UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0990

September Term, 2016

IN RE: ADOPTION/ GUARDIANSHIP OF
T.C., C.J. AND C.J.

Meredith,
Beachley,
Davis, Arrie W.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Davis, J.

Filed: December 21, 2016

*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.

Petitions for Guardianship with the Right to Consent to Adoption or Long-Term Care Short of Adoption and termination of parental rights ("TPR") proceedings, seeking to terminate appellants' parental rights of their three biological children, in Cases No. T15314016, T15314015 and T15314014 were filed in the Circuit Court for Baltimore City, sitting as a juvenile court. After a hearing on May 16, 2016 and June 24, 2016, the court (J. Copeland), on July 6, 2016, granted the petitions, thereby terminating appellants' parental rights to all three children, based on the court's determination that exceptional circumstances made the continuation of the parent-child relationship detrimental to each child's best interests. Appellants filed the instant appeal, in which they ask that we review the following questions, which we quote:

1. Did the trial court err in terminating parental rights?
2. Did the trial court err in failing to place the children with biological relatives?

FACTS AND LEGAL PROCEEDINGS

Background

Appellants, D.J. (Ms. J.) and T.C. (Mr. C.), are the biological mother and father, respectively, of the three appellee children. C.J. and C.J. are twin girls, born on November 23, 2012 and T.C. is a boy, born on August 29, 2014. Ms. J. has one other child, a seven-year-old daughter, who is in the sole legal and physical custody of her father, not Mr. C. Mr. C. has no other children. The twins, who were born premature, weighed three pounds each. Mr. C., who was incarcerated at the time of their birth, was not identified as their biological father at that time. After the twins' release from the hospital, Ms. J. neglected to follow-up with her premature infants' medical care. She failed to take them to scheduled

medical appointments and did not reschedule the appointments. Both twins had ophthalmological issues that went untreated as a result of a lapse in medical care while in their mother's custody.

The twins also had breathing issues, *i.e.*, apnea, which required the use of physical monitors to ensure the premature infants received enough oxygen. Ms. J. discontinued use of the monitors for several weeks and**,** in April 2013, one of the twins experienced trouble breathing and had to be taken to the hospital. Against medical advice, Ms. J. left the hospital with the twin who had been having difficulty breathing.

On May 2, 2013, the twins were placed in the custody of the Baltimore City Department of Social Services under a shelter care order. On July 12, 2013, following an adjudicatory and dispositional hearing, a juvenile court magistrate declared the twins to be CINA and returned them to the physical custody of their biological parents under an Order of Protective Supervision. Mr. C**.** had been released from incarceration at the time.

Although under an order of protective custody, neither of the appellants made contact with the Department and both failed to attend bronchitis awareness courses. Ms. J. failed to attend scheduled meetings and failed to reschedule them. She also moved without informing the Department and did not provide them with her new address or contact information. Mr. C. failed to attend both domestic violence courses as well as courses for treatment for alcohol and drug abuse.

The girls were later placed in the custody of the Department under a Temporary Commitment Order on October 2, 2013 after appellants had engaged in violence in the

home involving an assault and stabbing. The Order of Protective Supervision was rescinded on December 5, 2013 and the twins were committed to the Department's custody and care. After placement in a licensed foster home, the twins' health improved. They were diagnosed with asthma, which was successfully managed through the use of a nebulizer and their need for apnea monitoring gradually ended. Generally, the twins presented as happy and adjusting well to the foster care.

Sheila Harris, the Department's assigned Family Preservation Worker**,** offered services to appellants after the twins were removed from their care in October 2013. On October 22, 2013, a service agreement was presented to appellants in which they agreed to search for independent housing and enter drug treatment. Harris convened a Family Involvement Meeting[1] on October 29, 2013. At this meeting, Ms. J. and Mr. C. admitted to Harris that they smoked marijuana and Mr. C. admitted to occasional alcohol use. Ms. Harris referred the parents for an assessment of their drug use through Partners in Recovery

[1] MD. DEP'T. OF HUMAN RES., POLICY DIRECTIVE SSA 10–08: FAMILY INVOLVEMENT MEETINGS (2009), *available at* http://dhr.maryland.gov/business-center/documents/child-policy-directives/. "A [FIM] is a casework practice forum to convene family members during key child welfare decision points. The purpose of the FIM is to establish a team to engage families and their support network to assess the needs and develop service plans. The goal is to develop service plan recommendations for the safest and least restrictive placement for a child while also considering appropriate permanency and well-being options for that child."

Program[2] in November 2013. She later referred them to Echo House[3] for drug treatment. She also referred appellants to the Department's parenting program for parenting classes and treatment. Subsequently, a second referral to parenting classes was made, but Harris received no indication that appellants completed the program. Harris offered service agreements in October 2013 and March 2014.

Appellants were scheduled to attend weekly visits with the twins at DSS. In the eight month period from January 2014 through August 2014, the Department documented that Ms. J. attended nine full visits and she arrived 15 to 60 minutes late for seven partial visits. During the same eight-month time period, Mr. C. attended eight full visits and five partial visits where he arrived 15 to 30 minutes late. The Department provided appellants the visitation schedule both in writing and orally. Harris also called Ms. J. to remind her about visits and "many times [Ms. J.] would say . . . she forgot." There was also a second referral to a parenting program during this time, which the parents did not attend.

By the end of August 2014, the parents were living with friends or relatives and no evidence of completion of drug programs was provided. There was also no evidence of employment provided for this period. Harris further testified that she observed the children

---

[2] MOSAIC COMMUNITY SERVICES, ADDICTION RECOVERY SERVICES - PARTNERS IN RECOVERY, http://www.mosaicinc.org/programs-services/addiction-recovery-services-partners-in-recovery/ (last visited November 21, 2016). Partners in Recovery is a component of a larger addiction treatment program that focuses on recovery oriented treatment and consists of four components: medical detoxification, therapy, weekly group support and education.

[3] ECHO HOUSE, http://www.echohouse.org/index.html (last visited November 21, 2016). Echo House is a non-profit organization that focuses on the treatment of substance abuse *via* outpatient medical detoxification and mental health and family services.

in placement with foster care providers during the period, October 2013 through August 2014, and that there were no concerns with this home. Harris agreed that neither the October 27, 2013 nor the March 2014 service agreements were tailored to the mental health needs of the parents. During a majority of the visits that the parents attended, they attended together and were appropriate with the children. Harris closed her case in August 2014.

T.C., who was born on August 29, 2014, was exposed to marijuana. He was placed in the custody of the Department pursuant to an emergency order on September 24, 2014, because his biological parents were arrested on drug charges during a police raid on their home. Following a contested hearing on January 23, 2015, T.C. was ultimately found to be CINA on February 2, 2015.

Latoya Thomas, Family Services Caseworker for Permanency, testified that she received the case in September 2014. Thomas attempted to contact appellants *via* mail and, eventually, as a result of a letter sent to Ms. J.'s mother's address, Ms. J. contacted Thomas in January 2015, requesting to visit the children. Ms. J. attended the January 2015 visit, which went well. Mr. C. was again incarcerated during this time. Ms J attended another scheduled visit on February 9, 2015. On May 18, 2015, the juvenile court found that Ms. J. had failed to maintain contact with the children and the Department reported that the first contact it had with Ms. J., after the February 9, 2015 visit, was at the September 15th, 2015 visit that both appellants attended after Mr. C.'s release from incarceration in July 2015. After the September 15th visit, the Department resumed scheduling visits on alternating

weeks. Appellants cancelled or did not appear, over the remainder of the year; for five of the visits; they attended three, arriving 40 minutes late for one of them.

A new service agreement was instituted in September 2015, which included a requirement that appellants attend the Family Recovery Program ("FRP")[4] offered through the juvenile court.

Thomas testified that, during the period between January 2015 and June 2015, Ms. J. attended the scheduled weekly visits once or twice a month. During this time, Ms. J. had stated that she was working at a Subway Sandwich Shop ("Subway") for several months, but ultimately never provided the requested proof of employment. Appellants once again entered into service agreements that required them to find adequate housing and complete parenting classes and drug treatment, but no evidence of completion was provided. Ms. J. was already involved with FRP. Thomas referred appellants to parenting classes at the Family Tree.[5] Ms. J. stated that she had completed a parenting program, but no certificate of completion was provided. During their participation with FRP, appellants exhibited a lack of engagement. FRP offered additional services upon Mr. C.'s release from prison. During this time, Mr. C. submitted five samples for urinalysis, two of which tested positive for marijuana; Ms. J. submitted seven samples, six of which tested positive for marijuana.

[4] FAMILY RECOVERY PROGRAM, http://frp-inc.org/about-us/ (last visited November 21, 2016). FRP is a court sponsored and monitored program for parents who have lost custody of their children due to substance abuse issues.

[5] THE FAMILY TREE, https://www.familytreemd.org/about-us/ (last visited November 21, 2016). Family Tree is a child abuse and neglect prevention center that offers education and support to parents.

Ultimately, appellants were discharged from FRP for non-compliance and neither appellant has attempted to re-engage with the program.

The Department also offered Ms. J. assistance with housing, including referrals to low-income and subsidized housing and extended offers to pay for furniture and provide monetary assistance for a security deposit and the first month's rent. Ms. J. also failed to obtain stable housing.

Andrea Parham, the case manager assigned at the time of the Petitions, testified that this case was transferred to her on December 29, 2015. Her first in-person meeting with Ms. J. was on March 4, 2016. Ms. J. was receiving services through FRP, but was residing with her mother, who herself resides in a rented room. Ms. J. indicated that she was also now unemployed, no longer working at Subway. Parham offered Ms. J. a service agreement that required Ms. J. to continue in her programs through FRP and find suitable housing. The Department, through multiple case managers, offered appellants first month's rent or a security deposit, if they could show that they could maintain payment of rent for an apartment.

Visits with the children were scheduled biweekly; however, according to Parham, Ms. J. had not attended since January 2016. Parham also testified that, as of January 2016, Mr. C. was incarcerated for a violation of probation. Parham testified that the children remained in foster care and that their needs were being met.

During the entirety of the case, appellants have provided no financial support for the children, other than a few snacks and gifts. Mr. C. spent a significant amount of time incarcerated while the children were residing in foster care.

Children's Placement with Current Foster Family

In June 2014, the twins' maternal grandfather, who was licensed as a foster parent, requested to be considered as a foster placement for the twins. The twins were placed with their maternal grandfather by the end of June 2014, but were removed on April 17, 2015 when allegations of sexual and physical abuse against the maternal relatives were made by a former foster child. They were placed with the Ch. Family. T.C. joined his twin sisters three months later.

Initially, upon placement in the Ch.s' home, the twins experienced nightmares and screamed during afternoon naps and at night. One twin did "a lot of fighting in her sleep." The other twin would "clench" when she was bathed or changed. At times, during their nightmares, they would cry out "No Pop Pop" while still asleep. Their speech was limited. The Ch.s arranged for the twins to participate in weekly, two-hour therapy sessions for traumatic stress, which remains ongoing. The twins have made progress, *e.g.*, no longer having nightmares, fighting or screaming while sleeping. The twins' speech therapy has been discontinued pursuant to a determination that they were within the appropriate developmental range and services were no longer necessary. T.C. also showed signs that his speech development has been delayed and Ms. Ch. enrolled him in speech therapy.

Subsequently, T.C. has been showing improvement to the extent that Ms. Ch. is no longer concerned about his development.

Prior to the TPR proceedings, the juvenile court requested that the court's Medical Services Division conduct a bonding study involving the children. Psychologist Ruth Zajdel, Ph.D. performed the bonding evaluation. Dr. Zajdel observed all three children's interactions with the Ch. family in a play room. She noted that the Ch. family easily interacted and engaged in activities with the children, maintaining a calm and relaxed demeanor throughout the active and busy play session. They directed play in age-appropriate manners, gave praise and encouragement to the children, redirected negative behaviors in a respectful manner and paid close attention to ensuring the children's safety. Although Dr. Zajdel attempted to conduct a similar observation with appellants, neither attended the scheduled session. Dr. Zajdel concluded that all three children were "bonded" to Mr. and Ms. Ch. and that they used the Ch.s "as a secure base in developmentally appropriate ways." She further opined that severance of a child's secure attachments can lead to "trauma" and other "long-term difficulties."

Current Proceedings

Petitions for Guardianship for all three children were filed on November 18, 2015. Hearings on these petitions were conducted on May 16, 2016 and June 24, 2016. Ms. J. testified that she would be picking up keys to a two-bedroom row house the following Monday morning. She further testified that she never missed doctor's appointments and appointments at Kennedy Krieger with the children and previously had them in the Infants

and Toddler's program. She wanted to be reunified so that her children can grow up with her older daughter. Ms. J. further testified that the children interacted with Mr. C. well. Ms. J. further explained that she was surprised by the sudden change in plan from reunification to Termination of Parental Rights (TPR) and adoption because she always took care of the children when they were in her care.

Mr. C. testified that he was then currently incarcerated in the Division of Corrections and expected to be released in July 2016, whereupon he plans on living with his brother and sister in Baltimore, on Edmonson Avenue and gain "under the table" employment. Mr. C. also wanted to retain his parental rights.

Ms. Ch. testified that she was a licensed foster care provider in Baltimore who, at the time of the hearing in this matter, had been married twenty years and had been employed at her current job for three years and that her husband has been employed as an animal technician for 18 years. She owns her own home. Ms. Ch. testified that she has been providing for the twins since April 2015 and for T.C. since July 2015. T.C. has his own bedroom and the girls share a bedroom with two beds. The children are in day care while Ms. Ch. is at work between 7:30 a.m. and 4:30 p.m. They attend school during the week, where they receive educational services and they have play time and homework time at home daily. Ms. Ch. testified that, on weekends, they jump on their trampoline, go to the park or do other activities in and around Baltimore. They attend church regularly. Additionally, the children have been on vacation with the Ch. Family to North Carolina,

South Carolina, Florida and New York. The Ch. Family have relatives and friends in the Baltimore area with whom the children interact appropriately.

Ms. Ch. further testified that the children have adjusted well in their new living situation. Both twins continue to attend weekly therapy through the Center for Child and Family Traumatic Stress at Kennedy Krieger.[6] Ms. Ch. further testified that the children have had appropriate medical and dental care and that they have no major physical issues. In addition to weekly childhood trauma therapy, the twins were also receiving speech therapy, but no longer have a need for the assistance. T.C. continues to receive speech therapy from the Infants and Toddlers program.

According to Ms. Ch., the children call her "Mommy" and her husband "Daddy. They do not ask for their biological parents, the appellants. The three children are her first set of foster children. She testified that she loves them and is seeking to adopt them.

The children have visited recently with paternal relatives from Arizona. M.S.L. (Ms. S.L.) testified that she is married to K.L. (Mr. L.), who is related to appellant, Mr. C. Ms. S.L. explained that Mr. C's mother was adopted by Mr. L.'s mother, who is also her aunt. Ms. S.L. testified that they first learned about the children's placement in State Custody during Thanksgiving 2015. She testified that, after Mr. C.'s mother died in 2011, they had little contact with Mr. C. Ms. S.L. and Mr. L. learned that they could be an adoptive

[6] KENNEDY KRIEGER INSTITUTE, CENTER FOR CHILD AND FAMILY TRAUMATIC STRESS, https://www.kennedykrieger.org/patient-care/patient-care-centers/traumatic-stress-center (last visited November 4, 2016). The Center is an affiliate of the National Child Traumatic Stress Network that focuses on treatment, training and research concerning childhood trauma.

resource for the children and began the process of becoming foster parents, *i.e.*, completing the requirements of the Interstate Compact paperwork.

According to Ms. S.L., they became involved because they were concerned about the children and interested in keeping the children in the family. At the May 16, 2016 hearing, the following colloquy occurred:

> [COUNSEL FOR DEPT.]: Okay. Okay, and I just want to make sure that I'm clear. You indicated there was Mediation and does that mean that you want to adopt the children?
>
> [MS. S.L.]: When we first, when we first came into it and we read all the paperwork, we were going for the Guardianship form, right.
>
> [COUNSEL FOR DEPT.]: Okay.
>
> [MS. S.L.]: Is what we were going for.
>
> [COUNSEL FOR DEPT.: Uh-huh.
>
> [MS. S.L.]: Okay, and then talking to multiple people, if we do, if we do the adoption agreement with the parent, you know, our thing is if the parents get their [sic] self together, why can't they be part of their children's lives?
>
> [COUNSEL FOR DEPT.]: Um-hum.
>
> [MS. S.L.]: You know, when I mean get their self [sic] together, I don't know what the State is requiring them to do. I don't know, okay. That's not on us, because that's something between them and the State. But if they get housing, they get jobs, you know and they show that they can take care, you know of the children, and the Court says okay, they can have their kids back. Then we want to be able to give them the opportunity. If we cut off any opportunity that they have, especially with [T.C.], since he's family—
>
> [COUNSEL FOR DEPT.]: Uh-huh.
>
> [MS. S.L.]: —what we don't want to do is cause that rift, you know.

[COUNSEL FOR DEPT.]: So just so that I'm clear, you just want temporary custody until the parents get themselves together?

[COUNSEL FOR APPELLANT-MOTHER]: Objection.

THE COURT: Basis?

[COUNSEL FOR APPELLANT-MOTHER]: I don't believe that was the testimony of the witness.

THE COURT: Overruled. I believe that's exactly what she said.

[COUNSEL FOR DEPT.]: Is that what you're saying?

[MS. S.L.]: What I'm saying is this. When we first started, it was for—

[COUNSEL FOR DEPT.]: But ma'am, I just need to know one way or the other.

THE COURT: I think we just need to be clear about what you're saying.

[COUNSEL FOR DEPT.]: So you're asking for temporary custody until the parents get it together. You're not, you don't want to adopt the children?

[MS. S.L.]: We're open to adoption also. Our main goal is if we, if we can adopt the kids and still have a relationship, and they still have a relationship with the parents, then we're willing to go for adoption.

* * *

That way if we do the adoption, we don't have to worry about let's say, you know—if we go for Guardianship then you know we can probably keep fighting this with the foster parents and all this stuff, and it's a long process for the kids. The kids will never get stabilized.

[COUNSEL FOR DEPT.]: Um-hum.

[MS. S.L.]: Right, so if we go straight for the adoption right, then we know that okay, they're with us, they're stable. The parents know where they are, you know. If the parents want to call, the parents want to come see them, you know, pictures or whatever, the parents know exactly where their children are.

Ms. S.L. further testified that she and her husband visited the children in Maryland in January, February and April of 2016. In May 2016, she visited the children in person and her husband, who was in Europe, visited *via* Skype video conferencing. Ms. S.L. indicated that she and her husband would be able to accommodate the children's medical needs, as well as other needs, *e.g.,* medical insurance, support services. They were "good to go" with "food, shelter, clothing, education." Ms. S.L. is retired from the military and indicated that T.C. would not need to be in a day care program. According to Ms. S.L., the home study had been completed and the only item that remained, insofar as the Interstate Compact paperwork was concerned, was fingerprinting. Ms. S.L. said that they were quite willing to have the children maintain a relationship with the current foster parents. Ms. S.L. further indicated that they would be able to return to Baltimore three or four times a year.

At the conclusion of the evidence, counsel for the children entered a consent to the TPR/Adoption on the condition that all three children be adopted together by either the S. family or the paternal relatives, Ms. S.L. and Mr. L. On July 6, 2016, the trial court granted the Department's petitions, thereby, terminating the parental rights of appellants for all three appellee children. The court ordered that the Department be appointed guardian of the children, with the Ch. family appointed limited guardianship for medical care, education decision and out-of-state travel. Guardianship Review with Child Consult was scheduled for November 16, 2016 to review the progress made for the children's adoption by the Ch. family and whether their current placement with the Ch. family continues to be in their best interests. The instant appeal followed.

STANDARD OF REVIEW

Regarding child custody disputes, the Court of Appeals has held that "three different but interrelated standards of review" are used by appellate courts:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard . . . applies. [Secondly,] if it appears that the [juvenile 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 [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [juvenile court's] decision should be disturbed only if there has been a clear abuse of discretion.

In re Adoption of Cadence B., 417 Md. 146, 155 (2010) (alteration in original) (quoting *In re Yve S.,* 373 Md. 551, 586 (2003)).

DISCUSSION

I. Termination of Parental Rights

Appellants contend that the trial court abused its discretion in terminating their parental rights because it "failed to satisfactorily explain" how the factual findings, pursuant to Md. Code Ann., Fam. Law ("FL") §5–323(d), rendered them, as the biological parents, unfit "or what the nature of any 'exceptional circumstances' were that made it detrimental to the children's best interest to remain in a legal relationship with their parents." Specifically, appellants assert that there were no findings of abuse or neglect; appellant-mother "met the responsibility of the difficult task of managing [] the twins['] medical issues on her own" and that there "was no evidence of 'unfitness' of either parent." Therefore, appellants maintain, the "only real issue in this case was a lack of housing" and the Department "did little if anything" to aid the parents in finding secure housing. Finally,

appellants note that the lower court's finding of the children's lack of emotional connection with their biological parents was the result of the "Department's removal of the children from their natural parents for a lengthy period of time" and, therefore, should not be part of the calculous in terminating appellants' parental rights.

The children as appellees, through counsel, respond that the trial court did not err or abuse its discretion in making the necessary findings under the Family Law Article to terminate parental rights of the appellants. Appellees assert that "the trial court made findings, based on clear and convincing evidence, with respect to each of the factors mandated under FL § 5–323, giving primary consideration to the Children's health, safety and best interests" and determined that there was "overwhelming evidence that exceptional circumstances do exist and that it is in the best interests of the children to terminate appellants' parental rights and award guardianship to the Department so the children can have a stable life with a loving family."

The Department responds that the court properly determined that, under FL § 5–323(b), terminating appellants' parental relationships was in each of the children's best interests. The Department asserts that the trial court, under the statute, did not have to make a finding that the parents were unfit; rather, a determination that there are exceptional circumstances that render continuation of the legal parental relationship against the children's best interests, sufficed. Furthermore, the Department notes that a court is required also to consider the "critical factor" of the need for "permanency in the child's life" when evaluating the termination or continuation of the parental relationship.

Therefore, the Department maintains that the court did not abuse its discretion.

> When considering a petition to terminate parental rights, courts must balance the presumption that a continuation of the parental relationship is in the child's best interests . . . against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect. Accordingly, the Family Law Article authorizes courts to terminate parental rights without consent only under specific, narrow circumstances[.]

In re Adoption of K'Amora K., 218 Md. App. 287, 301 (2014) (citations omitted) (internal quotation marks omitted).

Section 5–323(b) of the Family Law Article states:

> (b) 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.

(Emphasis supplied). *See In re Jasmine D.,* 217 Md. App. 718, 737 (2014) (noting that FL § 5–323(b) permits termination of parental rights based on a finding either of unfitness or "exceptional circumstances").

As we observed in *K'Amora K., supra*:

> A parent's right to raise her children is not absolute . . . but the 'clear and convincing evidence' standard imposes a greater burden than the 'mere preponderance' standard we use in custody determinations. And this makes good sense, since a TPR determination is not merely a change in status, but represents the legal and total end to the parent's relationship with the child.

218 Md. App. at 302 (citations omitted) (internal quotation marks omitted).

Furthermore, in a TPR proceeding, it is not the parent's rights that are the court's focus; rather, "the child's best interest has always been the transcendent standard in . . . TPR proceedings[.]" *Id.* (quoting *In re Ta'Niya C.*, 417 Md. 90, 112 (2010)).

Certain exceptions,[7] notwithstanding, § 5–323(d) outlines various factors to which a court will give primary consideration in evaluating whether termination of the parent's rights is in the child's best interests. We outline these statutory factors below:

> (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

[7] Md. Code Ann., FL § 5–323(c).

(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;

(iii) the parent subjected the child to:

(1) chronic abuse;

(2) chronic and life-threatening neglect;

(3) sexual abuse; or

(4) torture;

(iv) the parent has been convicted, in any state or any court of the United States, of:

(1) a crime of violence against:

(A) a minor offspring of the parent;

(B) the child; or

(C) another parent of the child; or

(2) aiding or abetting, conspiring, or soliciting to commit a crime described in item 1 of this item; and

(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 determining if terminating parental rights is in the best interest of the child, the factors set forth in FL § 5–323(d) 'guide and limit the court.'" *In re Adoption/Guardianship of Darjal C.*, 191 Md. App. 505, 530 (2010) (quoting *In re Adoption/ Guardianship of Rashawn H.*, 402 Md. 495, 499 (2007)). Accordingly,

> before terminating parental rights, the court must consider 'the relevant statutory factors,' 'make specific findings based on the evidence with respect to each of them,' and also determine expressly whether those findings suffice either to show an unfitness on the part of the parent to remain in a parental relationship with the child *or to constitute an exceptional circumstance* that would make a continuation of the parental relationship detrimental to the best interest of the child, and, if so, how. If the court does that—articulates its conclusion as to the best interest of the child in that manner—the parental rights we have recognized and the statutory basis for terminating those rights are in proper and harmonious balance.

Darjal C., 191 Md. App. at 531–32 (Emphasis supplied) (quoting *Rashawn H.*, 402 Md. at 501).

We have held that "the disjunctive wording in § 5–323(b) . . . authorizes the court to terminate a parent's rights even absent a specific finding that a parent is unfit to care for her child" so long as exceptional circumstances are present. *In re Adoption of K'Amora K.*, 218 Md. App. 287, 304 (2014) (citation omitted).

FL § 5–323(b) does not define "exceptional circumstances"; however, case law provides some guidance. A parent's failure to improve his or her circumstances over a long period of time, in and of itself, cannot justify termination of parental rights based on exceptional circumstances. *In re Alonza D.*, 412 Md. 442, 460 (2010). On the other hand, a parent's "behavior or character" should be considered by trial courts in the exceptional circumstances analysis. *In re Adoption/ Guardianship No. A91–71A*, 334 Md. 538, 563 (1994).

> Behavior that may not be extreme enough to warrant a finding of unfitness is still relevant to the ultimate finding of whether it is in the child's best interest to grant an adoption over the objection of the parent. Therefore, in making the best interest determination, this evidence can, and should, be considered not only with regard to fitness, but as a potential factor which may give rise to exceptional circumstances warranting the termination of parental rights.

Id.

Similarly, "a parent's actions and failures to act both can bear on the presence of exceptional circumstances and the question of whether continuing the parent-child relationship serves the child's best interests." *K'Amora K.,* 218 Md. App. at 307.

Significantly, the Court of Appeals has emphasized stability and permanency in determining the best interests of a child in regards to termination of parental rights. In *In re Jayden G.,* 443 Md. 50 (2013), the Court noted that "Jayden's mother had failed to make any positive progress over the two-plus years that Jayden lived in foster care, which, coupled with Jayden's healthy adjustment to living with a foster family, led the Court to conclude 'that a severance of the relationship with the [m]other would not have a detrimental effect on Jayden, but . . . would allow him to achieve permanency.'" *K'Amora K.,* 218 Md. App. at 307 (alteration in original) (quoting *Jayden G.,* 443 Md. at 102).

In *K'Amora K., supra*, this Court determined that termination of parental rights was in the best interest of the child, on the following analysis by the circuit court:

> • Mother's refusal to allow K'Amora to receive antiviral medication at birth;
>
> • Mother's irrational and unfounded suspicions that hospital staff were attempting to kidnap K'Amora;
>
> • Mother's repeated denial of any mental health problems, in spite of professionals' advice that she undergo treatment and take medication, her refusal to participate meaningfully in counseling, and her concomitant failure to abide by service agreements with DSS;
>
> • Mother's sporadic and unproductive visitation with K'Amora, which averaged less than two hours a month, by our count, for the first twenty months of K'Amora's life, and with the result that she failed to establish a bond at all with K'Amora over that time;
>
> • Social workers' specific concern that Mother could not "maintain K'Amora's well-being" if she were returned to Mother;
>
> • Mother's failure to work for six years; and

> • Mother's history of failing to parent or provide safe environments for K'Amora's older siblings.

Id. at 309. Furthermore, we noted that the circuit court

> faced the reality that sending K'Amora to live with Mother would have uprooted her from the safe and stable (and only) family environment she had known. The exceptional circumstances alternative is meant to cover situations, such as this, in which a child's transcendent best interests are not served by continuing a relationship with a parent who might not be clearly and convincingly unfit.

Id. at 310.

In the case *sub judice*, on July 7, 2016, the court articulated, on the record, its findings as they pertained to the relevant statutory factors under subsection (d) of Family Law Article 5–323. For subsection (d)(1)(i), services offered to the parent, the court found that all three social workers offered services, to both parents, for housing, mental health, drug treatment and parent classes. Services were offered to appellants at the initial contact in October 2013 and several service agreements were signed with appellants, the most recent being a six month service agreement, signed in March of 2016. For subsection (d)(1)(ii), extent, nature and timeliness of services, the court found the services were timely offered to appellants in order to facilitate reunification with their children. As stated *supra*, services were offered for housing, mental health, drug treatment and parenting classes to both appellants, with the exception of appellant father during his periods of incarceration.

Considering compliance with subsection (d)(1)(iii), fulfillment of obligations under service agreements by parents and local department, the court found that the Department did fulfill its obligations under the social contract agreements through multiple offers of services, referrals and following up progress, *vel non*, of the parents. Regarding appellants,

the court noted inconsistent participation in drug treatment programs and no documentation of completion. The court also noted that appellants failed to find adequate housing for themselves or their children. There was also testimony that the parents did not complete other obligations under the service agreements, *i.e.*, parenting classes.

As to compliance with subsections (d)(2)(i)(1–3), the extent the parents maintained regular contact, the court found that appellants initially maintained "sporadic" contact with their children and communicated with the Department regarding their whereabouts. However, between February 9 and September 15, 2015, the parents did not visit their children once and, thereafter, when visitation resumed, it was again sporadic. The court found that, during the same time period, appellant mother maintained communication with the Department; noting the three changes in case workers and that any failure to maintain communication with the Department may not have been Ms. J's fault. Appellant father, on the other hand, failed to maintain communication with the Department until he was incarcerated and then the Department was able to locate him. The court found appellants' contact with caregivers to be inapplicable.

For subsection (d)(2)(ii–iii), parents' contribution to a reasonable part of children's care, the court found that neither parent reasonably contributed to the financial support of their children. The court noted that appellant father indicated that he applied for disability in 2003 and that he intended to work "under the table" upon his release from incarceration. Appellant mother worked briefly at a Subway Restaurant, but was unemployed at the time of the hearing. The court also found that appellants failed to provide documentation that

any disabilities, *i.e.,* depression, rendered them incapable of providing financially for their children.

With respect to subsection (d)(2)(iv), the likelihood of additional services that would reunite parents and children within eighteen months of placement, the court found that it would be unlikely. The court noted that appellants had failed to fulfill obligations or utilize resources provided under "multiple service agreements."

With respect to subsection (d)(3)(i), parental abuse or neglect, the court noted that the children were found to be CINA, but that appellants had not subjected the children to any chronic abuse or life-threatening neglect.

Regarding subsection (d)(4)(i), the court found that the children had no emotional ties with their biological parents that would significantly affect their best interests. The court noted that the twins do not ask for their biological parents and that T.C. is too young to have an emotional tie to appellants.

Considering subsections (d)(4)(ii)(1–4), children's adjustment to community, home, placement and school, the court found that all three children had adjusted well. They have appropriate housing and care from the Ch. Family. The children's needs are being met, including medical, dental and therapy. The children go on regular vacations and participate in their community and church. The twins are doing well in school and T.C. is doing well in daycare.

Considering subsections (d)(4)(iii–iv), children's feelings about severance of the parent-child relationship, the court found that the children refer to the foster parents as

"Mom" and "Dad" and have been determined to have bonded with them. The court reiterated that the children's needs are being met "emotionally, financially and medically" and that it did not believe that termination of appellants' parental rights would have a negative impact on the children.

After evaluating the relevant statutory factors under subsection (d), the court concluded that exceptional circumstances existed that would make a continuation of the parental relationship detrimental to the best interests of the children. The court noted that, for 81.6 percent of the twins' lives and 91.6 percent of T.C.'s life, they have been out of appellants' care. All three children were determined CINA and removed from their parents' care. Between October 2013 and September 2015, the parents have had sporadic contact with their children and, after September 2015, little to no contact.

Furthermore, the court found that the parents have "shown little to no stability." Despite services offered by the Department for nearly three years, appellants have failed to illustrate how they will provide stable housing for the three children. The court noted that appellant-father, upon his release from prison, will reside with family, but had not proffered that the children "would be free to live there." Appellant-mother also failed to provide proof of permanent and adequate housing. Both appellants failed to secure employment, although appellant father indicated that he would seek "under the table" employment upon his release from prison.

Although appellants stated that housing was the only "issue" and that a parental relationship cannot be terminated for housing alone, the court indicated that other issues

were important as well. The court noted that the children's medical needs were not being met when they were in the care of their biological parents. The twins, both premature, were checked out of the hospital by appellant-mother against medical advice and appellant-mother discontinued use of apnea monitoring machine for the twins, also against medical advice. The children were characterized as "medically fragile" while in appellants' care. On the other hand, the current caregivers meet the children's medical and emotional needs. The Ch. family initiated childhood trauma therapy for the twins and has consistently ensured that they attend. The Ch. family has worked with schools and the Department to ensure that other supportive services were utilized, *e.g.,* speech therapy.

We disagree with appellants' contention that the trial court failed to make an "explicit and articulated finding that the parents were unfit, or that exceptional circumstances existed." As the record clearly illustrates, the trial court made factual findings pursuant to § 5–323(d) of the Family Law Article and adequately explained how those findings showed exceptional circumstances that made it detrimental to the children's best interests to leave appellant's parental rights intact. In determining whether to terminate parental rights, the court is not "required to recite the magic words of a legal test," as the Court of Appeals has explained, "nor [is it] desired if actual consideration of the necessary legal considerations are apparent in the record." *In re Adoption/Guardianship of Darjal C.*, 191 Md. App. 505, 531 (2010) (quoting *S. Easton Neighborhood Ass'n, Inc. v. Town of Easton*, 387 Md. 468, 495 (2005)).

Therefore, we hold that the trial court, sitting as a juvenile court, properly evaluated the relevant statutory factors, pursuant to § 5–323(d) of the Family Law Article, considered the need for stability and permanency in the children's lives and found that appellants have shown little to no stability and have no likelihood of stability in the future. Accordingly, the court did not abuse its discretion in finding that these exceptional circumstances render termination of appellants' parental rights in the best interests of appellee children.

II. Placement with Paternal Relatives

Appellants contend that, under Maryland law, if a child cannot be placed with his or her biological parent, then placement with a relative is preferential. Therefore, appellants maintain, "It was error for the court to refuse to place the children in the care of their relatives" and the court's order must be vacated.

Appellee-children and the Department respond that the issue of placement of a child pursuant to Family Law Article § 5–324(b)(1)(ii)(1)(B) was not preserved for appellate review. Even if it had been preserved for our review, the Department argues that the juvenile court lacked authority to place the children with the Arizona relatives because they had not completed the Interstate Compact. Appellee-children agree and add that their conditional consent permitted either the foster family or paternal relatives to adopt. Because appellants failed to make an agreement concerning placement with paternal relatives and post adoption/guardianship contact, the issues are not preserved and, therefore, not properly before this Court.

As a preliminary matter, this Court in *In re Adoption/Guardianship of L.B.*, 229 Md. App. 566, 599 (2016), recently held that, "[o]nce the termination of parental rights is affirmed on appeal . . . the parent no longer has standing to challenge decisions relating to the child, including the circuit court's order regarding placement of the child." As in *L.B., supra*, because we have affirmed the lower court's order terminating appellants' parental rights, *supra, Discussion I*, the parents no longer have standing to contest the children's placement by the court. However, even if appellants had standing to contest this issue, their argument lacks merit. We explain.

Md. Code Ann., FL § 5-525(f)(2)(i–iii) governs the priority of permanency plan placements and provides that, if returning the children to their prior situation is not in the child's best interest, placement with relatives, "to whom adoption, custody and guardianship, or care and custody, in descending order of priority," is prioritized before adoption by a current foster parent. This, however, is not absolute.

The Interstate Compact for the Placement of Children ("Compact" or "ICPC") is statutory law in all U.S. states, "establishing uniform legal and administrative procedures governing the interstate placement of children."[8] Maryland has adopted the Compact, pursuant to Md. Code Ann., FL § 5–601. The purpose of the Compact is to "facilitate[e] interstate adoption and increase[e] the number of acceptable homes for children in need of

---

[8] ASSOCIATION OF ADMINISTRATORS OF THE INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN, http://www.aphsa.org/content/AAICPC/en/home.html (last visited November 18, 2016).

placement." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 314 (1997). "Compliance with the procedures set forth in the ICPC are mandatory." *Id.*

It is axiomatic that the application for the Compact must be complete before a placement can occur. In the instant case, the parental relatives had not completed the application, nor was a continuance requested by the relatives or appellants for the application to be completed. The children, as appellees, had conditionally consented to the adoption of all three children, provided that they were all adopted by the same family and that either the parental relatives or the Ch. family adopted them. The court ordered that the Department be appointed guardian of the children, with the Ch. family appointed limited guardianship and a future Guardianship Review was scheduled to assess the progress toward adoption. The court could not place the children with the out-of-state parental relatives until the application was complete, which logically left the Ch. family as a candidate for placement.

Appellants argument that the court's "refusal" to place the children with relatives is erroneous and that, in general, placement with relatives is "mandated" to occur before "considering" placement with foster care, is incorrect. FL § 5–525(f)(2) requires that a court "shall consider the following permanency plans, in descending order of priority" and lists placement with relatives before foster care. There is no doubt that Maryland law prioritizes keeping families together, so long as doing so is in the best interests of the child. In evaluating the best interests of the child, during out-of-home placement, a court is required to consider a child's "emotional attachments." *L.B.,* 229 Md. App. at 600. Like

L.B., supra, the children in the instant case have a demonstrable attachment to their foster parents, whereas, they have no relationship to their parental relatives; they met them once prior to the TPR proceeding.

A court is also required to consider the child's need for stability and permanency in determining the child's best interests. Parental relative, Ms. S.L.'s testimony, regarding her intended relation with the children, did not inspire stability or permanency. Initially, Ms. S.L. described a temporary custody situation, with the ultimate goal of wanting to reunite the children with their biological parents, the appellants. After further questioning from counsel and the court, Ms. S.L. indicated that she was "open to adoption." This is in stark contrast with Ms. Ch. who clearly indicated that she wanted to adopt the children.

For the foregoing reasons, we hold that the circuit court, sitting as a juvenile court, did not err in appointing the Department as guardian of the children, with limited guardianship and adoption review to the Ch. family. This order complied with conditional consent of the appellee-children and patently is in the best interest of the children. Although appellants do not have standing to bring the placement issue before this Court, *L.B., supra*, assuming, *arguendo*, that they did have the requisite standing, their argument that the court was mandated to place the children with parental relatives, under the facts of this instant case, is unsupported by Maryland law.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.