Circuit Court for Howard County
Case No.: C-13-JV-22-000112-15
Case No.: C-13-JV-18-000161-64

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1171

September Term, 2022

No. 131

September Term, 2023

IN RE: S.B., P.B., C.B., B.B.

Arthur,
Beachley,
Woodward, Patrick, L.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: February 7, 2024

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

Appellant, L.B. ("Father"), appeals from an order of the Circuit Court for Howard County, sitting as a juvenile court, granting the petitions of the Howard County Department of Social Services ("DSS" or "the Department") to terminate Father's parental rights in relation to his natural children, C.B., B.B., P.B., and S.B. (collectively, "Respondents" or "the Children"), who had previously been adjudicated as children in need of assistance ("CINA"). Father also appeals from an order of the juvenile court changing the Children's permanency plans from reunification to adoption by a nonrelative.

In this consolidated appeal, Father presents two questions for our review:

1. Did the court err in terminating the parental rights of [Father]?
2. Did the court err when it changed the permanency plans away from reunification and to adoption by a nonrelative?

For the following reasons, we affirm the judgments of the circuit court terminating Father's parental rights.

Along with its brief, the Department filed a motion to dismiss Father's appeal of the change in the Children's permanency plans on the grounds that an affirmance of the judgments terminating Father's parental rights makes Father's appeal moot. As we shall explain, in light of our determination that the juvenile court did not err in terminating Father's parental rights in the Children, we hold that Father's appeal of the change in the Children's permanency plans from reunification to adoption by a nonrelative is moot. Accordingly, we will grant the Department's motion to dismiss.

BACKGROUND

Father and S.S. ("Mother") are the parents of C.B., born in 2015; B.B., born in 2016; P.B., born in 2017; and S.B., born in 2018. On July 1, 2016, while under the supervision of Mother, a pit bull attacked C.B., who was 17 months old, requiring him to be airlifted to Johns Hopkins Hospital. Eight days later, while C.B. remained hospitalized, Mother gave birth to B.B. Johns Hopkins Hospital contacted the Department to report that B.B. was a substance exposed newborn after Mother tested positive for marijuana.

On May 23, 2017, Mother tested positive for marijuana after giving birth to P.B., and Father refused to be tested. At this time, the family was living in a trailer owned by Mother's grandfather. Michelle Harman, a DSS family preservation worker, began working with the family. On September 8, 2017, P.B. was brought to Johns Hopkins Hospital after she had persistent vomiting and tested positive for Oxycodone. It was not known how P.B. ingested the substance. A Child Protective Services ("CPS") investigation made a finding of neglect and physical abuse with an unnamed maltreator.

After the CPS investigation, Mother and the Children moved out of Mother's grandfather's home and ended up moving into the Grassroots Crisis Intervention Center ("Grassroots") in February 2018. Father moved in with them in May 2018. In May 2018, Father left C.B., B.B., and P.B. alone in a room together, during which time three-year-old C.B. played with a lighter and set the bed on fire. Another CPS investigation was initiated, and a finding of neglect was made against Father. Grassroots told Father that he could no longer stay there, and the family moved into a trailer belonging to one of Mother's friends.

On July 27, 2018, Ms. Harman met with Mother, and Mother stated that she had a falling out with Father. C.B. had a bruise on his forehead from Father throwing a cup at him. Mother told Ms. Harman that a couple days earlier she had asked Father to watch the Children while she went to the bathroom. Instead of watching the Children, Father made the Children, who were all under four years old, walk to a trailer in a neighboring trailer park and cross multiple streets without supervision.

On September 19, 2018, Father and Mother were involved in a car accident with the Children in the car. Father, who had a suspended license, was driving the car, and the police officer who responded to the scene observed that Father had difficulty with his balance and had constricted pupils. The officer found straws with white powder in the front seat of the car, and Mother said that the straws were used by her to take Percocet earlier that day. Father was charged with driving under the influence and driving on a suspended license, and Mother was charged with possession of paraphernalia. The Children were taken to the hospital because none of them had socks or shoes and they all appeared to be dirty. Following the removal of the Children, Hadassah Freed, a Department social worker, was assigned as the primary social worker for the family.

On September 20, 2018, the Department filed a CINA Petition and Request for Shelter Care Authorization for the Children with the juvenile court in Howard County, Maryland. On September 28, 2018, the juvenile court ordered the Children removed from the care of Mother and Father and placed in foster care. While the Children were initially placed in separate foster homes, on October 11, 2018, all four Children were placed in the care of Ms. T., who had been C.B. and P.B.'s foster parent for the previous month. On

January 24, 2019, the court entered an order finding that the Children were Children in Need of Assistance and committed them to the care of DSS.

When the Children first came into the care of the Department on September 19, 2018, S.B. had a significant diaper rash and a large mark on her left thigh. C.B. had an injury on one of his toes that was bleeding. P.B. also had an injury on one of her toes. B.B. had a nickel-sized bruise on her arm, a scar on her right ankle, and a problem with her left big toe. After the Children were placed in foster care with Ms. T., they were evaluated to determine if services were warranted. P.B. was diagnosed with a speech delay and began receiving speech services twice a month. C.B. was found to have a possible eating disorder due to trauma because he was eating food out of the trash and off the floor. B.B. was found to have anger problems and was hitting other children at day care. S.B., who was two months old at the time she entered the Department's care, was found to be well-adjusted. All four Children were found to be thriving in the foster home.

The first in-person visit between Father and the Children occurred on September 28, 2018, supervised by the Department. On October 4, 2018, Father completed a mental health assessment but did not complete the substance abuse part of the evaluation. At this time, Father was working at IHOP. On January 24, 2019, the court ordered visitation between the parents and the Children at least twice a week, with one visit during the week supervised by the Department or Mother's aunt, and one visit on the weekend supervised by Mother's aunt. The Department would schedule a cab to drive the parents to and from the visit at the Department, and also made cabs available to the parents to travel to the weekend visits. During the visits supervised by the Department, Father would disappear for lengths of time.

When the visits took place at the Rosedale Library, the parents often had difficulty keeping track of the Children or would not pay attention to the Children. When the visits took place at the Columbia Mall, the parents often spent most of the visit talking to their friends that were at the mall instead of focusing on the Children. When questioned by the Department, Father would not respond or would say that he could do what he wanted.

On January 29, 2019 and February 6, 2019, Father underwent random substance testing and tested positive for marijuana. On February 15, 2019, Father completed a clinical assessment for substance-related disorders and met the criteria for a substance use disorder. Father was still regularly meeting with the Children twice per week. On March 6, 2019, the juvenile court ordered Father to complete a substance abuse evaluation, participate in individual therapy, participate in parenting classes, participate in a 12-hour early intervention substance abuse education program, complete twenty substance abuse treatment groups, engage in individual mental health counseling or anger management counseling, and submit to random substance abuse testing when requested by their treatment program(s) or by the Department.

On March 18, 2019, DSS met with Father to sign a Service Agreement containing the same tasks that the court ordered Father to complete on March 6, 2019, and Father refused to sign the agreement. On August 7, 2019, the juvenile court issued an initial permanency plan order wherein it set the permanency plans as reunification and ordered Father to complete the previously requested services. The court found that both parents only began to address the required services in June of 2019, which was nine months after the Children were placed in foster care.

On August 24, 2019, Mother and Father were two hours late to a weekend visit and appeared to be under the influence when they arrived. Weekend visits were suspended until Ms. Freed could meet with Mother and Father to discuss the incident. Ms. Freed spoke with Father over the phone on August 28, 2019 to talk about his behavior during recent visits, and Father sounded groggy and slurred his speech. Father informed Ms. Freed that he was residing in a hotel. On September 20, 2019, Ms. Freed had an in-person meeting with Mother and Father where both parents arrived 40 minutes late and appeared disheveled with constricted pupils. Both parents refused to undergo drug testing. Both parents also were failing to attend drug education classes that the Department had arranged for them.

On November 15, 2019, in-person visits between Father, Mother and the Children resumed once a week. The Department stopped allowing four-hour weekend visits supervised by Mother's aunt because Mother's aunt allowed the parents to visit the Children while intoxicated. The visits continued regularly, including visits on November 19, 2019 and November 25, 2019. Both parents were working at this time, but Father stopped working sometime in December. As of mid-January 2020, the parents had one supervised visit a week with the Children at DSS.

On January 22, 2020, the juvenile court held a permanency plan review hearing. The Department recommended that the permanency plans be changed to adoption by a nonrelative, while the parents requested an additional 90 days to complete the tasks required of them by the court. In the court's January 22, 2020 permanency plan review order, the court found:

> Both parents have shown lack of follow-through with services. They still need to participate in a 12-hour early intervention substance abuse education program, complete twenty substance-abuse treatment groups, engage in weekly individual mental health counseling and parenting classes. They have not complied with random drug screening nor taken advantage of the agency's services. Despite the social worker's encouragement, the parents are not scheduling the referral appointments provided by the Department.

Although the court stated that "[i]t appears to the Court that the parents will not be able to timely be in a position to reunify with the [C]hildren[,]" the court ordered that the permanency plans remain reunification.

In-person visits supervised by the Department continued once a week until March 17, 2020, when that visit and the March 24, 2020 visit were canceled because the Children were sick. Virtual visits between the parents and the Children began on April 2, 2020, twice a week for one-hour.

On June 24, 2020, the juvenile court held a permanency plan review hearing, during which the Department again requested that the permanency plans change from reunification to adoption by a nonrelative. The parents requested a hearing on the issue so that they could present evidence. The hearing began on September 9, 2020 and continued for nine days during the next one and a half years: September 30, 2020, October 15, 2020, December 2, 2020, January 6, 2021, October 20, 2021, October 27, 2021, November 17, 2021, February 22, 2022, and February 23, 2022.

The Department changed its policy to begin allowing in-person visitation starting on July 1, 2020. At several times during the course of the hearing, Father requested that he be allowed in-person visitation with the Children. Each time, however, in-person visitation was denied by the juvenile court. During the virtual visits, Father often was not engaged.

In the April 9, 2020 visit, Father was observed to be smoking marijuana and disappeared for approximately 40 minutes. During some visits, Father would say hello to the Children and not participate in the visit or engage with the Children.

In September 2021, visits were changed to one one-hour visit a week for Mother and one one-hour visit a week for Father because of a protective order that Mother had obtained against Father. Around this time, Father's attendance at visits became more inconsistent. Between September of 2021 and the termination of parental rights ("TPR") hearing in March of 2023, Father only attended fourteen virtual visits with the Children. Although Ms. Freed spoke to Father about the importance of consistency in his visits with the Children, Father's consistency did not improve.

On August 9, 2022, the juvenile court issued a Permanency Plan Review Order in which the court changed the permanency plans to adoption by a nonrelative and ordered the Children to remain in the care of the Department. In its order, the court stated:

> The permanency plan has been reunification. The [D]epartment recommends that the plan be changed to adoption by non[]relative. This is due to the [C]hildren being in care for almost 3 years, the parent's lack of follow through with court ordered tasks, and the continued concern of drug use and lack of stability. The parents recommend a plan of reunification. The parents are now separated, and [Mother] lives in the basement of her aunt and uncle and continues to be overwhelmed. [Father] is believed to be employed however he has not provided proof of employment, uses marijuana on a daily basis and has mental health issues. He is in need of services and refuses to work with DSS since he doesn't trust them. Neither parent is able to provide proper care for the [C]hildren.
>
> The [C]hildren are in a stable home and are doing well in the care of the foster parent, who is a pre-adoptive resource. The [C]hildren have bonded with the foster parent and their daily needs are being met. It is in the [C]hildren's best interest to continue to be in a stable environment with the

> foster parent and for the permanency plan to be changed to adoption by non[]relative.

On September 15, 2022, Father filed a notice of appeal of the juvenile court's change of the permanency plans from reunification to adoption by a nonrelative.[1] On September 23, 2022, the Department filed Petitions for Guardianship with the Right to Consent to Adoption or Long-Term Care Short of Adoption of a Minor for the Children.

On October 4, 2022, Ms. Freed informed Father that the Department had filed the Petitions for Guardianship for the Children. Father made threats to harm Ms. Freed and her family, which led Ms. Freed to pursue and obtain a peace order against Father. That same day, Father went to his mother's house and refused to leave despite his mother's requests, and the police were called. When the police arrived, Father was damaging his vehicle with a knife and was arrested.

Later that day, after Father had been released, Father returned to his mother's house and demanded to be let inside while swinging a crowbar and a baseball bat. Father's mother came outside to tell Father that he could not come in, and when she turned to go back inside Father pushed past her and knocked her to the ground. Father's mother believed that she fractured some ribs and broke her thumb, although she did not seek medical care. Once inside his mother's house, Father crushed Xanax pills and snorted them before returning outside and attacking his own vehicle again. The police were called again, and when they arrived, Father removed a machete from his car and beheaded a pink teddy bear. Father

[1] The Department does not raise any issue about Father's apparent untimely appeal of the change in the permanency plans. Because we conclude that such appeal is moot, we need not address this issue.

was again arrested. After waking up in jail, Father stated that he had no recollection of any of the above events. Father was convicted of disorderly conduct and disobeying a lawful order and spent fifty-seven days in jail. Father was released on November 30, 2022. Father was placed on supervised probation that required him to refrain from drug usage and criminal activity and participate in therapy.

The juvenile court held a hearing on the Department's Petition on March 6-10, 2023. On the first day of the hearing, Mother consented to the Petition and thus voluntarily relinquished her parental rights in the Children. On March 10, 2023, the court granted the Department's order and terminated Father's parental rights in the Children. On March 22, 2023, Father filed a notice of appeal of the juvenile court's order terminating Father's parental rights. Both appeals were consolidated by this Court. We shall provide additional facts as necessary to the resolution of the questions presented in this appeal.

DISCUSSION

I. Did the court err in terminating the parental rights of Father?

A. Facts

From March 6 through March 10, 2023, the juvenile court held a hearing on the termination of Father's parental rights in the Children. On March 10, 2023, the court issued an order terminating Father's parental rights in the Children and appointing DSS as guardian of the Children. The court's findings of fact and conclusions of law are reproduced in their entirety below:

> **In ruling on the four petitions with the Department requesting guardianship with the right to consent to adoption for the [Children],**

the Court has focused as it's [sic] primary consideration on the health and safety of the [C]hildren and has considered all of the statutory considerations in Section 5-323 of the Family Law Article in making a determination of whether terminating [F]ather's parental rights is in the [C]hildren's best interest.

The Court notes that after opening statements but before the evidentiary portion of the trial started, [Mother] signed consents in each of the cases and a Post-Adoption Contact Agreement. She also put her consent on the record orally and was voir dired by her attorney. The Court accepted her conditional consent on the record and received the documents that [Mother] had signed as evidence in the cases and the cases went forward as to [Father] only.

The Court finds that DSS offered services to the family prior to placement. That the family came to the attention of Howard County DSS in May 2016 when [P.B.] was an infant and had been hospitalized as an unresponsive infant. After testing, it was determined [P.B.] had been exposed to, I believe, OxyContin, I don't know, maybe Oxycodone, an oxy drug, an opioid. And she was hospitalized for a number of days. The parents reported that [P.B.] had been in the care of her maternal grandmother, uncle and great-grandfather in the trailer in which she and her sister and brother and parents lived.

In 2017, Department again had a report on the family when [M]other tested positive for THC at the birth of one of her children. DSS assigned a family preservation worker, Michelle Harman to work with the family. Ms. Harman had home visits with the family every two weeks. Ms. Harman testified about numerous locations that the family had stayed including a trailer belonging to [M]other's grandfather, [Father's] mother's house, some motels, a neighbor of [Mother's] grandfather's house and [F]ather's -- I don't know if I mentioned but [F]ather's mother also.

When the family was having difficulty with housing, Ms. Harman referred them to Grassroots so that they could be connected to the Bridges for Housing Program. She also offered that the Department would provide a security deposit on an apartment to assist the family if they were able to locate an apartment. The family did stay in cold-weather shelters for about three to four months, according to [Father] and then were at Grassroots for a few months until the fire that [C.B.] had started when he was left unattended. The family was asked to leave Grassroots after that, and Ms. Harman continued to coordinate communication with Bridges to Housing and the family and also referred the family to other shelter programs in other jurisdictions.

After the fire at Grassroots that was set by [C.B], Ms. Harman worked with the family to create a safety plan so that the [C]hildren could stay in the

family's care. And that plan was that the [C]hildren were not to be left alone in [F]ather's sole care, that there always had to be another caregiver present.

Ms. Harman testified that she became aware the [C]hildren had some missed medical appointments and arranged for the family to have access to taxi services so that they'd have transportation so they could keep the appointments. She assisted [Mother] with applications for Food Stamps, Medical Assistance, and Temporary Cash Assistance. She referred the family to Infants and Toddlers and to Parents as Teachers a number of times, but the parents apparently did not complete either program. Ms. Harman offered drug screening to the family and the family had indicated they were not interested in treatment for their marijuana use. Ms. Harman testified she provided the family with referral to the Work Force Program to assist them in filling out resumes and employment applications. And I believe she had also referred them to an expungement service when [F]ather indicated that he felt that his record from the past was a barrier to him getting employment.

I will note that the family was homeless, and the marijuana was on the Departments radar at this time. That was not the reason that the [C]hildren were sheltered. And that the DSS had worked with them with regard to those issues.

After the [C]hildren were sheltered in September of 201[8], in making findings of the extent, nature and timeliness of the services offered to facilitate reunification, Hadassah Freed was assigned by Department as the Foster Care Social Worker for the family. At first Ms. Freed and Ms. Harman were both involved until the adjudication of the [C]hildren at CINA in January. They met together so that Ms. Freed could get up to speed on the family's needs. She also met with the family to discuss what her role would be going forward.

DSS continued to provide support for the parents to access Bridges for Housing Program. They continued to offer the security deposit if the family was able to find housing. DSS provided [F]ather with information about a job fair, told him about openings at the Wegmans grocery store. DSS provided the family with service plans that were six months long and monitored their progress. There were bi-weekly visits. The parents were referred to three different parenting classes. They were referred to the Healthy Families Program. DSS supervised twice weekly visits for the family immediately after the [C]hildren were sheltered, one during the week and a longer one on the weekend. The weekly visits were supervised by Department of Social Services. The weekend visits were supervised by other people in the community, family members and so forth.

After one of the supervisors for the weekend visits reported that the parents had arrived at her house extremely late and appeared to be impaired for the weekend visit, the weekend visits at her home were discontinued. Ms. Freed and her supervisor met with the parents to discuss the incident. In

March 2020 when the Covid shutdown happened, the in-person visits obviously had to end. DSS was able to institute virtual visits after a few weeks. There were challenges with the virtual visits because, of course, the [C]hildren were very young at the time. DSS provided the parents with suggestions and tips on how to connect with small children on Zoom.

In August of 2021, [F]ather requested separate visits due to a Protective Order and at that point, the visits went to one -- two visits a week, one with each parent. The family was given drug screening. They were referred to substance abuse facilities for treatment and -- for evaluation and recommendations for treatment. DSS referred [Father] for mental health treatment, referred the parents to couple's counseling. Father was referred to anger management. The four [C]hildren were placed with a foster parent in a therapeutic foster home. And after about one month, all four [C]hildren were able to be in the same home where they had -- the older two had been with the existing foster mother, the younger two were moved in with her a month later.

DSS has monitored the [C]hildren to assure they are receiving proper medical and dental care and that their educational needs are being addressed. The three older children all have particular needs, [C.B.] probably having the most profound needs. He has learning disabilities. He's a slow processor. He has behavioral issues at school and has trouble self-regulating. He's been evaluated and there are IEPs in place for him. [B.B.] has had – [B.B.] and [C.B.] have both had issues with unusual eating patterns. [C.B.] eating food out of the trash and off of the floor. [B.B.] stuffing her face with so much food that she can't chew it all. And those situations have been addressed and the foster mother reports that they've all but disappeared. They are very rare now.

DSS, at placement of the [C]hildren, did explore relative resources. When [F]ather's mother offered herself as a resource, she was initially disqualified because of a prior [finding] of indicated child abuse. But she was offered an opportunity to be reconsidered if she would complete a parenting class and that didn't happen according to [Father's] mother. It didn't happen because [F]ather asked her not to get involved and she acceded to his wishes. But in any event, she did not accept the offer and did not later come forward and offer herself again as a relative resource until very recently. I believe that the findings at the -- at one of the hearings with Judge Tucker on the exceptions, she had testified that she wanted to be a resource. Although that was testimony in court, I don't -- her testimony was she had not reached out to the Department again.

With respect to the extent to which the Department and the parents have fulfilled their obligations under the Service Agreement. When there was a Safety Agreement in place with the Department of Social Services, and this

was before the [C]hildren were sheltered, both parents had signed that agreement. It was following the fire at Grassroots. I did not get any evidence or testimony as to whether the parties complied with the terms of that agreement. Father did not participate in the Service Agreements. After the [C]hildren were sheltered, by his own testimony, he avoided contact with the social worker. Ms. Freed testified he was not present for the bi-weekly appointments and if he was there, he would simply leave the room.

Mother signed the Service Agreements and I know that the Service Agreements really had tasks for her to complete. I'm not sure I recall seeing any tasks for [Father] to complete. And DSS met its obligation to provide oversight, transportation, and referrals to assist at least [M]other in being successful in completing the tasks that she had agreed to in the Service Agreement.

With respect to the results of the parents' efforts to adjust their circumstance, condition or conduct to make it in the best interest to return home. First of all, the extent to which this parent has maintained contact with the child, [F]ather was initially consistent with attending in-person visits. There were reports that at the mall visits, that there were almost always adult friends of the parents present and that they would spend time visiting with their friends rather than focusing exclusively on [the Children]. It was reported at the library, [F]ather would take smoke breaks and bathroom breaks. He seemed to have difficulty connecting with the [C]hildren. When the visits became virtual, [F]ather became extremely inconsistent in attending the visits. And it is of note to the Court that there's been no effort to have contact with the [C]hildren since February 1st, 2023. It's reported that he had attended only fourteen visits since September of 2021.

The extent to which the parent has maintained contact with the Department. I think this is one point on which [Father] and the Department agree that he does not communicate or share information. He says that he does not trust them. He has routinely not made himself available to the social worker for visits. And if he's in the home, he leaves the room. And sometime in 2022, he actually made threats to the social worker and her family to Ms. Freed prompting her to get a Peace Order, further complicating his ability to maintain contact with the Department. But he clearly had no interest in cooperating with the Department, taking their recommendations and working with them.

The extent to which the parent has maintained contact with the caregiver to the extent feasible. The foster mother testified that she would sometimes see the parents for visitation exchanges. That during virtual visits, she was available to answer questions but that hasn't been possible because [Father] has rarely attended the virtual visits. She also expressed concerns

about the impact on the [C]hildren of his lack of consistency with attending those visits.

With respect to the parents' contribution to a reasonable part of the [C]hildren's support and care to the extent that the parent is financially able to do so. Father testified he's had numerous jobs. Apparently, he has many skills including construction, cooking, serving, tattooing, although I never -- it's my understanding that you need a license to perform tattooing and I don't think he's ever worked in a tattoo parlor so I'm not sure that that's a legitimate or feasible regular form of support. He says he's working in a warehouse now. So, he certainly has the ability to work and in this job market -- I just heard on the news this morning, there's two jobs for every unemployed person. I know the restaurants have had a lot of difficulty since the Covid shutdown. It seems like finding a job would not be difficult, I think, based on what I've heard about that [F]ather often has jobs but does not keep them for long periods of time. And that was his testimony as well. When he would testify about how long he had worked at jobs, it was normally a month or three or four months. And the Court would -- I would surmise that he was contributing to the [C]hildren's expenses while they were in his care as he was able to but there's no indication he's made any effort to do so while the [C]hildren have been in the care of the Department of Social Services. Father also has notably not provided the Department of Social Services with any documentation of any of his employment or his income.

The existence of a parental disability that makes parent consistently unable to care for the child's immediate and ongoing physical and psychological needs for long periods of time. This one is, I think, a little more difficult for the Court because [F]ather testified that he has PTSD, ADHD, bipolar disorder. That he's been in treatment throughout his life. That he's had numerous caregivers. No one consistent caregiver. That he's had numerous therapists, numerous psychologists. He's been on a number of medications for those things. Those conditions properly treated would not make a parent consistently unable to care for a child's immediate and ongoing physical and psychological needs for long periods of time.

A greater concern to the Court is the substance abuse. And as I said before, and I think I said yesterday, marijuana is not the substance that it appears to the Court that DSS was concerned about. It's not the substance that the Court is concerned about. **The [C]hildren were sheltered after an automobile accident that apparently was not the fault of the driver of the minivan in which the [C]hildren were but in which there were cut straws with white, powdery residue in them, where [F]ather was showing signs of impairment. He had constricted pupils, which certainly are not consistent with marijuana use but are not inconsistent with other substance abuse, severely slurred speech. The other driver told the**

trooper that [Father] appeared to have impaired coordination. He was offered a drug test and declined it.

The Court has always taken the position that declining a drug test is -- raises a suspicion that the person would not have passed the drug test. And also, the fact that [Mother] had told the trooper, and why would she say this if this was untrue, that she had snorted Percocet, an opioid drug, through one of those straws.

Father has refused to submit to substance abuse testing through DSS since the Covid shutdown. Father declined the last drug test offered by DSS in August 2022. Father's mother told the Department that the family couldn't live with her because the parents were stealing her prescription oxycodone. Father was placed on suboxone when he was released from jail November 30th, 2022, just about four months ago. Suboxone is a drug that's used to treat opioid addiction. It's not for treating addiction to Xanax. In fact, you can't take oxycodone with Xanax. It's a deadly combination. And that was the testimony from Doctor Frye.

In October of 2022, [Father] admitted to snorting Xanax through a straw and claims he had a blackout and doesn't recall anything from that moment until he awakened in jail. After being released from jail, he was in a thirty-day substance abuse treatment center, also consistent with detoxing from opioid use. Father claims he's been in treatment since he was released from jail but did not bring documentation to court or to the Department of Social Services of his compliance with treatment or his drug test results. And I bring that up now because the Court believes that this problem is an underpinning of the reason the [C]hildren are still in care, the reason that reunification has not been possible. And I don't make findings with regard to [Mother] because she's no longer a part of this case. But there are ample indications that [Father] has unmet substance abuse problems. Maybe he's meeting them now. We have no evidence to support or contradict that. But it's also of significant concern that when [F]ather did the substance abuse intake evaluation, he did not disclose any use of opioid drugs or other off-label use of prescription drugs.

Whether additional services would be likely to bring about a lasting parental adjustment so that the [C]hildren could be returned to the parent in a reasonable time not to exceed eighteen months from placement unless the Court makes specific findings it's in the [C]hildren's best interest to extend the time for a specified period.

Father testified he had undergone the thirty-day in-patient drug program and then the intensive outpatient program. He's currently in substance abuse and mental health treatment across the street from his mental health program -- from his substance abuse program. We have no documentation of either of those things. There's no evidence of either of those things. **The Court notes that he is on probation in Baltimore County**

arising out of the incident with his mother back on October 4th, 2022, about six months ago, when -- maybe seven months ago, when he engaged in extremely bizarre behavior and used Xanax by sniffing it through a straw into his nose, which is not a prescription use of Xanax, and when he assaulted his mother by pushing her, causing her to fall, breaking a rib and fracturing her thumb.

Father's current situation is potentially the most stable he's been in since the [C]hildren were placed four and a half years ago. He's living with his mother and his daughter, [Z.B.], and his son, [A.B.], in the home that his mother has owned for nine years. So, it is a stable home. He states that he's been employed for three weeks.

It causes significant concern that while his mother testified that her home was a resource for him and all six of the children, she was willing to make renovations to the home so that there would be room for all of the children to have a bedroom. Not an individual bedroom. Nobody could make that much room. But so that it would be more accommodating to the [C]hildren's needs. And his testimony was that it was temporary. He does not plan to stay there.

The Court finds, in light of history of the case, so [F]ather's history of maintaining employment only for brief periods of time, his history of housing and stability, his refusal to work with DSS or provide them with information, it's unlikely that the current situation is going to lead to a lasting parental adjustment that would allow the [C]hildren to be placed in his care in a reasonable period of time. This case has been argued as if this Court today would have the opportunity to just send the [C]hildren home with [F]ather and his mother. And that is not what would happen if this request for guardianship was not granted. If this was not granted, the [C]hildren would remain in foster care and would be under the guardianship -- care and custody, excuse me, of Department of Social Services, not automatically returned. We would be going back to, I suppose, a plan of reunification. There's been no cooperation, no sharing of information. There's no reason to believe that's going to change in the future. Father's made it completely clear he does not trust the Court; he does not trust the Department and he's not going to work with them.

Whether the parent has abused or neglected the [C]hildren. [Father] has left the [C]hildren unattended when he was at that homeless shelter. His testimony was he was washing laundry and it was as far away as the next courtroom, which may sound like a very short distance, but this is a very big courthouse. And leaving the [C]hildren alone in a room and going down the hall to do laundry when you have an infant, a one-year-old and three-year-old is not a great idea. And the fact that they tore up the bedroom while he was gone is not surprising to anyone who has ever had small children. That's what they do. You have to -- especially

toddlers -- you have to watch them 24/7, every moment of the day. Many parents take them in the bathroom with them. You have to keep an eye on the children. **And then he got frustrated and went outside to talk to [Mother] and to smoke a cigarette and [C.B.] lit a fire in their room because he was left unattended with two younger children. He was three at the time.** I believe he was three. **And there was a lighter that didn't have a child guard on it.** And there was some testimony that there was also spilled hand sanitizer, which doesn't seem like a safe situation either.

There's testimony that when the parents live together at one point, [F]ather threw a sippy cup at [C.B.] and hit him in the head. I have never heard of a parent throwing a sippy cup to a child. And I believe that the statement from [M]other was that it was done in anger. Father sent [C.B.] and his sister out to walk alone through the trailer park from [Mother's] grandfather's trailer to another trailer, Poppy's trailer. Or maybe they were in the neighbor's trailer, and they were walking to grandfather's trailer. I don't know. **The older of the two was maybe three years old. And apparently there was a street they had to cross. This is neglect. This is an unsafe thing to do with children of that age. They need to be attended at all times.**

At the time of the accident leading to the [C]hildren being sheltered, I've discussed that there was ample evidence to conclude that [F]ather was under the influence of a drug, that there was no sober parent available, as [M]other had admitted she had snorted Percocet through one of those straws.

Father has failed to maintain stable housing or employment causing the [C]hildren to have to stay in shelters, motels, and at one point, on an unenclosed front porch. I do not find that the abuse allegation is particularly serious. It does cause concerns that a person in anger would do something to injure a child, but it was not a serious injury. **The neglect allegations, the Court takes very seriously.** These are just the ones that we know about. **And the [C]hildren were placed in very dangerous situations, walking alone across the street, walking alone through a neighborhood or a trailer park at very, very young ages, being left alone in a situation where a fire was started.**

I have to go to my cheat sheet. I have to state on the record that I do not find that the parent has subjected the child to chronic abuse, chronic and life-threatening neglect, sexual abuse, or torture. I do not find that the parent has been convicted of a crime of violence against any of the minor [C]hildren, any of his offspring or another parent of the child or aiding or abetting, conspiring, or soliciting to commit a crime described above.

This parent has never involuntarily lost parental rights to a sibling of the child, although I understand that [A.B.] is in the legal care -- well, it's either custody or guardianship. I think his mother had said both. But she has

legal custody but that's not a finding for this. So, having not made a finding under [d(3)(iii), (iv) or (v)], I find that section F is not applicable.

With respect to the emotional ties and feeling toward the child's parents, the child's siblings, and others who may affect the child's interests significantly. The Court finds the [C]hildren have integrated into their foster home. They enjoy family nights. They're close with the foster parent's extended family who they visit in New York and consider her parents to be their grandparents, consider her siblings to be their aunts and uncles. They do many family activities together. [S.B.], the youngest was only a few months old when she came into care and seems to be the most closely attached to the foster parent. [S.B.] and [P.B.] both call the foster mother Mommy. [C.B.] calls her [Ms. T.] and [B.B] alternates between Mommy and [Ms. T.]. But they do consider their foster brother their brother. The [C]hildren are very close with each other. Their attorney described them running together, I think she called it a stampede, when they want to go outside and play. They enjoy playing together in the foster parent's backyard.

The [C]hildren have been in care for about four and a half years, which is significant because the oldest child just turned eight. So, for [C.B.], that's been half of his life. For the other children, it's an even greater percentage. They are six, five, and four years old.

[C.B.] and [B.B.] seem to have more attachment to the birth parents. The younger two, perhaps, less attachment. And for the younger two, the greater attachment is definitely with the foster mother. The [C]hildren's attorney indicated that she felt for [C.B.] and for [B.B.]. It would be hurtful if they weren't able to see their dad or their mom. **And while it's certainly true that virtual visits are a poor replacement for in-person visits, [F]ather has fallen down on the job by failing to take advantage of the visits that he can have as a way to stay present in the [C]hildren's lives. And he's been inconsistent which is unquestionably difficult for the [C]hildren who were likely looking forward to seeing him and hoping to hear from him. It's extremely disappointing that even with this case coming up, that the visits did not increase. In fact, I think they may have fallen off even more with the last visit being a telephone call on [C.B.'s] birthday on February 1st.**

The [C]hildren are now in school because it's time for them to be in school. When they were in care, they were too young. I mean, before they went into care, they were too young. They go to the YMCA with -- well, now it's called the Y -- with their foster mother every weekend. They swim. They do family nights, movie nights, open gym. They've been in the same foster home for over four years. They've adjusted to her home and community. The [C]hildren do sporting activities through the Y and the two older girls have been in Girl Scouts. Although the older three children are having challenges

at school, they're receiving appropriate intervention and are making progress.

Father's counsel pointed out that, you know, the doctor specifically recommended team sports. And the Court does not find it unreasonable that a single foster parent with five children, four foster children and her own child, would find it difficult to get four children into team sports. And they are very young for team sports. I mean, the eight-year-old is probably old enough but for six-, five- and four-year olds, it's normally just play groups type sports like they're receiving at the Y.

The [C]hildren's feeling about severance, the parent/child relationship. The Court has had no direct evidence on the point. The foster mother testified that the [C]hildren have never asked about their parents, although she has put a picture of the pictures in the [C]hildren's bedroom, and she does tell them that Mommy and Daddy miss them and love them. The [C]hildren's attorney indicated that she felt the older two would be sad not to see [Father] and she's hoping something can be worked out in the future so that that can continue in some way, shape or form.

The likely impact of terminating the parental rights on the [C]hildren's well-being. Father has a plan, but I don't find that it's a realistic plan. He's working only parttime and he plans to move away from his mother's stable home presumably with five children from ages two to eight or perhaps a little older by the time they do that. Less than six months ago, he engaged in violent, bizarre behavior in front of his mother's house causing her to move his belongings out of the house and into his vehicle which does not indicate a stable housing situation. She ended up being injured in this very difficult situation in which [F]ather was arrested not once but twice. The first time being told, released on his own recognizance, just stay away from her house, and he went directly there, engaged in extremely odd behavior involving destroying or damaging his car with a bat and a crowbar and also using a machete to behead a teddy bear. I assume that was his daughter [Z.B.'s] teddy bear. It was pink. Which I suppose -- it just causes great concern. And that was October 4th of 2022, which was not very long ago.

Father's account of how he obtained temporary custody of [Z.B.] also raises concerns. He testified he picked her up from daycare and now he has temporary custody. What I didn't hear was we had a court case, or her mother and I agreed or we discussed it. And then he picked her up from daycare. And to the extent that this was unplanned, it was very likely disruptive to [Z.B.] who had been used to a different way of life. He also testified while he was incarcerated and presumably during his in-patient treatment that he left [Z.B.] with a babysitter, not his mother. And I don't know how that was arranged since he was incarcerated from the time of the incident until his ultimate release after his court date when he got a time-served disposition.

Also, extremely disruptive for a two-year-old child to be taken from her caregiver. And I don't know who this babysitter was, but it was not -- according to Mr. B., it was not his mother.

The Court is extremely concerned with [F]ather's lack of candor, both with the Court and with DSS regarding his substance abuse problem and also with his initial substance abuse evaluation. His mother testified that he's been on suboxone since he was released from jail, which is a substance used to treat opioid addiction, the thirty-day detox. It's also consistent with opioid use. Never once has DSS been made aware, I suppose other than whatever conclusions that they could reasonably draw at the time the [C]hildren were sheltered, **that there was opioid use going on. The two straws with the white powder, [F]ather's physical condition at the time of the shelter or immediately before, the report from [F]ather's mother to DSS, the observation[]s [that Father] would fall asleep during virtual visit[s], the lack of ability to maintain employment and housing, all completely consistent with that.**

The Court is also concerned with [F]ather's mother's lack of candor. On direct examination, she's testifying that the [C]hildren were always clean and well-fed, and everything was perfect, and her son has always had stable housing and her house has always been open to him. And on cross, she admitted that the [C]hildren were often dirty, or she had told DSS in the past the [C]hildren were often dirty, hadn't had changed diapers, and were always hungry. She had told DSS that the parents were stealing her prescription drugs. She testified that [F]ather and [Z.B.] had lived with her for six months and [F]ather said that he'd left [Z.B.] with a babysitter for two to three months while he was in jail and presumably detox.

For the last four years, the [C]hildren have had stable housing, consistent parenting, ability to participate in school and activities, contact with the foster mother's extended family. The foster mother has been able to provide a home for all four of the very young children, some of whom have significant behavioral problems and educational needs. But she provides them with a safe and stable home where, most importantly, they can all be together. They're doing well in her care. And the Court does find that termination [of] this parent's rights would be in the [C]hildren's best interest to allow them an opportunity to have permanency after this very long case.

So, having considered all of the factors enumerated in 5-323 of the Family Law Article and the factual determinations, the Court finds by clear and convincing evidence that the facts demonstrate the unfitness of [Father] to remain in a parental relationship with [the Children] by virtue of his very recent history of substance abuse, out of control anger management issues, mental health issues, that he's received inconsistent or inappropriate treatment -- he's avoided appropriate treatment, history of neglect of the [C]hildren, employment instability, housing

> **instability, and failure or refusal to cooperate in the efforts of Department to reconcile the family.**
>
> Accordingly, the Court will issue an order to the local Department of Social Services with the right to consent to adoption or other planned permanent living arrangement terminating the rights, duties and obligations and interests of [Father], the natural and legal father of the minor [C]hildren.

(Emphasis added.)

B. Standard of Review

"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) (quotation marks and citation omitted). First, any factual findings made by the court are reviewed for clear error. *Id.* Second, any legal conclusions made by the court are reviewed de novo. *Id.* Finally, if the court's ultimate conclusion is "founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion." *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 100 (2010) (quotation marks and citations omitted) (alteration in original). "A decision will be reversed for an abuse of discretion only if it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *In re J.J.*, 231 Md. App. 304, 345 (2016), *aff'd*, 456 Md. 428 (2017) (quotation marks and citations omitted).

Under Maryland Rule 8-131(c), in a case tried without a jury, the appellate court "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the

witnesses." This Court has stated that "[a] trial court's findings are 'not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion.'" *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019) (quoting *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996)). Further, under Rule 8-131(c), "the evidence and all inferences drawn therefrom must be viewed in the light most favorable to . . . the prevailing party[.]" *Gertz v. Maryland Dep't of Env't*, 199 Md. App. 413, 430 (2011). Finally, it is well established that the weight of the evidence is a question for the trial court, as the fact finder. *See Thomas v. Cap. Med. Mgmt. Assocs., LLC*, 189 Md. App. 439, 453 (2009).

C. The Law

"Parents 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)). In *In re C.E.*, the Maryland Supreme Court summarized the law governing the termination of parental rights:

> In acknowledgment of the important rights at stake, we have previously described three elements of heightened protection provided to parents in a TPR proceeding. *See In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 498, 937 A.2d 177 (2007). First, we have recognized that there is the "presumption that the interest of the child is best served by maintaining the parental relationship, a presumption that may be rebutted only by a showing that the parent is either unfit or that exceptional circumstances exist that would make the continued relationship detrimental to the child's best interest." *Id.* at 498, 937 A.2d 177. Second, this presumption can only be overcome if the State establishes by clear and convincing evidence of unfitness or exceptional circumstances to justify a TPR. *Id.* at 499, 937 A.2d 177. This is a heavier burden than the preponderance of evidence standard utilized in a standard child custody case. *Id.* Third, the General Assembly provided factors that the juvenile court must expressly consider in determining whether termination is in the child's best

> interest. *Id.* While a juvenile court is permitted to consider additional factors, the statutory factors are intended to provide the basis for any termination of parental rights.
>
> The requisite factors are codified in FL § 5-323(d). FL § 5-323(d) is divided into four subparagraphs of factors that the court must use to assess both unfitness and exceptional circumstances. Maryland's guardianship statute does not define parental unfitness or exceptional circumstances. However, the existing statutory scheme is the appropriate mechanism for the evaluation of parental fitness or the kinds of exceptional circumstances that would suffice to rebut the presumption for continuing the parental relationship and justify the termination of that relationship. *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 715, 12 A.3d 130, (2011); *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 104, 8 A.3d 745 (2010) ("[T]he same factors that a court uses to determine whether termination of parental rights is in the child's best interest under the TPR statute equally serve to determine whether exceptional circumstances exist."); *Rashawn H.*, 402 Md. at 499, 937 A.2d 177.
>
> The four subparagraphs of FL § 5-323(d) are divided by topic and include consideration of: (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.[] Ultimately, these factors seek to assist the juvenile court in determining "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." *Rashawn H.*, 402 Md. at 500, 937 A.2d 177. This is the appropriate inquiry because courts are required to afford priority to the health and safety of the child. FL § 5-323. As such, the best interest of the child is the overarching standard in TPR proceedings. *In re Adoption/Guardianship of Cadence B.*, 417 Md. 146, 157, 9 A.3d 14 (2010) (citing *Ta'Niya C.*, 417 Md. at 90, 8 A.3d 745) ("[T]he child's best interest remains the 'transcendent standard in adoption, third-party custody cases, and TPR proceedings.' ").

Id. at 50-53.

Under Maryland law, the Department "must make good faith efforts to provide services to achieve reunification," *In re Shirley B.*, 191 Md. App. 678, 716 (2010), *aff'd*, 419 Md. 1 (2011), and "the obligation to render 'reasonable efforts' [toward reunification]

rests on the Department, not the parent[.]" *In re James G.*, 178 Md. App. 543, 601 (2008). The "reasonableness" of the Department's efforts to achieve reunification is determined by a consideration of the particular circumstances of each case. *See In re Shirley B.*, 191 Md. App. at 710-11 ("[T]here is no bright line rule to apply to the 'reasonable efforts' determination; each case must be decided based on its unique circumstances."). Such determination by the juvenile court is a factual finding that is reviewed for clear error. *Id.* at 708-09.

D. Analysis

i. *The Juvenile Court's Order*

In its thorough and comprehensive oral opinion, the juvenile court properly considered all of the statutory factors under FL § 5-323 and in its consideration emphasized a number of circumstances that led to its decision to terminate Father's parental rights. The court cited Father's neglect of the Children when they were in his care, such as when Father left the Children alone at Grassroots and C.B. started a fire, and when Father made the Children walk alone through the trailer park when they were under four years old. The court was concerned about Father's substance abuse and his consistent refusal to undergo substance abuse treatment or testing. Although Father testified that he had been in treatment since his release from jail in November of 2022, the court noted that Father had failed to provide any documentation regarding his compliance with any treatment or the results of any drug tests.

The court pointed to Father's employment instability, specifically Father's testimony that he had trouble keeping a job for a long period of time, often only lasting a

few months. The court noted that Father had not provided the Department with any documentation regarding his employment or income. The court also was concerned about Father's housing instability, which led to the Children often residing in shelters or motels when they were in his care. Although the court acknowledged that Father's situation at the time of the TPR hearing was stable and that he was living with his mother, the court noted that Father testified that he did not plan to stay there long term. Finally, the court considered Father's bizarre behavior in October of 2022 that involved Father snorting Xanax through a straw, assaulting his mother, and using a machete to behead a pink teddy bear. We will now review each of Father's arguments in turn.

ii. *Appellant's First Argument*

Father argues that the juvenile court erred in terminating his parental rights because Father was prevented from maintaining a relationship with the Children due to the court's denial of in-person visitation. Specifically, Father contends that, because the court must consider the emotional ties and the level of contact between a parent and child in a TPR case and virtual visits have "a well-known number of limitations compared to face-to-face family interactions[,]" it was especially important for Father to have in-person visits with the Children. Father also argues that the court should not have found that Father was lacking in contact with the Children because Father constantly requested in-person visits and in-person visits were available to other families, but not to him. According to Father, because visits are a required element of the reunification process, "the court's refusal to reinstate in-person visits . . . was against the purpose of the CINA statute."

Under FL § 5-323(d)(2)(i)(1), a juvenile court must consider 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 . . . the extent to which the parent has maintained regular contact with . . . the child[.]" Under FL § 5-323(d)(4)(i), a juvenile court must consider "the child's emotional ties with and feelings toward the child's parents[.]" We hold that the juvenile court's denial of in-person visits was not the cause of Father's inability to maintain a relationship with the Children. We shall explain.

Although virtual visits may have made it harder for Father to engage with the Children than in-person visits, Father often failed to pay attention to the Children or attend visits at all. During some visits, Father would say hello to the Children and not participate in the visit or engage with the Children. Father was also seen disappearing from visits for long stretches of time. Father testified that between March of 2020 and March of 2023, he attended only 40 virtual visits with the Children, meaning that he missed approximately 75% of them. Once Father began visiting the Children separately from Mother between September of 2021 and March of 2023, a period of a year and a half, Ms. Freed testified that Father attended only fourteen weekly visits with the Children, meaning that Father missed approximately 80% of all visits.

Although Ms. Freed spoke to Father about the importance of consistency in his visits with the Children, Father's attendance at the visits did not improve. Even when the visits were in-person before the Covid-19 pandemic, Father would not pay attention to the Children and was more focused on talking with his friends than engaging with the Children.

Based on Father's failure to participate in and take advantage of the virtual visits given to him, we conclude the juvenile court did not err in finding that Father failed to maintain regular contact and emotional ties with the Children.

iii. *Appellant's Second Argument*

Second, Father argues that the juvenile court improperly focused on older evidence when it found Father to be unfit. According to Father, the court overlooked the fact that he "worked, lived with [his mother], had treated his mental health, was in a substance use program, and enjoyed a good working relationship with his current [D]epartment worker." The court, Father argues, "cannot ignore that progress in favor of past or speculative concerns, especially when termination is the result[,]" and that Father's "current circumstances demonstrate an upward trajectory of progress[.]" In the alternative, Father argues that, even if he is currently unfit, "his substance use, mental health, and housing issues have been addressed," and "the court did not know whether [Father] would be able to parent effectively in the future."

In its initial CINA disposition order, filed on January 16, 2019, the juvenile court found that Father had neglected the Children and ordered Father to undergo a substance abuse evaluation and participate in parenting classes. In the court's August 9, 2022 permanency plan review order, the court found that Father's situation remained unchanged:

> [Father] has not cooperated with DSS and is resistant to receiving services through DSS. He does not trust DSS and refuses to communicate with them. He wants any communication to be through his attorney. He contends that the DSS worker "talks at him instead of to him." [Father] has had various employment over the past few years. He has worked in construction, landscaping and has training as tattoo artist. He uses marijuana daily and testified that he uses marijuana for ADD, ADHD, anxiety, depression and for

> suicidal thoughts. He has been on multiple medications since the first grade and has been hospitalized three times. Since using marijuana he no longer has suicidal thoughts and is less stressed. Marijuana helps [Father] escape reality and slows his mind and helps him focus. [Father] also testified that DSS keeps adding conditions and there is no light at the end of the tunnel. [Father] denies physically assaulting [Mother] and states that his relationship with her is good. He acknowledges having loud arguments with her but denies any physical assaults. [Father] is easily frustrated and cursed out at the Court after he finished testifying and stated that he did not realize he was still on video when he made the comment.

As Father notes, the juvenile court is required to consider current parental fitness when deciding whether to terminate a parent's parental rights. The court specifically found that "Father's current situation is potentially the most stable he's been in since the [C]hildren were placed four and a half years ago." The court, however, is not required to ignore the previous four and a half years of instability, especially given Father's inconsistent housing and employment and his failure to complete the services required by the court.

Contrary to Father's argument, Father did not show that his fitness as a parent changed since the Children were sheltered in September 2018. Despite being court ordered to submit to random drug testing, Father has refused to submit to a drug test since before the Covid-19 pandemic began, with the last refusal occurring in August 2022. Although Father testified that he was undergoing substance abuse treatment, he did not provide any documentation regarding the treatment or the results of any drug tests to the Department. Father also testified that his current housing situation with his mother was temporary and did not provide documentation of his income to the Department or the court at any point

since the Children were sheltered. Finally, Father's bizarre behavior in October of 2022 that resulted in him being arrested twice was only five months before the TPR hearing.

Even if he is currently unfit as a parent, Father argues that the court must consider whether his deficiencies are "temporary and correctible[.]" *Rashawn H.*, 402 Md. at 499. However, the issues that Father was dealing with at the time of the TPR hearing – substance abuse, lack of employment and housing, anger management – were the same issues Father had since the Department first intervened and sheltered the Children in 2018. Therefore, the juvenile court did not err when it found that Father's situation has remained unchanged, and the court did not only rely on older evidence in coming to its conclusion.

iv. *Appellant's Third Argument*

Third, Father argues that the juvenile court erred "by failing to consider that the [D]epartment's plan was not in the [C]hildren's best interests," especially when compared to Father's plan to reunify the Children with Father's mother. Father contends that it was "in the best interest of the [C]hildren to be cared for by their available family members." According to Father, the court viewed evidence from the Children's foster parent, Ms. T., that the Children were happy and close with Ms. T. positively, even though she testified that she wanted to adopt the Children and was therefore not neutral. Furthermore, Father argues, the court was "unwilling to consider the aspects of the [D]epartment's plan for adoption with [Ms. T.] that were not in the best interests of the [C]hildren[,]" such as the fact that it was unclear whether Ms. T. had participated in a home adoption study and that C.B. had made abuse allegations against Ms. T. In sum, Father argues that the court's

"refusal to consider the many difficult aspects of the [D]epartment's plan was error because such consideration was in the [C]hildren's best interest."

Although Father claims that the juvenile court failed to "consider that the [D]epartment's plan was not in the [C]hildren's best interests," the court clearly considered the fact that the Children had spent the majority of their lives under the care of Ms. T., and that it would be in their best interest to continue under her care. The court also specifically found that the testimony of Father's mother was not trustworthy and pointed out inconsistencies in her testimony.

Regarding Father's complaint that the juvenile court failed to consider whether Ms. T. would actually be able to adopt the Children before terminating his parental rights, the Department properly notes that

> a child's prospects for adoption must be a consideration independent from the termination of parental rights . . . in that "[t]he facts should first be considered as if the State were taking the child from the parent for some indefinite placement and upon that determination open the question of the suitability of the proposed adoption and its relation to the child's welfare."

In re Adoption/Guardianship of Victor A., 386 Md. 288, 317 (2005) (quoting *Cecil Cty. Dept of Soc. Servs. v. Goodyear*, 263 Md. 611, 615 (1971)) (alteration in original). The evidence presented to the juvenile court showed that the Children were fully adjusted to the foster home, were fully integrated into Ms. T.'s family, had made significant improvements with their behavioral and developmental issues, and did no longer feel significant attachment to Father's home. Therefore, the juvenile court did not err when it found that the Department's plan was in best interest of the Children.

v. *Appellant's Fourth Argument*

Finally, Father argues that the juvenile court erred when it found that the Department made reasonable efforts toward reunification between Father and the Children. Specifically, Father contends that the Department failed to provide visitation with any consistency and "made no provisions for [Father's] difficulty in participating meaningfully in the visits from just a phone." Further, Father argues that the involvement of Ms. Freed, the DSS case worker assigned to Father and the Children, was harmful to Father's reunification efforts because she had obtained a peace order against him. Father contends that he had shown an ability to work with other case workers, and removing Ms. Freed in favor of another case worker would have been "a simple, reasonable effort to promote reunification." Father concludes that this Court "should vacate the termination of parental rights decree and remand for the trial court to reopen the CINA case with identification and delivery of appropriate services, including frequent and meaningful in-person visitation."

In our view, the juvenile court did not err when it found the reunification efforts of the Department to be reasonable. Before the pandemic, the Department provided the parents with referrals to programs to assist them with housing stability. The Department also assisted Father in his attempt to find consistent employment and get his record expunged. The Department offered the parents two visits a week with the Children: a two-hour visit during the week supervised by the Department, and a four-hour visit on the weekend supervised by Mother's aunt. In order to assist the parents in getting to each visit, the Department would schedule a cab to drive the parents to and from the visit at the Department, and also made cabs available to the parents to travel to the weekend visits.

Although the visits may not have always been scheduled at the most convenient times for Father, the only time that some visits stopped was when Father and Mother arrived to the August 24, 2019 visit two hours late and apparently under the influence.

Once the pandemic began, the Department began offering Father virtual visits with the Children twice a week. When the juvenile court denied the resumption of in-person visits, the Department continued to provide virtual visits twice a week. The Department also provided visits to the parents after they separated and referred the parents to parenting classes to help with engaging with the Children during virtual visits. Therefore, we conclude that the juvenile court did not err when it found that the Department made reasonable efforts to reunify Father and the Children.

Regarding Father's claim that Ms. Freed's involvement in the case was harmful to Father's reunification efforts, we note that Ms. Freed did not request a peace order until October 2022 after Father made threats of harm to Ms. Freed and her family. Although Father claims that he was able to work with other Department employees, he testified that he "didn't cooperate with [the Department's workers] at all[]" and was "[c]onfrontational, argumentative, [and] non-compliant[]" with Ms. Freed. In addition, Father testified that he had refused to work with the family's previous social worker, Ms. Harman, for the entire time that she was assigned to work with Father and the Children. For the above reasons, this Court concludes that the juvenile court was not clearly erroneous when it found that the Department made reasonable efforts to facilitate the reunion of the Children and Father, as required by FL § 5-323(d)(1)(ii).

vi. *Conclusion*

In sum, the juvenile court considered the required factors under FL § 5-323(d) and made specific findings of fact as to each factor, which we have determined are not clearly erroneous. From these findings, all of which favored a termination of Father's parental rights, the court concluded by clear and convincing evidence that under FL § 5-323(b) Father was unfit to remain in a parental relationship with the Children and that severing Father's parental rights was in the Children's best interests. Based on the court's stated reasons, and our review of the entire record, this Court holds that the juvenile court did not err or abuse its discretion in terminating Father's parental rights in the Children.

II. Did the juvenile court err when it changed the permanency plans away from reunification and to adoption by a nonrelative?

Appellate courts generally do not decide moot questions. *In re Karl H.*, 394 Md. 402, 410 (2006). "'A question is moot if, at the time it is before the court, there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide.'" *Falik v. Hornage*, 413 Md. 163, 186 (2010) (quoting *Attorney Gen. v. Anne Arundel County School Bus Contractors Ass'n, Inc.*, 286 Md. 324, 327 (1979)). However, there are several exceptions to the mootness doctrine that will allow a court to hear a particular case. The first exception is that "mootness will not preclude appellate review in situations where a party can demonstrate that collateral consequences flow from the lower court's disposition." *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 352 (2019). The second exception is that a court will review a moot issue if the issue may perpetually evade review. *See Karl H.*, 394 Md. at 411. Finally, under the public

interest exception, a court may review a moot issue if "'the urgency of establishing a rule of future conduct in matters of important public concern is imperative and manifest[.]'" *Hamot v. Telos Corp.*, 185 Md. App. 352, 366 (2009) (quoting *Lloyd v. Bd. of Supervisors of Elections*, 206 Md. 36, 43 (1954)).

Under FL § 5-325(a)(4), an order for guardianship of an individual terminates the individual's CINA case. In light of our affirmance of the juvenile court's order terminating Father's parental rights in the Children, Father's appeal of the court's change in the permanency plans for the Children from reunification to adoption by a nonrelative is moot. We also conclude that none of the exceptions to the mootness doctrine apply to the circumstances of the instant case. Accordingly, we will grant the Department's motion to dismiss.

III. Did the juvenile court err by inserting itself into the proceedings and failing to remain a neutral arbiter without the appearance of bias?

A. Arguments of the Parties

Although not presented as an issue on appeal, Father, nevertheless, argues that the juvenile court improperly inserted itself into both proceedings and failed to remain neutral and without bias. In particular, Father contends that the court overstepped its judicial boundaries when it "argued against [Father's] counsel, when it stepped in to question witnesses, and when it gave indication that it had prejudged the cases." Father concludes that, by failing to treat both parties with fairness and respect, "the court undermined the public confidence in its ability to both be fair and appear fair in such important proceedings."

The Department responds that "the record demonstrates numerous occasions where the court accommodated Father and his attorney." According to the Department, "[a]ny frustration expressed against Father's attorney was the result of the attorney's conduct, including his (1) demanding explanations from the court about its rulings[,]" "(2) continuing to argue after the court's rulings[,]" "(3) repeatedly interrupting the judges[,]" "and (4) engaging in behavior that could be perceived as disrespectful toward the court."

B. Analysis

"It is well settled in Maryland that fundamental to a defendant's right to a fair trial is an impartial and disinterested judge." *Jefferson–El v. State*, 330 Md. 99, 105 (1993). "The accused has a right to a trial in which the judge is not only impartial and disinterested, but who also has the appearance of being impartial and disinterested." *Chapman v. State*, 115 Md. App. 626, 631 (1997). "[T]here is a strong presumption . . . that judges are impartial participants in the legal process, whose duty to preside when qualified is as strong as their duty to refrain from presiding when not qualified." *Conner v. State*, 472 Md. 722, 738 (2021) (quoting *Jefferson-El*, 330 Md. at 107). This presumption "carries with it the presumption that a judge will discard from his or her mind personal biases, inadmissible evidence, and other irrelevant matters in deciding a case." *Id.* at 749. To overcome this presumption, a party must prove that "the trial judge has 'a personal bias or prejudice' concerning him or 'personal knowledge of disputed evidentiary facts concerning the proceedings.'" *Jefferson-El*, 330 Md. at 107 (quoting *Boyd v. State*, 321 Md. 69, 80 (1990)).

In the instant case, Father has not overcome the strong presumption that the juvenile court in this case was acting impartially. The many instances cited by Father of supposed bias or prejudice from the court do not show that the court had any personal biases against Father or his counsel or personal knowledge about the facts of this case. The fact that the court disagreed with Father's counsel does not mean that the court was personally prejudiced against Father or his counsel.

APPELLEE'S MOTION TO DISMISS NO. 1171, SEPTEMBER TERM, 2022, GRANTED. JUDGMENTS OF THE CIRCUIT COURT FOR HOWARD COUNTY IN NO. 131, SEPTEMBER TERM, 2023, AFFIRMED. APPELLANT TO PAY COSTS.