

Circuit Court for Allegany County
Case No. C-01-JV-19-000043

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1733

September Term, 2019

IN RE: L.K.

Shaw Geter,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: April 22, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On October 25, 2019, following a hearing in the Circuit Court for Allegany County, appellant’s parental rights to her eighteen-month old son, L.K., were terminated. The court’s order granted the Department of Social Services’ (“the Department”) petition for guardianship with the right to consent to adoption. Appellant timely appealed and presents the following question for our review:

1. Did insufficient evidence support the juvenile court’s decision to terminate mother’s parental rights to L.K.?

For the reasons discussed, we conclude the court below did not err and affirm.

BACKGROUND

On April 18, 2018, L.K. was born in a local hospital in Alleghany County, Maryland. Both he and his mother, appellant, tested positive for cocaine. Following a shelter care hearing on April 25, 2018, L.K. was released from the hospital and placed in foster care. He has remained with the same family since his initial placement.

On May 10, 2018, L.K. was adjudicated a child in need of assistance (CINA).¹ Following the hearing, a visitation schedule was provided to appellant by L.K.’s social worker, Christina Pratt. Approximately 32 visits were scheduled. Appellant, however, did not visit L.K. The Department also provided appellant with information about upcoming court review hearings, as well as services to assist her, but she did not respond. During

¹ A CINA is a child who requires court intervention because “the child has been abused, has been neglected, has a developmental disability, or has a mental disorder” and the child’s caretaker is “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.

this sixteen-month time frame, appellant never saw her Child and had contact with the Department on only two occasions.

On March 27, 2019, the Department initiated guardianship proceedings. Appellant noted her objection through counsel and a contested hearing was held on September 23, 2019. She appeared for the hearing, along with L.K.’s father.² Neither had previously participated in any court proceedings since the CINA adjudication. Various witnesses were called, including Pratt, appellant, and L.K.’s father. Documentary exhibits were also admitted.

Pratt testified regarding her efforts to promote reunification with L.K., including offering a visitation schedule, sending letters about reunification services, and information about scheduled court hearings. She called appellant numerous times and sent text messages to the telephone number appellant provided her. Despite her efforts, appellant never attended any of the scheduled visits and never answered Pratt’s telephone calls. Pratt testified that appellant, on one occasion, approximately two weeks prior to the guardianship hearing, called to inquire about the hearing. According to appellant, she did not maintain contact with the Department because she was “still using” drugs, or she was in treatment, or she was “scared.” L.K.’s father, C.K., testified that he felt that the mother previously wasn’t ready to deal with her addiction issues. He stated “this is the first time where she has taken an initiative on her own towards, to try to get off of drugs . . . Now we are in a place where it is possible for us to move forward.” He further indicated that he had never

² The court deemed L.K.’s biological father, C.K., consented to the petition because of his failure to object within the allotted time frame. He is not a party to this appeal.

visited L.K.

On October 28, 2019, the court entered its written opinion and order. It evaluated each of the statutory factors, and found that exceptional circumstances existed that made continuation of appellant’s parental relationship detrimental to the best interests of L.K. The court determined the Department made reasonable efforts to facilitate reunification with L.K., but appellant did not avail herself of the opportunities created for contact, visitation, or reunification.

The court found:

[She] [h]as not been able to adjust her circumstances, conduct, or conditions to make it in the best interest of the Child to return home.

[She] [h]as not maintained regular contact with the Child since his birth.

[She] [h]as not maintained regular contact with:

The local department since the Child’s birth

The Child’s caregiver since his discharge from the hospital into the foster home

[She] [h]as not contributed to the care and maintenance of the Child to the extent financially able to do so since his birth.

[She] [d]oes not have a disability that renders her unable to care for the immediate and ongoing physical or psychological needs of the Child for long periods of time.

The court further held “additional services would not be likely to bring about a lasting parental adjustment so that [L.K.] could be returned to the parent within an ascertainable time.” The Child was found to have no emotional ties to his mother, father or siblings because they never “visited with him.” In examining L.K.’s bond with his foster

family, the court determined “they are the only family he has known.” After finding exceptional circumstances existed, the court granted the Department’s petition.

STANDARD OF REVIEW

Appellate courts review a juvenile court’s decision to terminate parental rights by utilizing “three different but interrelated standards.” *In re Adoption of Ta’Niya C.*, 417 Md. 90, 100 (2010).

When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Second,] [i]f it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon some 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 C.E., 464 Md. 26, 47 (2019), *reconsideration denied* (July 24, 2019) (quoting *In re Adoption of Ta’Niya C.*, 417 Md. 100).

[Q]uestions within the discretion of the trial court are much better decided by the trial judges than by appellate courts, and the decisions of such judges should only be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred. In sum, to be reversed the decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.

In re Adoption of Cadence B., 417 Md. 146, 155–56 (2010).

DISCUSSION

I. The juvenile court did not err as a matter of law or abuse its discretion in concluding that appellant’s parental rights should be terminated.

“The relevant question in a TPR proceeding is whether the parent is unfit to continue the *parental relationship* or whether there are exceptional circumstances that make the

continued *parental relationship* detrimental to the child’s best interest.” *In re Adoption/Guardianship of C.E.*, 464 Md. at 49–50 (emphasis in original). “The grant of guardianship terminates the existing parental relationship and transfers to the State the parental rights that emanate from a parental relationship.” *Id.* at 48. Maryland cases have

recognize[d] and give[n] full appropriate weight to the fundamental right of the parents, as indeed they must, but they all recognize as well that the right of the parents is not absolute and that it 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).

Maryland Family Law Code § 5-323(d) provides, in pertinent part:

(d) . . . in ruling on a petition for guardianship of a child, a juvenile court shall give primary consideration to the health and safety of the child and consideration to all other factors needed to determine whether terminating a parent’s rights is in the child’s best interests, including:

- (1) (i) all services offered to the parent before the child’s placement, whether offered by a local department, another agency, or a professional;

(ii) the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent; and

(iii) the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any;
- (2) the results of the parent’s effort to adjust the parent’s circumstances, condition, or conduct to make it in the child’s best interests for the child to be returned to the parent’s home, including:
 - (i) the extent to which the parent has maintained regular contact with:
 1. the child;

2. the local department to which the child is committed;
and

3. if feasible, the child's caregiver;

(ii) the parent's contribution to a reasonable part of the child's care and support, if the parent is financially able to do so;

(iii) the existence of a parental disability that makes the parent consistently unable to care for the child's immediate and ongoing physical or psychological needs for long periods of time; and

(iv) whether additional services would be likely to bring about a lasting parental adjustment so that the child could be returned to the parent within an ascertainable time not to exceed 18 months from the date of placement unless the juvenile court makes a specific finding that it is in the child's best interests to extend the time for a specified period;

(3) whether:

(i) the parent has abused or neglected the child or a minor and the seriousness of the abuse or neglect;

(ii) 1. A. on admission to a hospital for the child's delivery, the mother tested positive for a drug as evidenced by a positive toxicology test; or

B. upon the birth of the child, the child tested positive for a drug as evidenced by a positive toxicology test; and

2. the mother refused the level of drug treatment recommended by a qualified addictions specialist, as defined in § 5-1201 of this title, or by a physician or psychologist, as defined in the Health Occupations Article;

* * *

(v) the parent has involuntarily lost parental rights to a sibling of the child; and

- (4) (i) the child’s emotional ties with and feelings toward the child’s parents, the child’s siblings, and others who may affect the child’s best interests significantly;
- (ii) the child’s adjustment to:
 - 1. community;
 - 2. home;
 - 3. placement; and
 - 4. school;
- (iii) the child’s feelings about severance of the parent-child relationship; and
- (iv) the likely impact of terminating parental rights on the child’s well-being.

In order to terminate parental rights, there must be a showing by clear and convincing evidence that the parent is either unfit, or exceptional circumstances exist that would make the continued relationship detrimental to the child’s best interest. Md. Code Ann., Fam. Law, § 5-323(d). Courts examine the factors in § 5-323(d) to determine if termination of parental rights is in the child’s best interest and to conclude whether exceptional circumstances exist. *In re Adoption/Guardianship of C.E.*, 464 Md. at 50.

Here, appellant argues that because the court’s findings regarding the statutory factors were clearly erroneous, the court abused its discretion in concluding that exceptional circumstances existed to warrant the termination of her parental rights. Conversely, appellees maintain the evidence established by clear and convincing evidence that continuation of appellant’s parental rights was detrimental to L.K.’s best interest.

At the conclusion of the evidentiary hearing, the juvenile court convened a hearing and stated its findings and conclusions on the record. The court also entered a written order, wherein it made factual findings on each of the statutory factors. The court also stated the following: “neither parent has visited the [C]hild or maintained any kind of relationship with him since his birth;” while appellant “has recently participated in substance abuse treatment, . . . she is a stranger to her two year old son;” and L.K. “had remained with the same foster care family he was placed with at birth and knows no other family.”

Appellant does not contend these findings were in error, rather she insists the lack of visitation was a “temporary and correctable deficiency.” As such, appellant argues the court’s finding that she did not adjust her circumstances to make it in the child’s best interests to return home was error. According to her, she had been sober for six months prior to the hearing and had a stable home because she was living with L.K.’s father as well as taking care of their oldest child. She had completed an in-patient drug program and she was participating in outpatient treatment, with drug testing. Considering these facts, appellant argues that additional services would likely have brought about a lasting parental adjustment and it was in L.K.’s best interest to continue the parental relationship.

Appellant, however, seems to overlook the other § 5-323 factors a court is required to consider in examining a parent’s efforts to adjust their circumstances, such as contact with the local department and/or the Child’s caregiver. Also, whether services would likely bring about an adjustment so that the Child can be returned within an ascertainable time not to exceed 18 months from the date of placement, unless it is in the Child’s best interest

to extend the time period. While it is uncontroverted that appellant made progress in her sobriety, the court's findings were also clear that she had made no attempts to communicate with the Department or L.K.'s caregiver about her Child, nor did she visit or prepare to parent him during his first eighteen months of life. Appellant seems to minimize the significance of visitation in such determinations. As the court noted, she had not "maintained any kind of relationship with him since his birth." The court also noted that appellant "admitted she was aware of the department's efforts to reach her and knew she was able to participate in services and visit with her Child. Her stated reason for not doing so, even after achieving sobriety, was that she was "afraid of contact with DSS."

Essentially, because she had no visitation or contact with L.K., she had no parental relationship with him and she made no efforts to establish one. The court's determination thus, did not reflect an emphasis on visitation but, rather, an analysis of appellant's commitment to basic parenting and her efforts to adjust her circumstances to make it in the Child's best interest to be returned to her. Its decision that additional services would not likely have brought about a lasting parental adjustment was, therefore, not erroneous, but rather, based upon the uncontroverted evidence presented in the hearing. We hold its final determination that exceptional circumstances existed was not an abuse of discretion.

While biological parents have a Constitutional right to raise their children, that right is rebutted when, as in the case at bar, exceptional circumstances are found. *In re Adoption/Guardianship of Rashawn H.*, 402 Md. at 495.

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