UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1841

September Term, 2014

IN RE: ADOPTION/GUARDIANSHIP OF EMILEE G., DEVIN G. AND BELLA G.

Hotten,
Reed,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: May 19, 2015

Appellant, William G. ("Mr. G."), is the father of Emilee G., born July 10, 2009, Devin G., born August 8, 2010, and Bella G, born March 27, 2012. The children were found children in need of assistance ("CINA")[1] on September 13, 2012. Mr. G. appeals the decision by the Circuit Court for Washington County, sitting as a juvenile court, terminating his parental rights. He raises one question for our consideration: "[d]id the court err in terminating [his] parental rights to his children? We answer that question in the negative and affirm the judgment of the juvenile court.

FACTS AND LEGAL PROCEEDINGS

The Washington County Department of Social Services ("DSS") became involved with the family because all three children were born testing positive for cocaine. DSS referred mother, Patricia C. ("Ms. C."), to substance abuse treatment at a residential facility, but she left the program early and relapsed. On August 14, 2012, Mr. G. called DSS and reported that Ms. C. had invited drug dealers into the family home and that he found drugs on the floor within the children's reach. The children were sheltered on that day, and a safety plan was put into effect that prohibited Ms. C. from having contact with the children, except under DSS supervision. On August 28, 2012, Allison Lillas, a DSS worker, observed Ms. C., Mr. G. and the children walking down the street together in violation of the safety plan. The next day Ms. Lillas went to the family home and found Ms. C. with the children on the front

[1]Md. Code (1974, 2013 Repl. Vol.), §3-801(f) of the Courts & Judicial Proceedings Article, defines a "Child in need of assistance" as "a child who requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs."

porch without another adult present. DSS workers informed Mr. G. of their decision to change the placement to a licensed foster care as a result of his failure to protect the children from Ms. C. Mr. G. then took the children into the home and denied DSS access. The next day, when DSS came to the house with an order of entry, the children were not there. DSS later located them at their aunt's home. The children were removed and placed in foster care on August 29, 2012. In November 2012, Emilee was removed from her first foster care placement and placed in a therapeutic foster care home because of her violent and sexualized behavior. Devin and Bella remained together in a foster care home.

The permanency plan was reunification with a concurrent plan of relative placement, but the relative's home study was denied. In January 2014, DSS recommended a plan change to a permanent adoptive placement without a concurrent plan because of Mr. G.'s inability to end his relationship with Ms. C. and his lack of understanding of the children's safety and developmental needs. Following permanency review hearings in January, February, and March of 2014, the court ordered the permanency plan be changed to adoption. Mr. G. appealed that decision to this Court, and we held, in an unreported opinion, that the juvenile court did not err in changing the permanency plan because it addressed specifically the factors in Maryland Code (1999, 2012 Repl. Vol.) § 5-525 of the Family Law Article ("FL") in determining the best interest of the children in changing the permanency plan. *See In re Emilee G., Devin G. & Bella G.*, No. 96, Sept. Term 2014 (filed Nov. 6, 2014, slip op. 21).

On April 11, 2014, DSS filed a Petition for Guardianship with the Right to Consent to Adoption for Emilee, Devin, and Bella because the children had been in care, custody, and control of DSS since August 14, 2012. On April 24, 2014, both Mr. G. and Ms. C. objected to the guardianship petitions.

At the two-day termination of parental rights ("TPR") hearing on August 19 and 21, 2014, Ms. C. signed a post-adoption contact agreement and withdrew her objection and consented to a termination of her parental rights. The attorney for the children argued that Mr. G.'s parental rights should be terminated. Because TPR decisions are necessarily fact intensive, we will summarize the testimony given before the juvenile court.

Mr. G.'s testimony

Mr. G. testified at the hearing that all three children tested positive for drug exposure at birth, but he did not know that Ms. C. was using drugs while pregnant. He explained that he did not "know what she was doing at the time until she had the babies" because she told him that she was "done with it." He testified he sent her to rehabilitation, and because she had completed all but one program, he thought she had addressed her issue. During his testimony, the following transpired:

> DSS: Why . . . didn't you take the necessary steps to protect [the children] from their mother . . . when each time she had a child she was doing drugs.
>
> Mr. G.: She didn't do it around me you know that's the problem.
>
> DSS: So if it's not around you it's not your problem?

> Mr. G.: What? It's still my problem if she come home like that but when she go out, I don't know what she do. Like right now she go up the street right now without me, I don't know what she will do. I can't worry about that. I got to worry about my baby[2]. . . .
>
> DSS: Do you trust Ms. C. now?
>
> Mr. G.: To a certain extent. I can't say fully though. To a certain extent.
>
> DSS: Do you believe she is clean right now?
>
> Mr. G.: Right now I believe she clean because I know because I been around her.

Mr. G. later testified, however, that when Jace was born, he expected Jace to be born drug-exposed, and was surprised when he did not test positive because Ms. C. had been leaving the house to spend time with friends.

Mr. G. stated that he has never had a positive urinalysis and never had an issue with drug abuse. He completed Love and Logic, a three-week program, and he completed a 12-week father class at the Sunshine Center.

Mr. G. testified that he and Ms. C. were living together when all three children were born, and he did not separate from her because "she went to treatment and she was trying to do right," and people were telling him to "give her a chance." He thought that the children had been removed from his care because Ms. C. came to the house, but that he "didn't get a chance" to ask her to leave because the social worker came as soon as he learned that Ms. C. was there.

[2]Mr. G. and Ms. C. have a fourth child together, Jace, who is not in the custody of DSS.

At the time of the TPR hearing, Mr. G. was living with Ms. C., even though in January and February earlier that year, he had testified at a review hearing that they were not living together because he was trying to separate himself from her. He testified that as of the TPR hearing, Ms. C. was "clean," and in a rehabilitation program. He hadn't observed any of the previous behavior he observed when she was using, and they have "a great relationship." And, if he were to see Ms. C. exhibit the same behaviors that he saw when she was using, he would make her take a drug test, and if it was positive, he would "make her get help." When asked what he would do if she refused to get help, he testified: "[s]he won't. She'll do it," but if she refused, he would not allow her to live at the house or be alone with the children.

Mr. G. and Ms. C. previously had arguments because of her drug use. He filed a protective order against her that was granted, but he "rejected it because she needed a place to stay and [they] talked about it." He also explained that at the time, the children were "coming to home visits and [he] figured [he] was trying to get [the] kids home so . . . [he] dimiss[ed] it to try and help get [the] kids home." Mr. G. acknowledged that Ms. C. also sought protective orders against him. The first was filed in August 2012, but was dismissed because Ms. C. did not come to court. At that time, Mr. G. had also filed a protective order against Ms. C., but it too was dismissed. Ms. C. again filed protective orders against Mr. G. in March 2013, which was rescinded, in June 2013, which was dismissed for failure of Ms. C. to appear, and in November 2013, which was dismissed for failure of Ms. C. to appear. In April 2013, Mr. G. was incarcerated for violating the March protective order. At the time of

the TPR hearing, Mr. G. was not concerned about any future domestic disputes that may put their fourth child, Jace, in jeopardy because they had not had any domestic disputes since restarting their relationship in February 2014. When questioned whether he would ask Ms. C. to leave the residence to ensure Jace's protection, he responded:

> No, I'm not going to throw her out. I'm not going to just throw her away like that. No I'm going to take it - - I'm going to put that kid in my care so that I don't have to deal with social service because social service don't have nothing on me. It's her with the problem.

The DSS attorney asked Mr. G. if he remembered "being told by [DSS] early on at shelter that if [he] could simply keep mom away from the house [he'd] be able to keep [his] kids. Mr. G. responded: "Right. That's what they told me that's why even the judge knew that I had to be a great man to even give them to me. But she came to the house on her own. She - - She love[s] her kids. It's just her addiction messes her up." He was also asked, "the reason your children are out of your care, do you believe any of it has to do with you?" To which he responded: "No. Nothing to do with me." He reaffirmed that position with his testimony:

> I didn't do anything wrong. I did everything I had to do. I got a roof for - - I got a roof over my head for my kids, I got food for them, I got plenty of money in the bank saved up that I saved myself so when they come home, I can just run and grab brand new beds.

In his view, his only fault in the situation was telling DSS about the drugs on the floor. Mr. G. further testified that he's had four different residences in the past 18 months because of the protective orders Ms. C. has filed, and each time the police have "put [him] out." He testified

that he currently lives in a three-bedroom house, but would move to a bigger house if the children are returned to his care.

According to Mr. G., he doesn't have steady work, but receives disability payments of $723 a month. He pays $600 in rent, an electric bill, $40 a month for a cell phone, and for groceries with food stamps. He testified that Ms. C. receives her own check, and, if the children return home, they'll receive checks as well. Mr. G. testified that he had no problem taking care of the three children along with Jace, and he can provide them with whatever they need. Because he receives disability payments, he does not provide child support, but he does supply them with clothes, birthday presents, and Christmas presents. He testified that he was never asked to pay child support, but if he had been, he would have paid it.

He explained that he would address Emilee's behavioral problems by taking "her to therapy, sit down with the doctor and watch what she do." If "the doctor say she do this type of stuff they tell me, I would have to work with her. . . . I would say 'Emilee, you can't do that, that's not nice. That's bad.' 'Emilee, stop it, that's no good. You're going to get in trouble.' I talks to them like that." He testified that currently when Emilee behaves poorly, he'll say "'You know you got to listen to Daddy. . . . What you do is affecting me. If you want to come with me, you got to do what Daddy tell you.' And that's when she pays attention." He disagreed that Emilee's conduct made it unsafe for the other children to be around, testifying that she wouldn't hurt her brother and that at a recent visitation she took care of him. But, he would not leave Emilee alone with the other children. As to the other children,

he testified he would punish them if they misbehaved by not letting them watch television or play outside, and he would teach them to say "sorry."

Numerous times throughout his testimony, Mr. G. disagreed with statements of others calling them "liars." For example, he testified that he thinks the foster mother is lying about Emilee's sexualized behavior. The children's attorney asked Mr. G. if he remembered testifying at a hearing on September 13, 2012 that he was asleep during the incident when Ms. C. was at the home during the unannounced DSS visit, to which he responded that his testimony that he was asleep was "a lie." The children's attorney also asked him if he thought that the stenographer who prepared the transcript was part of a conspiracy of DSS, he responded "[t]hat's right." Later in his testimony, he admitted that he may have said that he had fallen asleep. The DSS attorney asked Mr. G. about the social worker seeing him and Ms. C. walking down the street with the children after issuance of the court order prohibiting her from having unsupervised contact. Mr. G. testified that that never happened, and that the social worker was "lying" when she said she saw that. During his testimony, when asked about two missed urinalysis tests, he testified that he hadn't missed any. And, when questioned about the health department records indicating that he had missed appointments, he stated that the records were "a lie."

Allison Lillis's Testimony

Allison Lillis, a DSS case worker was assigned to the family beginning July 23, 2009 when Emilee was born exposed to drugs. She testified that after each child was born, Ms. C.

was referred for addiction treatment assessments. "The Department attempted to work with Mr. G. regarding some past history of substance abuse concerns with him and [] offered ongoing services." Ms. Lillis explained that after Emilee was born, the "case was transferred to Consolidated Services" and was "closed prior to Devin being born with the understanding that Mr. G. would be the primary caregiver of Emilee." After Devin was born, the case was transferred to a different person in Consolidated Services. Ms. Lillis was reassigned the case after Bella's birth, and there was a recommendation for Ms. C. to "go inpatient at the Cameo house."

Ms. Lillis testified to conversations with Mr. G. regarding his knowledge of Ms. C.'s drug use. He "had always told the Department that he was not using and that even if Ms. C. was under the influence, he was able to protect those children." On August 28, 2012, Ms. Lillas observed Ms. C. and Mr. G. leaving DSS after a supervised visit and saw them walking down the block together. Prior to the visit, however, DSS had Ms. C. enter the building through the front entrance and had Mr. G. and the children enter through the back entrance. Ms. Lillas testified that she conducted an unannounced home visit on August 29th with a foster care intern. "Upon walking up to the residence . . . when we arrived at the gate, Ms. C. was on the front porch. I believe she was sweeping and Devin and Emilee were outside eating. Ms. C. was yelling something to Mr. G. inside the residence." It did not appear to her that Ms. C. had just arrived.

Shana Matthews's Testimony

Shana Matthews, a program coordinator and visit coach at the Sunshine Center testified that Ms. C. and Mr. G. had visitation at the center for eight months, stopping in March 2014. During that time she observed Mr. G. for "probably 30" visits. She explained that the Sunshine Center provides a home-like atmosphere for the visits, and often during visits Ms. C. and Mr. G. would prepare lunch together and have lunch with the children as a family. "Mr. G. was able to provide the children with food for their visit, for the most part brought activities to the visits, was able to facilitate those activities with the children." She testified that "there was some good mutual work between [Ms. C. and Mr. G.] in caring for the children during that time." After five or six months of visits the parents visited the children separately because of a breakup in the relationship.

Regarding the children's bond with Mr. G., she testified:

> Most times the children would greet him with a hug. They would run to him understanding that you know when they saw him come in the room, they would run to him. There were a few times that Emilee kind of hesitated, which is not unusual for children of that age. . . . but for the most part all of the children approached with love.

Ms. Matthews testified that the coaching she provided included appropriate discipline and redirection, and that Mr. G. "did a lot of the play" and Ms. C. "provided all of the [] redirection and discipline when needed." But, she had seen Mr. G. discipline Emilee when she was being disrespectful, and, in Ms. Matthew's opinion, he disciplined her appropriately. He was also able to redirect the children during visits when Ms. C. was acting inappropriately.

She testified that Mr. G. was mostly receptive to the coaching she gave during the visits, but she asked him to do some "homework," that involved "setting up a schedule for his visit time" but "he made it pretty known he was not going to do homework." She explained that it was a concern because "it takes some level of investment" for parents to take the lessons they've learned at the center and "think about how are they going to work this out independently" and show that "they are able to then use that structure in their own home[.]"

According to Ms. Matthews, visits were referred back to DSS because Mr. G. had become "irate" upon learning that Bella had broken her leg and made "some threatening remarks regarding the resource parent" a few hours prior to a visit and there is no security at the Sunshine Center. Additionally, Mr. G. was "hard to focus during visits because of various things that were happening with u'm personally I think with the case." She explained that at one visit he thought "he lost an I-Pod or an I-Pod had been stolen and it became kind of his fixation during that visit and it was very difficult to get him to focus on meeting the needs of the children," as he continually left the room to look for it. She also testified that "it's very easy for [him] to be distracted at times when things are emotionally an upheaval for him. It's been very difficult for him at different times to concentrate on meeting the needs of the children." She testified that coaching was helpful, and if they had time to talk "it was easier for [Mr. G.] to attend to the children, but if we did not have time for that, then it was a struggle for dad to make sure that he was attending to the emotional needs of the kids at

certain visits." The iPod incident, however, was the only visit she considered terminating early because of Mr. G.'s behavior, and Mr. G. apologized for his behavior at the end.

Cali Kazmarek's Testimony

Cali Kazmarek, a foster care caseworker, testified that services were provided including weekly visitation at DSS, substance abuse and mental health for Ms. C., a CASA evaluation for both parents because of domestic violence concerns, parenting services, and a relative resource placement investigation, but the relative was denied. She testified that the parents attended and completed CASA counseling, and Mr. G. was recommended to Dad's Connection. Ms. Kazmarek testified that since the plan changed, Mr. G. had been called for color code[3] "probably a dozen times" and he missed two; Ms. C. reported to six color codes, which were negative, and she missed three.

Regarding the visits, Ms. Kazmarek testified that the parents visited together from September 12, 2012 through November 7, 2012, and she had no concerns with the actual visits. The visits were referred to the Sunshine Center in November 2012, and were held there for three hours at a time. In January 2013, unsupervised home visits were supposed to occur along with visits at the Sunshine Center, but the in-home visits lasted only for approximately two months because of concerns regarding Ms. C.'s substance abuse. Visitation resumed at DSS on March 13, 2013.

[3]Color code is a randomized drug testing system where a person calls a phone number, and if their assigned color is "called," they are to report for drug testing.

Ms. Kazmarek testified that she observed visitations. She didn't have any concerns regarding Mr. G.'s interaction with the children until a visit on May 8, 2013, which did concern her because the kids were playing and one child took something from another, and "[t]hey were on the floor and dad directed Emilee to kick Devin because he was bad." When asked about how Mr. G. disciplines the children, Ms. Kazmarek testified that he "trie[s] to redirect them and turns it into more a game instead of sitting down and talking with them[.]" There were some visits that the children kept turning off the lights, so they had to stop the visits. Although not safety concerns, during other visits the children would run out of the room, so she had to redirect them.

Ms. Kazmarek testified that in addition to concerns about Ms. C. being in the household when she's using and "domestic violence when [Ms. C.] is using," there are concerns about "having a structure, having a plan to take care of the kids for their future doctor appointments, transportation to get to places, u'm follow through with saying, with things that he says he's going to do and doesn't follow through[,]" such as having a relationship with Ms. C. Ms. Kazmarek also explained that because Ms. C. had relapsed several times during the case, a two to three month period of sobriety of did not alleviate DSS's concerns.

Ms. Kazmarek testified that she has spoken with Mr. G. about what he can do to have the children returned, including "completion of court ordered paths," letting her know if he

needed transportation to color code appointments, and safety checks of the home. She testified that she spoke with him regarding Ms. C.'s presence in the home.

> DSS Attorney: Did you stress to him the importance of Ms. C. not being in the home?
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> Ms. Kazmarek: We had a conversation that if he wanted to be with her, he had to make his own choices and if that was what was best for him and the kids, then that's what he would have to do.
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> DSS Attorney: Meaning having her in the home?
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> Ms. Kazmarek: U'mhmm, yes.
>
> DSS Attorney: Did her - - up until today, did her presence in the home raise more concerns than her absence in the home?
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> Ms. Kazmarek: Yes it did.
>
> DSS Attorney: Why?
>
> Ms. Kazmarek: Substance abuse, u'm Mr. G. would get angry with Ms. C. whenever she would use, which would result in protective orders, domestic violence incidences.
>
> DSS Attorney: Did you explain to him the difference in - strike that. Did you explain to him the different options with respect to reunification with his children, whether he was choosing to have Ms. C. in the home or not?
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> Ms. Kazmarek: Yes.
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> ***
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> DSS Attorney: Is it fair to say that the Department's position was that it was more optimal if Ms. C. was not in the home?
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> Ms. Kazmarek: Yes.
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> ***

> The Court: And just so I'm clear, I didn't understand this sentence, the answer a couple questions ago and I think what you said was you told Mr. G. that he would have to make his own decision about having her in the home. So I'm not exactly clear what, what concrete guidance the Department was giving Mr. G.
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> Ms. Kazmarek: Well he, needed to make that choice if he wanted to make things work with her or not. I wasn't going to tell him he couldn't be with her.
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> The Court: Did you explain what the consequences were if, if he - - of each path he may have chosen?
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> Ms. Kazmarek: I probably wasn't clear no.
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> ***
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> DSS Attorney: Did you tell him that it would be more problematic that he chose to have her in the home than if not?
>
> Ms. Kazmarek: Yes.
>
> DSS Attorney: Okay. Based on that statement to him, what did he - - How did he respond? Did he acknowledge understanding that or not?
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> Ms. Kazmarek: At the time he was - - he was on board with that because he didn't want - - he wasn't with her.

She testified that in order for Mr. G. to successfully parent alone, he would have "to follow through with structure and routine. He doesn't follow through with setting boundaries, setting routines." She testified that during the visits "the kids can get away with anything. . . . They can physically beat up on each other, kick each other and Mr. G. doesn't do anything." She testified that such interaction is "a concern but it's not so much as a concern whenever its supervised by the Department. If they were at home, yes that would be a concern because there wouldn't be anybody to intervene." She testified that since the visits returned to DSS,

she has had to step in a handful of times, but DSS had not put more structure in place during the visits. One visit in July 2013 ended early when a worker came into help Mr. G. and he became upset and cursed at the worker in front of the children. During the visits, he brings food for the children and changes diapers. There is no organized activity, but he interacts with each child appropriately. Sometimes the parent aide will "model" for Mr. G. what to do, and he has gotten better. He attends visits regularly.

Ms. Kazmarek testified that the children "always are excited to see [Mr. G.]. They run to him, give them a hug, ask him what he brought for them," but, "[t]hey don't cry at the end of the visit. They say like "[s]ee you next week." She did not see that as "a problem."

She testified that Devin and Bella have been in the same foster home since December 2013, and Emilee has been in her foster home since November 2012. Emilee is "very well bonded" with her foster family, as are Devin and Bella with their foster family. The families have monthly visits, outside of the weekly parental visitation, where they conduct additional sibling visits.

Robin Stoops Testimony

Robin Stoops, a family support worker at DSS, helps with visitation and transporting the children from daycare to the office. She testified that at one visit Emilee called her foster mother "mom." When Mr. G. corrected her by saying that Ms. C. was her mother, Emilee became upset. Ms. Stoops told Mr. G. that those statements were not appropriate for the visit, and he "settled down." Ms. Stoops testified that out of approximately 28 visits, she has had

to step in four or five times, not because of safety concerns, but because the visits are chaotic. The "visits get loud and the kids run in and out or the lights go on and off" and usually it is not until she comes in will Mr. G. take control of the visit. She described him as a "playmate" to the children but not a disciplinarian.

Tina F.'s Testimony

Emilee's foster mother, Tina F. ("Ms. F.") testified at the hearing that Emilee has been in her care since November 13, 2012. She has a "wonderful relationship" with Emilee, and Emilee seeks comfort from her. Emilee refers to her as "Mommy" and her husband as "Daddy," and they would like to adopt her. Ms. F. testified that she takes Emilee to preschool, has put her in gymnastics classes, and she attends the Creative Learning Center.

According to Ms. F., Emilee has shown aggressive physical behavior, including "scratching, biting, hitting, [and] kicking," and that "anything could trigger" this behavior. When she does, she receives a "timeout." Emilee still has "meltdowns," but "they are short-lived" and the timeouts help address them. Ms. F. testified that Emilee has also exhibited "very aggressive, sexual behaviors." Ms. F. attempts to redirect her, and Emilee sees a therapist weekly to engage in play therapy.

Ms. F. testified that once a month she schedules a visit with the children's other foster parents so the children can be together, and they seem to interact well, but occasionally fight. In Ms. F.'s opinion, in the beginning, the fights were "very, very physical" but "their interactions have been much, much better." Each family redirects their own children when it

comes to discipline, and they respond to the redirection. In Ms. F.'s view, it would be difficult to have all three children in the home "[b]ecause of Emilee's aggression and her behaviors." Emilee "does do better as an only child." Ms. F. testified that almost every time the other children have come to her house she has observed unsafe interactions because when Emilee "doesn't get her way, she will lash out[.]"

Ms. F. also testified that Emilee's aggressive behavior stands out on days that she has visits with Mr. G. compared to other days, and this behavior continues.

Mark Conrad's Testimony

Mr. Conrad, a Consolidated In-Home Service Worker and a licensed Clinical Professional Counselor, testified that he worked with the family beginning in 2009 in the Continuing Child Protective Services. He became involved with the family because Emilee was born drug exposed, and his role was to "work with the family to try to . . . assess substance abuse issues as well as . . . any developmental issues for the child and coordinate those services." He worked with the family for six months, and there was a "chronic pattern" of cocaine use with Ms. C. With regard to Mr. G., his concern was that "Mr. G. [would not be] available to go for a drug screen despite [Mr. Conrad] offering to [] come pick him up and take him. Under the, the pretense that if he did test negative that Emilee could remain in the home under a safety plan." Emilee was then placed with a relative. A week later, Mr. G. wanted to take the drug screen and he tested negative at that time. That allowed Emilee to return home with him if he submitted to drug screens. Mr. Conrad testified that Mr. G.

cooperated with the remaining drug screens and did not test positive. During the six months he worked on the case, there was a pattern of non-compliance by Ms. C., and Mr. G. was not always present because of leaving after fights between the two. Right after Emilee was born, a CINA finding was denied because Mr. G. came forward saying he would care for her. The family said they did not want further services from DSS, and the case was closed.

Patricia C.'s Testimony

Ms. C. testified that the children are always happy to see Mr. G. He always packs lunch for the children before the visits, brings games and had bought portable televisions to keep them occupied. During their joint visitations, they would watch movies, do arts and crafts, and sometimes go to the park at the center. Mr. G. disciplines the children by "tell[ing] them not to do that," and they've learned from Emilee's foster mother that telling her "she's using good choices or bad choices" is helpful. According to Ms. C., the children listen to Mr. G. when he corrects them.

Ms. C. testified that there have been no incidences of domestic violence since she moved back in with Mr. G. She explained that in August 2012, she did go to the house when she was not supposed to be with the children unsupervised, and Mr. G. did not ask her to come. When she got to the door, DSS arrived, and she left immediately when they told her she had to leave.

According to Ms. C., before the birth of each child, Mr. G. expressed concern about her illegal drug use. He knew that she was "smoking weed" before she got pregnant with

Emilee and "he asked her to stop and was concerned about it then, but he didn't know about anything else until after Emilee was born." When he was aware of her other drug use, he sent her to rehabilitation. During her pregnancy with Devin, he expressed concerns about whether she was using and tried to keep her away from people who were bad influences, but she testified that "it didn't really work until after Bella was born and they sent me to Cameo House and then I got hooked up with Turning Point," which has "been a great success[.]"

The Juvenile Court's Ruling

In a written order filed September 29, 2014 the juvenile court found that it was in the children's best interests to terminate the parental rights of Mr. G. finding both that he was unfit and that exceptional circumstances existed that made the continuation of the parent-child relationship detrimental to the children's best interests. The court explained

> The mother [Ms. C.] has grappled with a long term addiction to cocaine, which predated the birth, on July 10, 2009 of the first child Emilee. It is not known whether [Mr. G.] used or abused illegal drugs. There is no criminal or other history that shows drug use, however, during a period from about September 2013-January 2014, about a year and a half, he was a consistent no-show for Court Ordered random, color code drug testing [for which the Department would provide transportation on request]. The Court finds that these no shows were "behavioral positives," and show a strong possibility that during this time [Mr. G.] used illegal substances, but did not want that drug use detected through drug testing.
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> ***
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> Because of the drug exposure at birth and domestic violence between the parents, a discussion of extent, nature, and timeliness of services by the DSS, includes services offered to both parties. The needed services, and the parents respective efforts, are intertwined because they continued to live together up to the present day.

> For this reason services offered directly to [Ms. C.] including drug treatment are also considered by this Court to be services that [Mr. G.] was offered to help address his repeated unwillingness or lack of ability to prevent [Ms. C.] from further drug use and possible future drug exposure to, as yet, unborn Children.
>
> The drug treatment services for [Ms. C.] would also have assisted [Mr. G.] in protecting the Children from potential harm caused by living with a Mother who continue to use drugs[.]

With respect to Mr. G. allowing Ms. C. to be with the children, the court stated that "[t]he testimony is clear that [Mr. G.] knew and understood that he was not to allow any unsupervised contact with [Ms. C.]." As to Ms. Lillas coming to the family home unannounced, the court explained:

> [Mr. G.] testified that he did not know [Ms. C.] was there or that she was coming. However, [Mr. G.'s] testimony about where he was in the house and what he was doing was, at the best of times, mildly inconsistent, and at worst of times, was wildly inconsistent and a tad incoherent. This Court simply does not believe the testimony of [Mr. G.] that he did not know [Ms. C.] was there interacting with the Children. The Court also did not believe his testimony that [Ms. C.] had just walked up, unannounced, and that [Mr. G.] had no control over whether she stopped by the home.
>
> If [Mr. G.'s] testimony were true, then according to Ms. Lillas, if [Ms. C.] had not been there, the Children would have been on the front porch unsupervised by any adult, which would have been totally inappropriate and unsafe. [Mr. G.'s] version of who was where, and what he knew, and when, was not at all credible.

The court found the parents' relationship to be problematic because of

> the domestic violence concerns and [Ms. C.'s] ongoing illegal drug use such that each Child was physically harmed at birth. The second layer, and less obvious problems were [Mr. G's] unwillingness or inability to stop conceiving children with a person who used illegal drugs throughout each pregnancy, such that three children were born exposed to cocaine. Then after birth, [Mr. G.] was unable or unwilling (without DSS intervention) to prevent the Mother's poor

> choices from putting the children further at risk, when she repeatedly brought her drug dealer friends home, and there were drugs laying on the floor.

The court questioned what Mr. G.'s responsibility was to protect the children and whether "his failure to have acted, support a finding of unfitness and/or exceptional circumstances." The court explained that it did "not believe that [Mr. G.] did not have knowledge that [Ms. C.] used illegal drugs during the pregnancy with Emilee" because the parties lived together, and Mr. G. "was very clear that he knew of [Ms. C.'s] drug use during those two subsequent pregnancies." The court noted that "[Mr. G.] literally threw up his hands in describing his utter powerlessness, and said repeatedly that she was going to do whatever she wanted. However, he also did not describe any type of consistent, persistent or even during those pregnancies general or vague efforts to stop her." The only "notable instance where [Mr. G.] did take action" was when he called DSS about "drug dealers coming into the home, and drugs laying on the floor where the Children had access."

The court pointed out that "the issue of whether [Mr. G.] terminated his relationship with [Ms. C.] became a constantly moving target from December 2013 through the TPR hearing." Mr. G. made "forceful declarations in the January 9, 2014 and February 20, 2014 permanency planning hearings under oath (and presented through counsel) that [Ms. C.] was the problem, she had done the harm to the children, and in order to be reunited with Emilee, Devin, and Bella, he was finished with [Ms. C.] for good. He agreed that he would keep her from the Children if only given the chance." However, "[Mr. G.] testified in the TPR hearing

that [Ms. C.] moved back in with him. They were living together again as of March 10, 2014, several weeks after his emphatic testimony that they were finished for good."

The court also noted that Mr. G. "seemed befuddled about what he could do to help an unborn child if [Ms. C.] wanted to use drugs. As to the pregnancy with Jace, he also said that there was no way she was using drugs during this fourth pregnancy. But several times, he testified that he was 'shocked' that this May 9, 2014 baby, Ja[c]e,[4] did not test positive for illegal drugs like his other Children had."

The court found that the argument that Mr. G. was an "innocent bystander" while Ms. C. did "all the harm to the Children" "completely ignores the reality that the [G.] children have lived with intolerable physical harm and other less objectively measurable forms of harm, which were the natural and undeniable consequence to Children when a parent fails to make any reasonable effort to protect them from obvious dangerous conditions or circumstances."

The court found that

> [w]ith three children born drug exposed, and with the parties having lived together during all three pregnancies, and with [Mr. G.'s] inappropriately casual attitude about what efforts he should or could have made to impact the safety of the Children in-utero, the Department had a legitimate concern as to whether [Mr. G.] himself, used illegal drugs.

[4] As to concerns about the care of Jace, Ms. Kazmarek testified that DSS was contacted after his birth because of the open case with the other children, but, because he was born negative for drugs, a case was never opened. When asked if it was determined that Jace was then safe in the care of his parents, Ms. Kazmarek stated: "correct." The court noted that the circumstances related to Jase was not "directly relevant to the analysis as to whether [Mr. G.] is a fit parent such that Emilee, Devin, or Bella would be safe in his care[.]

The court commented on Mr. G.'s "complete lack of cooperation for 1.5 years [from August 2012-January 2014] in failing to show up for drug testing,[5] and his 11th hour cooperation beginning January 2014, the month of the first day of the contested hearing on the change of permanency plan," and was concerned about his "behavioral positives."

The court also found that the seven protective orders filed between the parties, even though they "did not result in long-term Protective Orders" "raised a concern as to whether there was ongoing domestic violence in the household."

The court went through the FL §5-323 factors and found that services were provided to Mr. G., "including court ordered drug testing, which were designed to prevent future safety issues related to [Ms. C.'s] drug use and his possible drug use." The court concluded that "services directed specifically at [Ms. C.] . . . were reasonable services provided by DSS to [Mr. G.], because [Mr. G.] had proven himself repeatedly to be completely ineffectual in protecting his unborn Children from [Ms. C.'s] ongoing drug use." After Emilee was born, DSS "offered in home services, and Continuing Child Protective Services/Consolidate[d] Services from September 2009 through June 2010." After Devin was born, in home services were again offered from October 2010 through March 2011 and after Bella's birth, from May 2012 through August 29, 2012, the time of removal. DSS also provided transportation for all services. The court noted its concern that Mr. G. had asked Ms. C. to leave the Cameo House

[5]The missed color code drug testing appointments from September 27, 2012 until May 19, 2014 were documented in DSS Exhibit 2, the Guardianship Outline, which was admitted without objection.

"because he needed her assistance in order to maintain his housing," and in doing so he "seemed to ignore the devastating effect of her drug use to that point in time, with three drug exposed new born babies." Mr. G. was also provided with color code drug testing, but missed his appointments "all through 2012 and 2013 " which resulted in behavioral positives.

DSS additionally referred the parents to CASA "which offers a six month Abuser Intervention Program, counseling for victims of domestic violence, shelter resources, and legal counsel to file or represent parties at protective orders." The court noted that there was "no information that either party followed up at all on the required [] evaluation from CASA or other intervention on the issue of domestic violence." Mr. G. was also referred to parenting classes, which he completed, and provided transportation for visitation. The court found that DSS made reasonable efforts to facilitate the reunification of the children with either of their parents together or individually.

The court found that Mr. G. "has not been able to adjust to circumstances, conduct, or condition to make it safe for or make it in the best interests of [the children] to return home." The court recognized that there was no evidence that Mr. G. had the financial ability to support the children because he is on disability and had been "declared a non-resource for the purposes of child support." Additionally, no evidence was produced that it was Mr. G.'s "disability that makes him unable to care for the immediate and ongoing physical or psychological needs of each Child for long periods of time."

The court also found that "additional services would not be likely to bring about a lasting parental adjustment so that the children could safely be returned to the parent because for a year and a half after Emilee was born, Mr. G. was uncooperative with drug testing services." Even though he began cooperating in 2014, the court found "Mr. G.'s testimony [to be] inconsistent on important issues, such that no coherent position which would assure the safety of his Children came forth." Although "[a]t times he was very coherent and passionate in his positions," his "positions were often based upon things that were factually inconsistent with other believable evidence." As an example, the court cited Mr. G.'s statement that the foster mother and DSS employees were "liars" regarding Emilee's behavioral issues, and that "Emilee had none of these problems, or that she would not have the problems if she were with him," or that he could "fix any behavioral problems" by "turning off the television."

The court noted that Mr. G. thought the effort and attention Emilee needed by her foster parents during visits with the other children "was made up" and the court found he had "no ability to, abstractly and in any detail, understand his Children's challenges or their behaviors, and how he could play a role in their healthy and positive development." The court explained "[i]n a nutshell, if one cannot begin to understand that there is a problem the depth of the problem, or why it is a problem, one has no hope of making progress with that issue."

Even though Devin and Bella do not have behavioral issues, the court found that it would be unsafe for them to return to Mr. G.'s care because he "had little concept of his role

or his responsibility in trying to make sure that his three Children were not born drug exposed." The court found that Mr. G.'s testimony relating to the fourth child– that he first testified that he was shocked Jace tested negative for drugs at birth, but later testified that he saw no signs of Ms. C.'s drug use while she was pregnant with Jace, and then testified again he was shocked Jace did not test positive– "calls into question [Mr. G.'s] grasp on reality, his insight and his basic protective parental judgment."

The court pointed out that as the fact-finder, it "assesses the credibility of the witnesses who testify. When assessing the overall credibility and coherence of [Mr. G.'s] testimony, the Court does not believe that he is intentionally lying on all topics, but that he is on some. . . . [Mr. G.] seems unable to grasp and understand the nuances of possible dangers for his Children that lurk in the world, particularly when it comes to an addicted parent."

The court also found that at "many points after removal, [Mr. G.] was oppositional with the Department and those trying to provide resources to [Ms. C.], himself, and to the Children." The court believed that Mr. G. "would say what he believed he needed to say at the time to get the children back. However, later he would say something inconsistent on significant topics," and "made statements that caused concern that if he had access to the Children, that he would take them and leave." And although Mr. G. agreed that "he would cooperate with services if he had the Children back," the court found "that testimony about his cooperation was simply not credible." Mr. G. did not recognize "Emilee's behavioral challenges, and her need for ongoing therapeutic intervention," along with "his frequent

stubborn refusal to cooperate with the Court Orders, lead the Court to believe by clear and convincing evidence that he would not cooperate with getting Emilee the services she needs because he simply would not see the point in it." The court also found "that if Devin or Bella need[ed] professional intervention, whether medical, dental, mental health, developmental, educational, or otherwise, unless it was a very obvious problem that was right under [Mr. G.'s] nose, [Mr. G.] does not have the insight or perceptive abilities to recognize the issue, and take reasonable action."

The court found that Emilee would not be safe in Mr. G.'s care, nor would the other children "be safe from Emilee with her extreme aggression and sexualized behaviors, if Emilee were in his care." Due to Mr. G.'s "lack of basic insight, and ability to perceive or understand even basic and normal behavioral challenges and with his lack of parental judgment necessary to make decisions that would provide basic protection of the children from possible harm" or "support their basic healthy development," Bella and Devin would not be safe in his care. Mr. G. "neither saw nor believed that there was extreme aggression while the children were together, yet there was intervention in several visits due to either aggression or things getting out of control." In the court's view, additional services would not be helpful due to Mr. G.'s "lack of ability to grasp reality on issues that are important to physical, psychological, and emotional safety of the Children[.]"

Regarding the children's bond with Mr. G., the court found that they are happy to see him and "generally have positive interactions" with "some notable exceptions" like when Mr.

G. accused the DSS staff of stealing his iPod or getting angry when Emilee called her foster mother "mommy." The court found there was "credible testimony from the foster Mother that Emilee does not ask about her Father or mention her Father in between visits."

The court found that Mr. G. "seems to take on the role of being a 'fun guy[,]' . . . who 'would get [the children] whatever things they want." But "[h]e does not see or address anything that is below the surface" and "inappropriately believes that every behavioral issue that he sees with each Child is fixed by turning off the television." The children's "relationship with [Mr. G.] lacks the amount of depth and closeness, and parental bond that one would have expected. He functions more like a 'fun' uncle, than a Father."

The court found that the children have adjusted well to their current placements, and in particular, Emilee has bonded with her foster mother and "is making excellent progress in her overall development, with the support of a dedicated and hard-working foster family." According to the court, the children are "too young to understand or appreciate the topic" to have an emotional response towards termination of parental rights. The children have been in foster care for over two years and "[e]ach child has a positive and nurturing bond and parental relationship with the foster family. Each child is thriving in the placement. Each placement is a pre-adopt home." The court also found that the termination would provide "little, if any, disruption to the positive progress" that the children are making.

The court found that Mr. G. was unfit to parent

> by virtue of his previous failure to take reasonable action to protect each Child from the actual physical harm suffered through illegal drug exposure during

> pregnancy. Further the Court finds that [Mr. G.] is unfit to remain in a parental relationship with the Children due to his lack of basic insight or basic ability to understand the basic needs of the Children necessary to adequately support their mental health needs, and their positive behavioral development, physical development, psychological development, emotional development, and/or social development. . . . [T]he Children have suffered harm in [Mr. G.'s] care, and that they would not be safe in his care, such that the Children would be likely to suffer actual harm in his care, either from his failure to protect them, or as detailed above his failure to identify and reasonably meet their basic needs.

The court also found that exceptional circumstances existed because of Mr. G.'s

> lack of reasonable effort to protect each of his Children from exposure to drugs during pregnancy, and his lack of basic understanding of the risk of harm from that drug exposure, and his basic lack of understanding that he had a role in at least making attempts to prevent that drug exposure during pregnancy. An additional exceptional circumstance is [Mr. G.'s] choice to create a fourth pregnancy, and his living with [Ms. C.] during at least half of this pregnancy, and [Mr. G.'s] failure to show up for court ordered drug testing for all but the last month of the pregnancy. . . . He also lacks the insight and ability to understand even in a basic way some of the types of risk that the Children will encounter, and from which any reasonable parent provides protection.

On October 2, 2014, Mr. G. filed a timely appeal to this Court.

DISCUSSION[6]

Mr. G. argues on appeal that the juvenile court erred in terminating his parental rights because:

> there was insufficient evidence that he was unfit or that it was in the children's best interests for parental rights to be terminated. The father had an income (social security payments for his disability) and housing. He had a relationship with his children, who loved, and were bonded to, him. To the extent that the court found that the father had a substance abuse issue, the court's finding was clearly erroneous. "Behavioral positives" mean he did not have the tests, and

[6]The children's attorney did not file an appellate brief.

> in light of the utter absence of other evidence from which the court could infer that he was using drugs – someone witnessing him, a positive test, an arrest for buying drugs, an admission - - the court erred in finding that the father may have had a drug problem. . . .The mother's presence in the home in violation of the court order was what led to the children's removal, not because they suffered abuse or neglect at their father's hands. . . . The lower court erred in focusing on whether the children could be placed in the father's custody, rather than determining whether it would be in the children's best interests to continue the legal relationship with the father whom they loved and with whom they shared a bond.

DSS responds that "the juvenile court's factual findings and conclusions offered a substantial basis for the juvenile court's ultimate decision that there was clear and convincing evidence both of Mr. G.'s unfitness *and* exceptional circumstances to justify a TPR judgment." (Emphasis in original). According to DSS, "Mr. G. fails to establish any abuse of discretion in its application of the statute to the evidence presented" because "[t]he juvenile court reviewed the statutory factors" and "gave 'primary consideration to the health and safety of the child[ren]' and made the required statutory findings on an ample evidentiary record." § 5-323(d) of the Family Law Article. DSS contends that

> Mr. G.'s sole protest is that the court erred in inferring from his repeated refusal to be tested that he had a substance abuse problem. This protest, however, is of no avail, given that there is no indication from the court that a drug problem alone was the reason for its judgment that his rights should be terminated. Moreover, Mr. G. does not dispute that he in fact repeatedly missed these court-ordered drug screenings. This fact is relevant to two of the required factors, in § 5-323(d)(2) ("the parent's efforts . . . to make it in the child's best interests for the child to be returned" and § 5-323(d)(2)(iv) ("whether additional services would be likely to bring about a lasting parental adjustment"), as well as relevant to the overarching concern for the "health and safety of the child (§ 5-323(d)), given that Emilee, Devin, and Bella were born exposed to cocaine and their mother was a confirmed substance abuser.

A termination of parental rights implicates a fundamental liberty interest and constitutional right of a parent to raise his or her child, and "may not be taken away unless clearly justified.'" *In re: Adoption/Guardianship No. 95195062*, 116 Md. App. 443, 454 (1997) (quoting *In re: Adoption/Guardianship No. 10941*, 335 Md. 99, 112 (1994)). Our appellate courts have long recognized the gravity of a decision to terminate one's legal status as a child's parent. *Id.* On the other hand, a parent's fundamental right to raise his or her children "'must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect.'" *Amber R.*, 417 Md. at 709 (quoting *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 497 (2007)). Therefore, parental rights can be terminated if it is demonstrated by clear and convincing evidence that the parent is either unfit or that exceptional circumstances exist that would make a continued relationship with the parent detrimental to the best interests of the child. *Id.*

Because termination of parental rights involves two strong, but often competing, interests–that of the parent and that of the child–the General Assembly has established a detailed statutory scheme to guide and limit a court in determining a child's best interest, which is the overarching standard. *Id.* The State bears the heavy evidentiary burden of proving by clear and convincing evidence that termination of the parent's rights serves the best interests of the child. In making decisions concerning the best interest of the child, however, the juvenile court is "'endowed with great discretion.'" *Id.* at 713 (quoting *Petrini v. Petrini*, 336 Md. 453, 469 (1994)).

In reviewing a juvenile court's decision with regard to a termination of parental rights, "our function . . . is not to determine whether, on the evidence, we might have reached a different conclusion." *In re Adoption/Guardianship No. J970013*, 128 Md. App. 242, 247 (1999) (internal citation omitted). In these cases, therefore, "'the greatest respect must be accorded [to] the opportunity the [trial court] had to see and hear the witnesses and to observe their appearance and demeanor.'" *In re Adoption/Guardianship Harold H.*, 171 Md. App. 564, 570 (2006) (quoting *No. J970013*, 128 Md. App. at 247-248). Our role is to "'ascertain whether the [court] considered the statutory criteria, whether its factual determinations were clearly erroneous, whether the court properly applied the law, and whether it abused its discretion in making its determination.'" *In re Cross H.*, 200 Md. App. 142, 155 (2011) (quoting *In re Adoption/Guardianship/CAD No. 94339058*, 120 Md. App. 88, 101 (1998)).

FL §5-323 enumerates specific factors a juvenile court must consider in any TPR proceeding. In pertinent part, the statute states:

> §5-323. Grant of guardianship–Nonconsensual.
>
> ***
>
> (b) *Authority*.–If, after consideration of factors as required in this section, a juvenile court finds by clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interests of the child such that terminating the rights of the parent is in a child's best interests, the juvenile court may grant guardianship of the child without consent otherwise required under this subtitle and over the child's objection.
>
> ***

(d) *Considerations*.–Except as provided in subsection (c) of this section, in ruling on a petition for guardianship of a child, a juvenile court shall give primary consideration to the health and safety of the child and consideration to all other factors needed to determine whether terminating a parent's rights is in the child's best interests, including:

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

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

(iii) the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any;

(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

***

(iii) the parent subjected the child to:

1. chronic abuse;
2. chronic and life-threatening neglect;
3. sexual abuse; or
4. torture;

***

(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.

***

(f) *Specific finding required*.–If a juvenile court finds that an act or circumstances listed in subsection (d)(3)(iii), (iv), or (v) of this section exists, the juvenile court shall make a specific finding, based on facts in the record, whether return of the child to a parent's custody poses an unacceptable risk to the child's future safety.

The statutory scheme requires the court to consider and make specific findings with respect to the factors enunciated in FL §5-323(d), and, mindful of the presumption favoring a continuation of the parental relationship, determine if the findings suffice to show either an unfitness of the parent or exceptional circumstances that would make a continuation of the parental relationship detrimental to the best interest of the child. *Ta'Niya C.*, 417 Md. at 102.

The juvenile court, as required, considered the §5-323(d) factors and clearly enunciated those findings in a written opinion. With regard to FL §5-323(d)(1), the services offered to

the parent and the extent to which DSS and the parent fulfilled their obligations under service agreements, the Court of Appeals in *In re Rashawn H.*, 402 Md. at 500, explained, "[t]he statute does not permit the State to leave parents in need adrift and then take away their children[;]" however, "[t]here are some limits . . . to what the State is required to do." The State "must provide reasonable assistance in helping the parent to achieve those goals, but its duty to protect the health and safety of the children is not lessened and cannot be cast aside if the parent, despite that assistance, remains unable or unwilling to provide appropriate care." *Id.* Here the court found that

> the services offered directly to [Ms. C.] including drug treatment are also considered by this Court to be services that [Mr. G.] was offered to help address his repeated unwillingness or lack of ability to prevent [Ms. C.] from further drug use and possible future drug exposure to, as yet, unborn Children.

The court also found that services were directly offered to Mr. G. in the form of drug testing, "in home services" offered through Continuing Child Protective Services after each child was born drug exposed, referrals to CASA for domestic violence counseling, parenting classes, visitation, and transportation. The court's finding that DSS provided services was not clearly erroneous based on Ms. Lillas's, Ms. Kazmarek's, and Mr. Conrad's testimonies of the services offered to Mr. G., nor does Mr. G. argue that DSS did not provide reasonable services.

As for findings with respect to FL §5-323(d)(2), the court's finding that Mr. G. had "not been able to adjust to circumstances, conduct, or condition[s] to make it safe for or make it in the best interests of [the children] to return home" was not clearly erroneous. To Mr. G.'s

credit, he had maintained regular contact with the children, and he had provided them with clothes, food, and presents during his visits. The court found that there was no evidence that Mr. G. had the financial ability to support the children because he is on disability and has been "declared a non-resource for the purposes of child support." Additionally, although Mr. G. testified that he is financially stable to support the children, the court found his testimony to not be credible because he gave conflicting testimony as to how he afforded things in addition to his rent and utilities. *See In re Landon G.*, 214 Md. App. 483, 492 (2013) (quoting *State v. Smith*, 374 Md. 527, 534 (2003) ("We give due regard to the [fact-finder's] . . . resolution of conflicting evidence, and significantly, its opportunity to observe and assess the credibility of witnesses.")).

The court found that "additional services" would not be likely to bring about a lasting parental adjustment so that the children could safely be returned to the parent" because Mr. G. was "uncooperative with drug testing services" for a year and a half until the permanency plan was changed from reunification to a concurrent plan of adoption, and he had "no ability to, abstractly and in any detail, understand his Children's challenges or their behaviors, and how he could play a role in their healthy and positive development." Mr. G. ignored the safety plans regarding Ms. C. having unsupervised contact with the children, and he continued a relationship with Ms. C., despite DSS's concern about Ms. C. living in the home and the parents' domestic violence disputes. According to the court, based on his testimony, Mr. G. does not appear to recognize that Emilee has severe behavioral issues that need attention, nor

understand how to properly discipline his children. Furthermore, the court, based on his conflicting testimony and general lack of recognition that the children were in need of services, found it questionable whether Mr. G. would continue to participate in services if the children were returned. Based on the testimonies of Mr. G. and the caseworkers, the court's finding that additional services would not help Mr. G. was not clearly erroneous.

Finally, in addressing FL §5-323(d)(4), the child's emotional ties to the parent, the child's adjustment to his community, home, placement and school, the child's feelings about severance of the parent-child relationship, and the likely impact of terminating the parental relationship on the child's well-being, the court acknowledged that the children "generally have positive interactions" with Mr. G., who "seems to take on the role of being a 'fun guy' . . . who would get the children whatever they want" but that the relationship lacked "the amount of depth and closeness, and parental bond that one would have expected." The court also found that "[e]ach child has a positive and nurturing bond and parental relationship with the foster family. Each child is thriving in placement. Each placement is a pre-adopt home." Such a finding was supported by the unobjected to testimony of the caseworkers and Emilee's foster mother and the agency's report that was admitted into evidence. The court clearly considered both the type of bond between Mr. G. and his children, and the children's bond with their foster parents.

With respect to Mr. G.'s argument that the court finding that he "had a substance abuse issue . . . was clearly erroneous" we first point out that the court only found the "behavioral

positives" to "show a strong possibility that during this time [Mr. G.] used illegal substances," not that he in fact did so, and that DSS "had a legitimate concern" that Mr. G. used drugs. Certainly his failure to take drug tests could support a reasonable inference that he would have tested positive if he had. Moreover, even if that finding was error, it was harmless because the court did not base its unfitness determination on a potential drug problem, but rather that his failure to appear for drug testing was a reason why additional services would not be helpful. The court was certainly entitled to find that his failure to take the drug tests indicated an overall disregard for services offered by DSS.

The court also found that exceptional circumstances existed in this case. In *In re Adoption of K'Amora*, 218 Md. App. 287, 305 (2014), we explained that the statute "does not define 'exceptional circumstances,' and no published decision of this Court or the Court of Appeals has found exceptional circumstances in a TPR case independently of unfitness." When deciding whether exceptional circumstances exist, however, a court may consider a parent's "behavior and character." *See In re Adoption No. A91–71A*, 334 Md. 538, 563 (1994) (examining "exceptional circumstances" in the context of a father's challenge to the adoption of his child by a third party and the attendant termination of his parental rights). The Court of Appeals in *No. A91-71A* stated:

> behavior of the natural parent tending to show instability with regard to employment, personal relationships, living arrangements, and compliance with the law is also relevant to the existence of exceptional circumstances. These factors clearly relate to the parent's ability to provide a stable environment for the child, which is universally recognized as critical to a child's proper development. The mere presence of any of these factors may not warrant a

> finding of exceptional circumstances justifying the termination of parental rights; these are simply factors to be considered in the best interest analysis.

Here, the court's finding of exceptional circumstances was based on Mr. G.'s behavior and character in that he failed to take measures to protect his children from drug exposure and lacked the basic insight and understanding of his role as a parent in at least attempting to prevent his children's exposure to drugs and the risks his children may face. In other words, the factors that inform a finding of unfitness or exceptional circumstances can, and do, overlap and come together in this case to support the ultimate determination that the termination of Mr. G.'s parental rights is in the best interests of the children. In sum, the court considered the statutory criteria, its factual determinations were not clearly erroneous, and its determination of Mr. G.'s parental rights was supported by the facts and did not constitute an abuse of its discretion.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.