

Circuit Court for Montgomery County  
Petition No.: 6-Z-19-0011

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1913

September Term, 2019

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IN RE: D.J.

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Kehoe,  
Beachley,  
Eyler, James R.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Eyler, J.

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Filed: May 7, 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.

This appeal arises from a decision by the Circuit Court for Montgomery County, sitting as a juvenile court, terminating the parental rights of Ms. M. to her son, D.J., and granting guardianship of D.J. to the Montgomery County Department of Health and Human Services (the “Department”). D.J.’s father, D.J., Sr., did not object to the petition of the Department of Health and Human Services (the “Department”), thereby consenting to the termination of his parental rights.<sup>1</sup> He is not a party to this appeal.

Ms. M. presents the following questions for our review:

1. Did the court commit error by admitting evidence from the CINA proceedings involving [Ms. M.’s] older child who was not in [Ms. M.’s] custody for the duration of D.J.’s case?
2. Did the court err in finding that the [D]epartment made reasonable efforts to facilitate reunification between [Ms. M.] and D.J. when the [D]epartment’s efforts consisted of making referrals to [Ms. M.]?

For the reasons set forth below, we shall affirm the judgment of the juvenile court.

### **FACTUAL AND PROCEDURAL BACKGROUND**

At the time of D.J.’s birth in November 2017, both he and Ms. M. tested positive for cocaine. Five years prior to D.J.’s birth, Ms. M. came to the attention of the Department due to allegations of neglect involving her then six-year-old daughter, D.M., who had been left alone unsupervised in a home in a neglected and unsanitary condition. Ms. M. left D.M. home alone again the following day, despite the Department’s involvement. The

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<sup>1</sup> Pursuant to Md. Code (1984, 2012 Repl. Vol., 2019 Supp.) § 5-320(a)(1)(iii)(1)(C) of the Family Law Article (“F.L.”), a parent will have consented to the grant of guardianship “by fail[ing] to file a timely notice of objection after being served with a show-cause order[.]”

Department provided in-home services to Ms. M. through July 2013, and was called to Ms. M.'s home several times in the years that followed.

In March 2016, Ms. M. left D.M. in the care of a friend who later overdosed and died while D.M. was in the home. In the summer of 2016, following Ms. M.'s admission that she had used cocaine while D.M. was in the home, D.M. went to live with a relative for several months. In April 2017, following a truancy board review hearing for D.M., the Department again became involved with Ms. M. Ms. M. told the Department that she had been keeping D.M. home from school because she had frequent ear, nose and throat infections, and to ensure that Ms. M.'s mental health did not decompensate. Ms. M. was not receiving mental health treatment at that time. The Department visited Ms. M.'s home and reported that it reeked of urine and the floor was littered with dog feces, cigarette butts, steak knives, and broken dishes. Ms. M. tested positive for cocaine, PCP and benzodiazepines. The Department sheltered then eleven-year-old D.M. and filed a Child in Need of Assistance (“CINA”) petition.<sup>2</sup>

The allegations in the first amended CINA petition were sustained with Ms. M.'s agreement and D.M. was adjudicated CINA on June 8, 2017. In June 2019, D.M.'s permanency plan was changed from reunification with Ms. M. to a concurrent plan of reunification and custody and guardianship with a relative.

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<sup>2</sup> A “child in need of assistance (“CINA”) is one who requires court intervention because the child has been abused or neglected, or has a developmental disability or mental disorder; and his or her “parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” Md. Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings Article (“CJP”) § 3-801(f).

When D.J. tested positive for cocaine at birth in November 2017, the Department met with Ms. M. in the hospital. Ms. M. reported a history of crack cocaine addiction, but stated that she had last used cocaine five months earlier. She also told the Department that she had been diagnosed with bipolar disorder and post-traumatic stress disorder.

Ms. M. requested that the Department place D.J. with Ms. W., a Montgomery County police officer whom Ms. M. had come to know after Ms. W. performed a welfare check at Ms. M.'s home five months earlier. Ms. M. remained in contact with Ms. W., requesting rides to medical and rehabilitation appointments. In October 2017, Ms. M. asked Ms. W. to meet with the Department and make arrangements to care for D.J. after his birth until Ms. M. was ready to care for him. Ms. M. had anticipated that the Department would not allow D.J. to remain in her custody following his birth because D.M. had recently been adjudicated a CINA.

Ms. W. agreed to Ms. M.'s request, and when D.J. was released from the hospital a week after his birth, he was placed with Ms. W. D.J. has remained in Ms. W.'s care since that time. At the shelter hearing on November 13, 2017, the court granted the Department care and custody of D.J. for placement with Ms. W. and granted Ms. M. weekly supervised visitation.

Following an adjudication and disposition hearing on December 11, 2017, the court sustained the allegations in the CINA petition and D.J. was adjudicated CINA. The court ordered Ms. M. to participate in a psychological evaluation and inpatient substance abuse

treatment and further ordered the Department to assist Ms. M. with referrals for moving expenses. The court increased Ms. M.'s weekly visitation to two hours weekly.

The Department had referred Ms. M. to Dr. Katherine Martin for a psychological evaluation as part of D.M.'s case, prior to D.J.'s birth. At Ms. M.'s first appointment with Dr. Martin on September 6, 2017, Ms. M. had an emotional outburst, refused to sign a consent form, and left the office. Ms. M. returned to Dr. Martin's office for an intake interview on November 29, 2017 and completed an evaluation with Dr. Martin on February 20 and March 1, 2018. Ms. M. reported an extensive history of substance abuse and significant mental health issues. She admitted to using cocaine in 2016 and 2017, and stated that she had relapsed on cocaine one week before D.J.'s birth.

Dr. Martin observed Ms. M. to be "highly emotionally labile" and "highly irritable and abrasive" and, at times, "tearful and weepy." Dr. Martin observed that Ms. M. was "unable to take any responsibility for her difficulties, and blamed everyone else ... for her difficulty making progress in taking steps to resume care of her children." Ms. M. reported that she was being evicted, but she had no plans to obtain housing. Though she denied substance use, she was unwilling to discuss whether she had obtained treatment, why she had failed to provide urinalysis at the Department, and seemed irritated "that she was required to provide urinalysis at all." Dr. Martin noted that "[d]espite [Ms. M.'s] distress and her ongoing difficulty managing typical day-to-day responsibilities, [she] lacks insight into her role in her own difficulties, including her mental health needs."

Dr. Martin diagnosed Ms. M. with bipolar I disorder, post-traumatic stress disorder, stimulant use disorder, cocaine, and borderline personality disorder. She recommended that Ms. M. participate in “an intensive dual-diagnosis program for individuals who suffer from co-occurring mental illness, personality disorders, and substance use disorders[.]”

Ms. M. completed a substance abuse evaluation at Access Behavior Health on September 1, 2017 and indicated that she was receiving substance abuse services at Adventist Behavioral Health. The Department requested that Ms. M. sign release forms authorizing the Department to contact her treatment providers and obtain information regarding her progress. According to social worker Tania Butler, she discussed these releases with Ms. M. “no fewer than 40 times,” but Ms. M. refused to sign the release forms. Though Ms. M. finally signed the forms, she left the names and addresses of her providers blank and refused to complete the missing information. Ms. Butler reported that the Department provided Ms. M. with referrals for moving assistance, but it did not receive any information from Ms. M. regarding her efforts to obtain housing.

In January 2018, Ms. M. asked Department supervisor John Anthony Hawkins to transport her to Suburban Hospital in Bethesda for psychiatric hospitalization and substance abuse treatment. Mr. Hawkins “dropped everything and went and picked her up and brought her to Suburban because we really wanted to take advantage of her willingness at that point to enter services.” Ms. M. was discharged from Suburban Hospital and transitioned to Avery Road Treatment Center for inpatient substance abuse treatment.

Avery Road discharged Ms. M. one week later, following a disagreement with a staff member.

In February 2018, Ms. Butler met with Ms. M. and a housing specialist at Veterans Affairs. The housing specialist recommended that Ms. M. enter a substance abuse treatment facility in Martinsburg, West Virginia. Ms. M. indicated that she planned to enter the facility the following month, but failed to do so. She contacted Mr. Hawkins in August 2018 and stated that she was ready to receive services, but first wanted to resolve her open warrants. At Ms. M.'s request, Mr. Hawkins picked her up and brought her to the Montgomery County Detention Center.

In September 2018, Ms. M. entered the VA inpatient treatment center in Martinsburg, West Virginia. The Department attempted to obtain information from the facility as to her treatment and progress, but because she had not signed a release, it was unable to do so. She completed that program and was transferred to a VA facility in Perry Point, Maryland for mental health treatment. Again, the Department was unable to obtain information regarding Ms. M.'s treatment, progress or discharge instructions because she had not signed a release.

Ms. M.'s visitation with D.J. was sporadic, as was her contact with the Department. Ms. M. visited with D.J. only twice between March 2018 and September 2019. In January 2019, the Department transported D.J. to the VA facility in Martinsburg, West Virginia to visit Ms. M. Ms. M.'s last visit with D.J. was on April 26, 2019.

At the April 26, 2019 permanency planning hearing, the court changed D.J.’s permanency plan from reunification to adoption by a non-relative and ordered the Department to refer Ms. M. for twice-weekly urinalysis. Ms. M. did not submit to urinalysis until September 2019, at which point, all three urinalysis tests were positive for marijuana.

The guardianship proceedings were scheduled to begin on October 7, 2019. When the case was called that morning, Ms. M.’s counsel informed the court that Ms. M. had admitted herself to the psychiatric unit of Prince George’s County Hospital and was awaiting transfer to a VA facility. At the request of Ms. M.’s counsel the proceedings were continued for one week.

The guardianship proceedings began on October 15, 2019. Ms. M. was present initially, but she left the courtroom after making a series of rambling statements and announcing, “I can’t do this.” Outside the courtroom, Ms. M. became agitated and combative and was removed from the courthouse by sheriff’s deputies. Ms. M.’s counsel remained in the courtroom and the proceedings continued in Ms. M.’s absence. Ms. M. appeared for the second day of the guardianship proceedings, but asked to be excused and left the courtroom before the hearings began. Ms. M.’s counsel was present and argued on her behalf but did not offer any evidence.

John Hawkins, Tania Butler, and Brooke Hinkle, social workers for the Department who had been involved in D.J.’s case, each testified that D.J. would not be safe in Ms. M.’s



care due to her history of substance abuse and inconsistent treatment for her chronic and extensive mental health and substance abuse issues.

Dr. Martin testified that Ms. M. suffered from bipolar disorder and borderline personality disorder, both of which are “chronic and persistent mental illnesses” requiring constant and vigilant management. Dr. Martin’s prognosis for Ms. M. was “very guarded” due to her diagnoses, frequent hospitalizations and struggles managing her moods and coping with stress. Dr. Martin concluded, in her expert opinion, that Ms. M. would struggle to simultaneously manage her own mental health and the needs and behaviors of D.J., a two-year old, who would require constant supervision, structure, and stability.

D.J. has been in the care of Ms. W. since he was one week old. Ms. W. also has an adopted son who is one year older than D.J., and they get along very well. D.J. refers to Ms. W. as “mom” and is very bonded to Ms. W. and her son. D.J. is a happy, energetic boy who is achieving his developmental milestones and thriving in the care of Ms. W. Ms. Butler visited with Ms. W. and D.J. at least twenty-five times and expressed no concerns about D.J.’s relationship with Ms. W.

On October 29, 2019, the court issued a 21-page opinion, including findings of fact and conclusions of law, and a final order terminating Ms. M.’s parental rights in D.J., and granting guardianship of D.J. to the Department with the right to consent to adoption. Ms. M. noted a timely appeal.

## DISCUSSION

### I. The Admissibility of Evidence of D.M.’s CINA Case

Ms. M. contends that the juvenile court erred in admitting evidence of D.M.’s CINA case, where D.M. had not been in her custody since D.J. was born. Ms. M. argues that because she had not lost her parental rights to D.M., the court improperly considered D.M.’s CINA case under Md. Code § 5-323(d)(3)(v) of the Family Law Article (“F.L.”) (2019 Repl. Vol.), which requires a court to consider whether “the parent has involuntarily lost parental rights to a sibling of the child.”

The Department argues that the juvenile court properly considered D.M.’s CINA case pursuant to F.L. § 5-323(d)(3)(i), which requires the court to consider whether “the parent has abused or neglected the child or a minor child and the seriousness of the abuse or neglect.” The Department asserts that evidence of D.M.’s CINA case was relevant to the court’s analysis and properly admitted in evidence despite D.M. not having been in Ms. M.’s custody because § 5-323(d)(3)(i) does not require that the children occupy the same household.

A termination of parental rights decision involves a balancing of the fundamental right of parents to raise their children and the State’s responsibility to protect children from abuse and neglect. *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 497 (2007). In determining a parent’s fitness, the court may consider evidence of the parent’s character and past behavior in evaluating whether the parent has adequate concern for a child’s well-being. *See In re Adoption/Guardianship No. A91–71A*, 334 Md. 538, 563-64 (1994). In

evaluating whether a risk of harm from neglect exists, the juvenile court has “a right – and indeed a duty – to look at the track record, the past, of [a parent] in order to predict what her future treatment of the child may be. That track record includes evidence that the parent has neglected the child’s sibling.” *In re J.J.*, 231 Md. App. 304, 346 (2016) (internal citation and quotation marks omitted). *See also William B.*, 73 Md. App. 68, 77 (1987) (“The parents’ ability to care for the needs of one child is probative of their ability to care for other children in the family.”). The juvenile court “has wide discretion when considering the relevancy of evidence.” *In re Adriana T.*, 208 Md. App. 545, 568 (2012) (citation omitted). We review the juvenile court’s conclusion of law that evidence is or is not relevant under a *de novo* standard. *Id.* at 569.

With respect to F.L. § 5-323(d)(3)(v), the juvenile court noted:

Ms. M. has not involuntarily lost parental rights to a sibling of [D.J.], but her oldest child, [D.M.] was found CINA on June 8, 2017 (06-I-17-73). At the Permanency Plan Review Hearing on June 24, 2019, the permanency plan for [D.M.] was changed by the Court from reunification with her mother to a concurrent plan of Reunification and Custody and Guardianship.

(Footnote omitted).

In this case, D.M.’s CINA file was relevant to the issue of Ms. M.’s history of neglect, which the juvenile court was required to consider in making its determination as to whether a termination of Ms. M.’s parental rights was in D.J.’s best interests. That information was not less relevant or irrelevant because D.M. had not been in Ms. M.’s custody. Although the juvenile court might have considered referencing § 5-323(d)(3)(i), whether “the parent has abused or neglected the child or a minor child and the seriousness

of the abuse or neglect,” rather than § 5-323(d)(3)(v), when considering the evidence of D.M.’s CINA case, the court did not err in admitting evidence of Ms. M.’s neglect of D.M. *State v. Breeden*, 333 Md. 212, 227 n.5 (1993) (a trial court’s ruling may be affirmed if the trial court is correct for a reason properly before us); *Green v. State*, 81 Md. App. 747, 755 (1990) (“A ruling generally will be affirmed even when the ruling is right for the wrong reason.”).

## **II. The Department’s Reasonable Efforts to Assist Ms. M.**

Ms. M. contends that the Department failed to make reasonable efforts to provide her with services tailored toward assisting her in reunifying with D.J. Because Ms. M. failed to raise this issue, by offering evidence or arguing specifics before the juvenile court, it is waived and we will not consider it. Md. Rule 8-131(a) provides that, “ordinarily, the appellate court will not decide [an] issue unless it plainly appears by the record to have been raised or decided by the trial court.” This rule ensures fairness for all parties by requiring them to present their positions to the trial court so that the trial court has an opportunity to rule on the issues. *Wajer v. Baltimore Gas and Elec. Co.*, 157 Md. App. 228, 236-37 (2004).

Even if we were to consider this issue, we are satisfied that reasonable efforts were made by the Department, tailored to Ms. M.’s mental health and substance abuse issues.

Accordingly, the juvenile court did not err in finding that the Department made reasonable efforts toward reunification.

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