the suspension of that visitation. In any event, although the court considered these issues, as it was required to do, its decision was ultimately driven by Mother's ongoing and persistent failure to address, or to comply with the Department's efforts to help her address, her longstanding mental health, substance abuse, and housing issues.

Finding no error in the juvenile court's factual findings and no abuse of discretion in its ultimate decision, we affirm.

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