UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1744

September Term, 2015

IN RE:
ADOPTION/GUARDIANSHIP
OF D.W.

Eyler, Deborah S.,
Arthur,
Wilner, Alan M.
(Retired, Specially Assigned),

JJ.

Opinion by Wilner, J.

Filed: March 10, 2016

This appeal, by the mother of D.W., is from a judgment of the Circuit Court for Baltimore City terminating appellant's parental rights with respect to her daughter and granting guardianship of the child, with the right to consent to the child's adoption or long-term care short of adoption, to the Department of Social Services of Baltimore City (DSS), appellee. Appellant complains that the court erred (1) in considering as a factor in terminating appellant's parental rights the availability of the child's foster family as an adoptive resource, and (2) in concluding that the time the child spent in foster care and the bond she formed with the foster care family constituted exceptional circumstances sufficient to overcome the presumption in favor of maintaining her relationship with appellant. We find these complaints to be without merit and shall affirm the judgment of the Circuit Court.

BACKGROUND

Appellant, herself, had a troubled life. Medical records reveal that, as a child, she was physically abused by her mother and sexually abused by her father and others. When she was 11, she was diagnosed with bipolar disorder and paranoid delusional disorder, which resulted in three hospitalizations before she reached adulthood. She got into frequent fights and exhibited an aggressive behavior that remained with her in adulthood, resulting in several arrests and one incarceration for assault. She gave birth to her first child at the age of 19. When the baby was two months old, he was taken from her because she had threatened to throw him down the stairs when he failed to stop crying. That child eventually was placed with appellant's mother in North Carolina.

D.W. was born in October 2012. She lived initially with appellant and the man who, at the time, was alleged to be D.W.'s father.[1] In early February 2013, when the child was four months old, appellant was removed from the home and involuntarily committed to the psychiatric unit of a local hospital following what appeared to be a suicide attempt.[2] Upon learning of that from the police, DSS placed the child in shelter care and opened a child in need of assistance (CINA) case. After an emergency shelter care hearing, the Juvenile Court for Baltimore City committed the child to the care of Father 1 with the condition that appellant was to have no unsupervised contact with the child and was not to reside in the home with the child. Upon that Order, DSS closed the case.

Unknown to DSS, appellant eventually returned to the apartment with Father 1 and D.W. following her release from the hospital. On March 7, 2013, she filed a domestic violence complaint against Father 1, who vacated the apartment. Aware that she was not permitted to be alone with the child, appellant reported to DSS that Father 1

[1] During the course of this litigation, appellant, in sequential fashion, named five different men as D.W.'s father. None of them have been shown to be the father and none of them have objected to the TPR Order. We shall refer to the first-named father as Father 1.

[2] These events were triggered by a 911 call by Father 1, who reported that appellant was incoherent and that she had informed him that she had ingested a number of pills. Appellant and D.W were transported to Johns Hopkins Hospital. D.W. was found to be fine. Appellant told hospital personnel that she had ingested four pills for pain. Upon an emergency petition, she was admitted for evaluation and was discharged several days later. She was diagnosed as having [cyclothemia *sic*] or bipolar disorder/mood disorder.

had been arrested. DSS workers promptly went to the house and, with the assistance of the police, removed the child and placed her in emergency shelter care.[3]

A CINA case was opened, or reopened, and, following adjudicatory and disposition hearings, the court, on April 12, 2013, found D.W. to be a CINA. The court determined that the child's continued residence in appellant's home was contrary to her welfare and committed her to DSS.[4] The initial permanency plan developed by DSS was for reunification, and, in furtherance of that objective, appellant and DSS entered into a succession of six-month service agreements that provided for parenting classes, a domestic violence program, and mental health and drug treatment through the University of Maryland Medical Center (UMMC) outpatient program. The parenting program had to be altered because appellant disagreed with much of what the instructor was trying to teach. In May 2013, appellant stopped taking her psychotropic medication and stopped attending individual therapy sessions because she had become pregnant. She continued using marijuana, however.

In July 2013, she moved in with the father of the new child, having previously announced that Father 1 was not D.W.'s father. In August, a paternity test showed that Father 1 was not, in fact, D.W.'s father. According to the social worker, appellant's aggressive and combative behavior continued in a variety of settings – with the new

[3] A DSS worker later testified that the police were called because appellant was upset and combative.

[4] By that time, Father 1 had resumed living with appellant, even though the protective order appellant had obtained was still in effect.

child's father, with the social worker, with her mother, with neighbors, and with others, which made it impossible to begin unsupervised visits with D.W. Appellant refused to participate in an anger management program at the House of Ruth. In a permanency planning hearing in December 2013, the court ordered appellant to engage in mental health therapy, take prescribed medications, and enroll in a Family Recovery Program administered through the Juvenile Courts (FRP). For a while, she complied with those requirements but eventually ceased participating in the FRP and persisted in her aggressive behavior. In February 2014, she was arrested and temporarily incarcerated for assaulting her social worker.

In March 2014, appellant failed to appear for a judicial permanency planning hearing. As a result, and upon findings that she continued to test positive for marijuana, was non-compliant with FRP, and had continued to display inappropriate anger, the court approved a change in the permanency plan to concurrent plans of reunification and custody and guardianship by a relative. Things continued to deteriorate. By May 2014, appellant had changed residence without notifying FRP, which discharged her from the program due to noncompliance. At discharge, all nine urine samples she had supplied tested positive for marijuana. In July 2014, she was expelled from the UMMC drug and mental health programs due to angry outbursts and disrespect. Later that month, she threatened to kill her roommate with a gun in the presence of her eight-month-old son. The police were called, and she was arrested, pled guilty, and was incarcerated for four months for a firearm violation.

Notwithstanding that the extant permanency plan approved in December 2013 called for reunification or placement with a relative, DSS, in light of all that had occurred, filed a TPR petition in August 2014. Because appellant kept naming additional men as D.W.'s father, however, the case could not proceed until the paternity of those men had been either established or negated, which took over a year to accomplish. As noted, all five eventually were excluded. In the meanwhile, D.W. remained in foster care with Mr. and Ms. N., in whose care and home she had been placed on March 7, 2013, when DSS removed her from appellant's home, and the CINA case remained active.

In January 2015, appellant underwent a comprehensive psychiatric assessment at King Health Systems. She acknowledged constant agitation, lack of focus, and unstable mood. The assessment concluded that she had a low frustration tolerance and that she presented a "high risk for violent acting out and harm to others" but a low risk for self-harm. King recommended a dual program of mental health and drug abuse treatment, but shortly discontinued its acceptance of appellant's health insurance, gave her a list of alternative providers, and advised that she enroll in FRP. She declined to enroll in any of those programs except FRP, but was non-compliant with that program as well. Her relationship with the father of the youngest child ended in May 2015. A new man then moved in with her, but that relationship ended in July 2015. She intended to reapply for health services from the UMMC program but never followed through with actually enrolling.

In April 2015, DSS filed an amended TPR petition, followed by another in June. A hearing finally was held in September 2015. At that hearing, the facts recounted above regarding appellant's history and situation were recounted. Also placed before the court was evidence regarding D.W. – her relationship with appellant and how she was faring with her foster family.

Because of her unmitigated anger issues and her inability or unwillingness to participate successfully in drug treatment and mental health programs, appellant's weekly visits with D.W., though regular, occurred at DSS and remained strictly supervised. Appellant never asked for, and never received, unsupervised day or overnight visits. As a result, she acknowledged that, although the visits usually (though not always) went well, she had not been able to build a bond with the child. Testimony indicated that, outside of the visits, D.W. does not ask about appellant, and, at the end of the visits, D.W. jumps into the foster parents' arms and shows no sign of being upset at leaving appellant. Appellant conceded that the child "just doesn't know me as her mother."

The child's relationship with the foster family is much closer. By the time of the hearing, she had been in their care for 30 of her 36 months of life. She learned to crawl and walk in their care. She calls Mr. and Ms. N. "mommy" and "daddy" and has a close relationship with their three-year-old adopted daughter, their 19-month old foster son, and with the foster parents' extended family. The foster parents stated that they were eager to adopt D.W. and agreed that, if that were to occur, they would maintain post-

adoption contact between D.W. and appellant. In all, the testimony depicted a warm, caring, nourishing, and loving relationship in which D.W. has thrived.

DISCUSSION

The authority of a Juvenile Court to enter an order granting guardianship of a child to a local department of social services, with the right of that agency to consent to an adoption of the child, without the consent of the natural parent, is governed by Md. Code, §5-323 of the Family Law Article (FL). Section 5-323(b) authorizes the court to enter such an order upon clear and convincing evidence (1) "that a parent is unfit to remain in a parental relationship with the child," or (2) "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 the child's best interest."

In making that determination, §5-323(d) requires the court to 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 the factors enumerated in that subsection. As the Court of Appeals pointed out in *In re Rashawn Kevon H.*, 402 Md. 477, 498 (2007), those factors, "though couched as considerations in determining whether termination is in the child's best interest, serve also as criteria for determining the kinds of exceptional circumstances that would suffice to rebut the presumption favoring a continued parental relationship and justify termination of that relationship."

The trial, on September 15, 2015, appeared to take the better part of the day. There are more than 200 pages of transcript comprising the testimony of appellant, the foster parents, and three social workers, and 111 exhibits. Closing arguments were held nine days later, at the conclusion of which the court, though reserving ultimate judgment pending further study of the record, noted the bond D.W. had developed with her foster family and stated that "it's hard to conclude with eyes on what I saw in the courtroom, that [D.W.] would not be devastated and that it would not be against her welfare to [have] anything but permanency in that home."

The actual findings were made in a written Order entered on October 1, 2015. The court began by noting that none of the five alleged fathers were parties to the proceeding. They either had consented to the guardianship or been ruled out as fathers. Through counsel, D.W. also had consented. The court then summarized the testimony of each witness who had testified and recounted the history of the CINA case that led to this proceeding. From that evidence, the court found, by clear and convincing evidence, that:

(1) DSS extended reasonable services to appellant from the time D.W. was removed from her care in March 2013 and that it fulfilled its obligations under the service agreements that the agency and appellant signed;

(2) Appellant fulfilled some of her requirements but failed to receive consistently mental health measures for her serious mental health diagnosis and was inconsistent with medication management. She was currently without a mental health provider and was past the end of her medication supply.

(3) Appellant was on the verge of losing her housing and had passed through a series of unstable adult relationships. Although the immediate concerns might be alleviated by DSS, "the 30 month cycling and unstable history convinces the Court that short term stability and safety for [D.W.] in [appellant's] care would not be sustained."

(4) Appellant did maintain regular contact with D.W. through weekly one-hour supervised visits. Those visits generally went well, although appellant displayed her severe anger outbursts in D.W.'s presence at some of the visits "and was distracted from mothering by pre-occupation with anger and disagreements with others."

(5) Appellant never sought unsupervised day or overnight visitation. As a result, she admitted that she had not bonded with D.W. In contrast, while the child was in foster care for more than 30 months, she had "closely bonded" with her foster parents.

(6) Although there may be no link between appellant's unstable mental health treatment and resulting cycling anger to D.W.'s **immediate** safety, the court was "convinced that the long history of erratic compliance with Service Agreements and chaotic, unstable housing would leave D.W. with an unstable, unsafe future in contrast to the safe stability of the only family she knows with [the foster family]." In light of this consistent history of instability and "angry rage behaviors," it is "unlikely that the provision of additional services by

> [DSS] would achieve unification of [D.W.] with [appellant] safely and sustainably in the foreseeable future.

Upon these findings, related mostly to appellant, the court found that appellant was not an unfit parent, but then turned its attention to D.W.'s situation in considering whether there were exceptional circumstances that made a continuation of the parental relationship detrimental to the child's best interest. In that regard, it noted that, for 90 percent of her life, D.W. has been in the care of her foster parents, whom she calls mommy and daddy and to whom, along with her foster siblings, she "is closely bonded." The court noted its own observation of D.W.'s interaction with the foster family in the courtroom, which it characterized as "warm, appropriate and close." The foster parents, it found, are closely attached to D.W. and committed to adopt her as their own.

From its own observations, the court repeated its earlier concern that D.W. "would be deeply hurt by separation from them." Acknowledging the strong presumption in favor of maintaining a parental relationship, the court found that the clear and convincing evidence sufficed to overcome that presumption and that there were strong exceptional circumstances favoring the willingness of the foster parents to be D.W.'s adoptive parents. For those reasons, it granted the petition for guardianship and terminated the CINA case.

In her appeal, appellant acknowledges the controlling legal principles. She stresses the court's finding that she is not an unfit parent and downplays the evidence regarding her unstable life, her inability to manage her anger, and the lack of any

significant bonding between her and D.W. that the court found preclusive of any hope of reunification between her and D.W. She interprets the court's ultimate decision as founded on the facts that D.W. had been in the care of the foster parents for most of her life and that they were prospective adoptive parents, which, relying largely on *In re Alonza D.*, 412 Md. 442 (2010), she claims are legally impermissible reasons to terminate her parental rights.

The facts in *Alonza D.* were quite different than those in this case. In *Alonza D.*, the trial court terminated a father's parental rights based almost entirely on the fact that the children had been in foster care for an extended period of time and had bonded with the foster mother. Unlike appellant here, the father had a stable life, was gainfully employed, had regularly visited with the children, had health insurance, had a home suitable for the children, and had arranged for day care services and schooling for the children, all of which was largely ignored by the trial judge. The Court of Appeals reversed. It noted that the record failed to reflect "how a continued parental relationship [with the father] would have caused a detriment to the children, and the trial judge made no findings to that effect." *Id.* at 468.

The key point in *Alonza D.*, quoting from *In re Rashawn Kevon H.*, *supra*, 402 Md. at 499-500, is that "[w]hat the statute appropriately looks to is whether the parent is, or within a reasonable time will be, able to care for the child in a way that does not endanger the child's welfare."

Unlike the situation in *Alonza D.*, that was the major focus of the trial judge in this case. On largely undisputed evidence, which he found clear and convincing, he concluded that there was no reasonable prospect of appellant being able to provide a stable environment for D.W. within the foreseeable future and that reunification was not a viable option. Under the statute, FL §5-323(d)(4), the judge also was required to consider the child's emotional ties with and feelings towards parents, siblings, "and others who may affect the child's interests significantly" and the child's adjustment to community, home, placement, and school. That necessarily implicates an examination of D.W.'s life with and emotional attachment to her foster family. *See In re Adoption of Jayden G.*, 433 Md. 50, 102 (2013).

We do not read the trial court's order as focusing inappropriately on the foster parents' willingness to adopt D.W. It was a fact which the court certainly could take into account in determining whether a continuation of the parental relationship with appellant was in D.W.'s best interest, especially in contrast to the bleak prospect of appellant ever being able to assume the responsibilities of being a parent.

JUDGMENT AFFIRMED;
APPELLANT TO PAY THE COSTS.