UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1931

SEPTEMBER TERM, 2015

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IN RE: ADOPTION/GUARDIANSHIP OF C.S. AND C.S.

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Eyler, Deborah S.,
Berger,
Arthur,

JJ.

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Opinion by Eyler, Deborah S., J.

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Filed: May 16, 2016

On December 1, 2015, the Circuit Court for Charles County, sitting as a juvenile court, entered an order granting a petition filed by the Charles County Department of Social Services ("the Department"), the appellee, to terminate the parental rights of Connie S. ("Mother") and Kevin S. ("Father"),[1] the appellants, in Ca.S. and C.S., their adoptive children. The children also are appellees in this Court. At the time of the proceedings, Ca.S. was 8 years old and C.S. was 10.

On appeal, Mother presents two questions and Father presents one multi-part question, [2,3] which we have combined and rephrased as follows: Did the juvenile court err

[1] We shall refer to Mother and Father collectively as "the S.s."

[2] Mother asks:

> I. Did the Trial Court erred [sic] in finding that [she] was "unfit" and that it would be contrary to the best interests of [Ca.S.] and C.S.] to continue the parental relationship with [her]?
>
> II. Did the [Department] failed to [sic] exert appropriate reasonable efforts to reunify [Ca.S.] and [C.S.] with [Mother]?

[3] Father asks:

> Did the lower court err in terminating Father's parental rights? Specifically,
>
> A. Did the Department fail to make reasonable efforts to reunite Father with his children?
> B. Does the record fail to show that Father was unfit to parent his children?
> C. Did the lower court violate Father's constitutional privilege against self-incrimination by finding that his refusal to admit to abuse warranted termination of his parental rights?

in terminating Mother's and Father's parental rights? For the following reasons, we shall affirm the judgments of the circuit court.

## FACTS AND PROCEEDINGS

In 2008, the Department removed the children from the home of their biological mother due to neglect and failure to thrive. The children were placed in foster care in the S.s' home. On a date not reflected in the record, the biological parents' parental rights in the children were terminated. In April 2010, when Ca.S. was 3 and C.S. was almost 5, the S.s adopted them.

The S.s live in a home in Waldorf. Mother manages a daycare center and Father works the night shift for the United States Department of State as a security officer. The S.s were receiving adoption subsidies of $850 per month per child.

Three years after the S.s adopted Ca.S. and C.S., the Department commenced an investigation into a report of abuse. Three months later, on June 19, 2013, the children were removed from the S.s' home and placed in foster care. On July 25, 2013, the juvenile court found both children to be children in need of assistance ("CINA").[4] Less than two years later, on April 22, 2015, the Department filed its petitions for

[4] A child in need of assistance is "a child who requires court intervention because: (1)[t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2)[t]he child's 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).

guardianship. The following evidence was adduced at the three-day contested guardianship hearing in August 2015.

During the 2012/2013 academic year, the children attended the same public school. Ca.S. was in kindergarten and C.S. was in second grade. Both boys had been diagnosed with attention deficit hyperactivity disorder ("ADHD") and had experienced some behavioral issues at school. The S.s chose not to give them medicine for their ADHD, however.

That year, Ca.S.'s kindergarten teacher noticed that he often came to school hungry. He was chronically late because he went to the cafeteria each morning to eat the free breakfast offered by the school. Ca.S.'s teacher sent a note home with him advising the S.s that they would have to drop Ca.S. off earlier if he needed to eat breakfast before class. Mother sent a note back stating that Ca.S. should not be permitted to eat breakfast at school. On one occasion, Ca.S. arrived in class with 100 pennies hidden in his shoe. When asked about it, he told his teacher he wanted to use the money to buy snacks after school at his daycare center. Ca.S.'s teacher contacted Mother about this incident. Mother responded that Ca.S. was "a thief."

The children's school used a color-coded behavior chart in the classrooms. At the beginning of the day, each child started on the green level. If the child misbehaved, he could be lowered to yellow, orange, and, finally, red. Ca.S. told his teacher that Mother and Father would spank him if he had any color other than green at the end of each day. The teacher believed he was telling the truth.

C.S. told his second grade teacher, Julie Yowell, that if he came home from school with an orange or red level, Mother and Father made him stay up all night. He became very agitated whenever his level moved down from green. C.S. also was hungry and tired almost every day. Yowell was very worried about C.S.'s home environment.

Yowell scheduled a conference with Mother to discuss C.S.'s hunger and fatigue. At the conference, Mother could not explain why C.S. came to school hungry and tired. She told Yowell that C.S. was a "liar" and a "thief" and that both boys were "bad." Yowell disagreed with this assessment and attempted to explain to Mother that C.S. was a pretty good child who had some behavioral issues. Yowell also offered to refer C.S. to the school-based counselor. Mother was adamant that the counselor not speak to either boy.

On April 17, 2013, Ca.S. ended the day on the red level in his kindergarten class. The next day, April 18, he came to school so tired that he could barely keep his eyes open. He told his teacher that, because he had come home on the "red level," the S.s had not permitted him to eat dinner or to go to sleep all night. He said he had been beaten with a belt and then forced to stand with his arms over his head under threat of additional beatings. He said he was hungry because all he had had for breakfast was a piece of plain bread.

Ca.S.'s teacher sent him to the school nurse's office. The nurse was concerned because Ca.S. was so tired that his eyes were rolling back in his head. He complained that his arms were sore from holding them up over his head the night before. The nurse

let Ca.S. lie down on a bed in her office; he immediately fell asleep. She called Mother to discuss Ca.S. Mother told the nurse that Ca.S. had been up late playing video games and should not be permitted to sleep at school. She insisted that the nurse send him back to class. While Ca.S. continued to sleep, Mother called back twice to ask the nurse if he was in class. The nurse found Mother's reaction to her son's fatigue "bizarre."

That same day, the Department received a report of suspected abuse and neglect regarding the children. It assigned Melissa Mohler, a child protective services ("CPS") investigator, to the case. Without prior notice, Mohler went to the children's school and interviewed them (separately), their teachers, the vice principal, and the school nurse. Both boys gave consistent reports about the events of April 17, 2013. They explained that, if Ca.S. was not on the green level at school, he would be forced to eat oatmeal prepared with water for dinner. On the night of April 17, the S.s did not let either boy eat dinner with them because Ca.S. had been on the "red level" that day and because C.S. had not been on the "green level" for a sufficient number of days in the recent weeks. The S.s ate lasagna while the boys each ate a bowl of oatmeal prepared with water.

Because C.S. had been on green that day, Mother and Father allowed him to go to bed. Ca.S. was not allowed to sleep. Ca.S. reported that Mother and Father each spanked him with Father's "long, black belt." Afterward, Mother forced him to stand in her bathroom with his hands held over his head. If he lowered his arms, he would be spanked again. He was crying because his neck hurt and he wanted to go to sleep.

C.S. did not see Ca.S. being beaten, but he could hear the belt being used and Ca.S. crying. He confirmed that Ca.S. was not allowed to go to bed and was forced to stand in Mother's bathroom. He reported that he received the same punishment when he was on the red level at school.

In the early afternoon, Mohler contacted Mother by telephone and requested an urgent meeting. Mother was extremely uncooperative. She told Mohler that she (Mother) was calling her lawyer, the Board of Education, and the Department, and then hung up the phone. After several more phone calls between Mother and Mohler, Mother agreed to come to the Department for a meeting.[5] By then, she had picked up the boys early from school.

Mohler and her supervisor attended the meeting with Mother. Mother denied that Ca.S. had not eaten dinner the night before, stating that he had had dinner *and then* a bowl of oatmeal. She denied that she ever had hit either child with a belt, but acknowledged paddling them on the palms of their hands. She denied that she had hit either child the night before. She stated that the boys were both "documented liars." Mohler confronted Mother with the fact that, during separate interviews, Ca.S. and C.S. had given consistent accounts of Ca.S.'s punishment. Mother responded that the boys shared a room and probably made up lies together.

[5] Mother had called one of Mohler's supervisors at the Department and told her that Mohler had behaved in an extremely rude and unprofessional manner.

The next day, Mother called the boys' school and asked that Ca.S. be moved to a different kindergarten class because she believed his teacher was involved in a "conspiracy" against her family.

On April 24, 2013, Mohler interviewed Father at the family home. Father did not remember what the boys had eaten for dinner on the night of April 17, 2013. He recalled that it had been a typical evening. He did not see what was wrong with feeding the children oatmeal. He denied using physical discipline on Ca.S. that night or that he ever had beaten either child with a belt. He stated that he and Mother hit the boys on the palms of their hands with a ruler for serious misbehavior.

Mohler contacted the boys' pediatrician, Diana Abney, M.D., to obtain copies of their medical records. Ca.S.'s weight chart reflected that between August 2011 and April 2012, he did not gain weight at a normal rate and fell from the 12.46th percentile to the 3.87th percentile for weight for boys his age. Dr. Abney's office had recommended that the S.s add high calorie snacks and Pediasure, a high calorie drink, to his diet. By March 2013, however, Ca.S. had dropped to the 1.49th percentile for weight and had a body mass index (BMI) of just 0.45th percentile.

On May 8, 2013, Mohler interviewed the children a second time at their school. Ca.S. reported that Mother had told him not to tell Mohler that he had been spanked and that if she (Mohler) asked him questions about his home, he should tell her to talk to Mother and ask to return to class. C.S. told Mohler that he had gotten in trouble for talking to her on April 18, 2013. According to both boys, Mother told them they might

have to go to another home because of what they had told Mohler previously. Both boys remained consistent about Ca.S.'s treatment by their parents on the night of April 17, 2013, however.

On May 21, 2013, the Department held a Family Involvement Meeting ("FIM") with the S.s. The Department had prepared a "Safety Plan" to address concerns about abuse. The S.s refused to sign the plan because it included a provision that they would not use physical discipline. Mohler also offered the services of a parent support worker, but the S.s did not think that was necessary. The S.s entered into a service agreement with the Department, agreeing to permit Ca.S. and C.S. to eat breakfast and lunch at school each day and to begin taking the children for individual therapy.

At the end of May 2013, Ca.S. and C.S. entered counseling with Sara Carson, a therapist with the Center for Children. Mother insisted on being present during the counseling sessions. She repeatedly interrupted the children during sessions. At one such session, when Ca.S. began to tell Carson that he had not been allowed to eat that day, Mother interjected, saying don't "start that again." At another session, Carson asked Mother to describe two character traits for each boy that she viewed as strengths. Mother described a strength for each boy, but then immediately explained why the strength also was a weakness. During the sessions, Ca.S. and C.S. were withdrawn, did not make eye contact, and would not answer Carson's questions. According to Carson, they did not make any therapeutic progress during the sessions that Mother attended.

On June 6, 2013, Mohler went to the boys' school to investigate a report that C.S. had a bruised right eye. He told her he had run into a tree. He also stated that he was not supposed to "discuss family business."

On Friday, June 14, 2013, the Department received a report from the children's school that they had been absent all week, without explanation. On Monday, June 18, 2013, Mohler called Mother on her cell phone, but received no answer and was unable to leave a message because Mother's voicemail was full.[6] Mohler went to the S.s' home, but no one was there. She left a business card in the door.[7] The next day, Mohler and another CPS investigator, Mary Jane Cupples, returned to the S.s' home and spoke to Father.[8] He told them he did not know where Mother or the boys were and he had not seen them since Sunday, June 16, 2013. He suggested that they may have gone to the beach in North Carolina. He allowed Mohler and Cupples to walk around the house. They noticed that the boys' beds, the kitchen table, the couch, and other items were

[6] The day before, Mother had emailed Mohler and provided a new address in Waldorf. Another Department social worker responded to that email and asked Mother if this was where she was now living with the children. Mother did not respond.

[7] Mohler also visited the new address Mother had provided by email. A woman answered the door, said she was Mother's grandmother, and told Mohler that Mother and the children had left about an hour earlier.

[8] Father initially did not answer the door. Mohler could see someone walking around inside. After waiting for twenty minutes, Mohler called the Charles County Sheriff's Department for back up and an officer knocked on the door. Only then did Father open the door.

missing from the home and that pictures had been removed from the walls. Mohler took photographs to document the condition of the home.

Cupples sent a text message to Mother asking her to contact the Department "ASAP" and informing her that "the police and CPS" were at her house. Mother responded and agreed to meet Mohler and Cupples at the Welcome Center on Route 301 in Newburg, Maryland, which is adjacent to a bridge that crosses the Potomac River into Virginia. The Welcome Center is about twenty minutes from the S.s' house. The Charles County Sheriff's Department dispatched officers to that location and Mohler and Cupples met them there. Mother was in her car and had the boys with her. The back seat was filled with the boys' clothing and other items.

At that time, the Department took Ca.S. and C.S. into custody and placed them in foster care with Mr. and Mrs. L. When Mohler took the children to the L.'s house, they both were "very happy" and told her that they "didn't want to go home."

The Department assigned Lolita Gleaton, a licensed social worker, as the children's foster care caseworker. Markeeta Dixon, a licensed clinical social worker, was Gleaton's supervisor and also was actively involved in managing the out-of-home services for Ca.S. and C.S..

After the boys were removed from the S.s' home, there was a marked improvement in their behavior at school and in their moods. The boys told Gleaton and Carson, who continued to act as their individual therapist, that they were very happy to be in foster care. Carson observed that the boys' demeanor during therapy sessions also

changed dramatically. They became open and playful. C.S. told Carson that his foster home was "great" and "awesome," noting that he could eat whenever he wanted and could go outside to play. He also told Carson he did not miss Mother and Father. Ca.S. told Carson that he missed Mother and Father a little, but he did not want to live with them.

The children also began disclosing to Carson more details about the way they had been disciplined by Mother and Father. Both boys chronically wet the bed. They told Carson that, because of this, Mother and Father forced them to sleep on rubber sheets with no other bedding. Both boys reported that on multiple occasions they had been made to stand for long stretches of time with their hands above their heads, as punishment. If they lowered their arms, Mother or Father hit them with a belt on their bare torso. Food was routinely withheld as punishment for infractions. They also were forced to take ice baths as punishment.

The Department referred Mother and Father for psychological evaluations. Father was evaluated on July 2, 2013. In a report dated July 10, 2013, the psychologist diagnosed him with an anxiety disorder, an avoidant personality disorder, and severe symptoms of poor global functioning. She recommended that he participate in individual treatment. She found that he exhibited "somewhat rigid and concrete" thinking and was "prone to struggle to control his feelings of anger and frustration."

Mother was evaluated on July 5, 2013. In a report dated August 5, 2013, the psychologist found that she was depressed and had a possible dependent personality

disorder. She noted that Mother went to great lengths to present herself in a positive light, reflecting an "overuse of defense mechanisms to cope with stress and troubling emotions." The psychologist recommended individual therapy, parenting skills classes, and a bonding assessment to assess the parent-child bonds. She further recommended that family therapy among Mother and her children commence "only after [Mother] has gained insight and shown progress in her individual therapy."

After Ca.S. and C.S. were adjudicated to be CINAs, the juvenile court ordered the Department to facilitate supervised visitation between the S.s and the boys at least once per week. Initially, Mr. and Mrs. L supervised these visits, which typically took place in a park or a Chuck E. Cheese, and lasted one hour.

In addition to this weekly visitation, in September 2013, the Department referred the S.s to the NOVO parenting program, through the Promise Resource Center ("PRC") in Waldorf. As part of the program, PRC staff facilitated a visit between the children and their parents on September 23, 2013.

On October 4, 2013, Carson wrote to the Department and advised that, in her professional opinion, NOVO Parenting Program visits between the children and Mother should "be put on hold" because the visits were "detrimental to the children's emotional well-being." Carson explained that she had seen a "distinct negative change in behavior, and regression in their progress" since the NOVO Parenting Program visit. She opined that Ca.S. and C.S. needed time to process "the abuse experienced" at the hands of Mother before having increased visitation with her.

Supervised visitation continued, but the NOVO Parenting Program visits were terminated. Mother and Father soon requested that their visits be supervised by a third party, because they perceived Mr. L as being "hostile" to them and they felt the boys were too "clingy" when he was around. Carson concurred in this suggestion, but maintained that the NOVO visits should not resume and that family therapy should not be started until Mother and Father had "both acknowledged the full extent of the abuse and trauma they [had] inflicted on [the children]."

From January through March 2014, PRC supervised weekly visitation. C.S. began to refuse to attend visits during this timeframe, however, and Ca.S. occasionally refused as well. As a result, the PRC terminated its supervision of the visits.

In March 2014, Ca.S. and C.S. began attending individual therapy with David Rice, another therapist at the Center for Children, because Carson had left the center.

In April 2014, Ca.S. and C.S. transitioned out of the L.'s home and into the home of Mr. C. and Mr. A. They continued to live with Mr. C. and Mr. A. through the guardianship proceedings in this case.

From April through June 2014, Mr. C. supervised occasional visits between the S.s and the boys. The boys continued to refuse to attend most visits, however. From July through September 2014, there were no successful supervised visits.

In September 2014, Rice advised the Department that he believed the boys were ready to begin family therapy with the S.s. The Department engaged Laurie Nelson, a licensed clinical professional counselor, to assess the potential for family therapy and

prepare a report of her findings. Nelson's objectives were to "reintroduce the family members" and "build security." On October 19, 2014, Nelson conducted two intake sessions: one with Mr. A., Mr. C., and the children, and a second with the S.s.

After the October 19, 2014, sessions, Nelson learned from the Department that the children were "experiencing some emotional dysregulation" at home and at school. Specifically, Mr. A. and Mr. C. had reported that the children were having nightmares and tantrums. Both boys began wetting the bed every night. The school reported that they were acting out. C.S. in particular was "not talking or communicating" at all at school, according to his teacher, and was becoming angry and defiant during after-care.

Nelson considered the boys' behaviors to be red flags. As a result, she decided to reduce the length of the last two family therapy sessions.

On October 26, 2014, and on November 9, 2014, Nelson met with the S.s and the children together for two more sessions. She observed "positive and playful" interactions between the S.s and the children. The children were "hesitant," but not fearful, around them.

On November 20, 2014, Nelson issued a report. She recommended continuation of family therapy with a therapist in the same practice as Rice so the family therapist and the individual therapist could collaborate.[9] She emphasized that the individual therapist

[9] Around this time, Rice advised the Department by e-mail that he would be willing to act as the boys' family therapist once they were in their "permanent placement."

would need to monitor the children's behavior to ensure it was not adversely affected by ongoing family therapy.

A month later, however, Rice determined that he could not continue acting as the boys' individual therapist because he had failed to develop a "rapport" with them. As a result, Ca.S. and C.S. did not receive any individual therapy for approximately 6 weeks. On January 31, 2015, the boys transitioned to a new individual therapist, Nawana Borges, at All That's Therapeutic in Waldorf. Borges did not recommend the resumption of family therapy. She was of the opinion that family therapy was likely to cause Ca.S. and C.S. to regress emotionally. The Department deferred to her opinion.

Meanwhile, in October 2014, the Department began facilitating supervised telephone contact between the boys and the S.s because the boys had refused to attend in-person visits. The S.s were permitted to call the boys up to four weekdays each week, plus on Saturday, at Mr. A. and Mr. C's house. The boys were not required to speak to them, however. In October, November, and December 2014, Ca.S. and C.S. agreed to speak to Mother and Father just once per month.

In January 2015, the S.s asked the juvenile court to order Borges to supervise the phone calls during the individual therapy sessions. The juvenile court granted their request and, beginning in February 2015, Borges attempted to facilitate a phone call between the S.s and the boys at the start of each session. Borges would call Mother and Father and put them on speaker phone. The boys consistently refused to talk to Mother and Father, however. Borges reached out to Gleaton to determine the protocol for the

supervised telephone contact. Gleaton advised her that, going forward, at the beginning of each phone call Mother and Father should be required to ask Ca.S. or C.S. whether they wished to speak to them. If there was a negative response, the phone contact for that session would cease. Between February 2015 and July 2015, there was only one successful phone call.

Mother and Father did not testify at the contested guardianship hearing. Mother called five witnesses: Nelson, who, as mentioned, conducted a family therapy assessment for the Department; Sondra Jackson, a therapist treating Mother; Audrey Codrington, a school psychologist at the boys' school; Dr. Abney; and George Roberts, the pastor at the S.s' church. Jackson testified that she worked as a contractual therapist for the Life Christian Counseling Network. She began treating Mother in August 2013, beginning with weekly sessions and then moving to bi-weekly sessions. Jackson had reached out to Carson early in Mother's therapy to determine whether family therapy was an option. Carson had advised Jackson that Mother would need to admit to the abuse before any steps toward reunification would be appropriate. During therapy with Jackson, Mother admitted to having used a ruler to paddle the boys' hands, but otherwise maintained that a "terrible misunderstanding had occurred." Jackson's main focus in treating Mother was to help her to cope with the grief associated with losing her sons. She also helped her to gain insight into parenting children with ADHD. Mother had been very resistant to using medication to treat the boys' symptoms, which she believed were better addressed

through prayer and discipline. Jackson helped Mother to understand that medication could help the boys to better take control of their behavior.

Codrington testified that she had evaluated C.S. in October 2013, after he was referred to the student support team at his school to address problems with inattentiveness in the classroom. He demonstrated significant attention deficits consistent with a diagnosis of ADHD. In response to a question about school, he told her a long story "based on fantasy" about fighting in a war. In her report, Codrington expressed concern about C.S.'s "preference for fantasy over reality" and recommended "monitor[ing] incidents of dishonesty."

On cross-examination, Codrington stated that she had interviewed Mother as part of her evaluation and that Mother had reported that C.S. "frequently tells lies." She also stated that C.S.'s school records reflected an improvement in his school work and behavior after he was removed from the S.s' home.

Dr. Abney testified primarily about Ca.S.'s weight chart, about when and whether fluctuations in weight can be cause for concern, and about various potential causes of failure to thrive.

Roberts testified that Mother and Father are good people. He described charitable acts Mother undertook for members of their church. He characterized the children as very neatly dressed and obedient. They were not permitted to run around during church services like the other children.

The children did not testify at the contested guardianship hearing because Borges advised the Department that, in her opinion, it would not be in their best interest to do so.

By order of October 19, 2015, the juvenile court found by clear and convincing evidence that it was in the children's best interests that the Department's guardianship petitions be granted.

On December 1, 2015, the juvenile court entered a memorandum of findings and opinions, which we shall discuss in greater detail, *infra*. The court found that both Mother and Father were "unfit to continue in a parental relationship" with Ca.S. and C.S.; and that the Department had "offered extensive, appropriate, and timely services to [the S.s] both prior to the removal of the children and thereafter, in an effort to facilitate reunification." The court determined that, despite these services, the S.s had not "addressed the concerns of their abuse, the impact their abuse had on their relationship with the children, and [had] therefore made little, to no, progress towards reunification" over the more than two years that the boys had been in foster care.

The court found that the Department had amply rebutted the presumption that "a continuation of the parental relationship" would be in the children's best interest and further found that denying the petitions would be "extremely detrimental to the children's welfare." It concluded that the children's best interests would be served by permitting them to move on and achieve permanence and stability in a safe and loving home, which they were able to receive in their foster home. For all those reasons, the court granted the petitions and terminated the S.s' parental rights in the children.

This timely appeal followed. We shall include additional facts in our discussion of the issues.

## STANDARD OF REVIEW

"In reviewing a juvenile court's decision with regard to termination of parental rights, we utilize three different but interrelated standards." *In re Adoption of Ta'Niya C.*, 417 Md. 90, 100 (2010).

> "When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Second,] [i]f it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion."

*In re Adoption/Guardianship of Victor A.*, 386 Md. 288, 297 (2005) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003) (alteration in *In re Victor A.*)).

A court abuses its discretion when """"the decision under consideration [is] well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable."""" *In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 734 (2014) (quoting *In re Shirley B.*, 419 Md. 1, 19 (2011), in turn quoting *In re Yve S.*, 373 Md. at 583-84).

## DISCUSSION

### I.

Mother and Father contend the juvenile court's decision to terminate their parental rights was not supported by clear and convincing evidence. Mother maintains that the

evidence showed that she complied with all the Department's directives and was actively engaged in therapy to "adjust [her] circumstances, condition, or conduct to make it in the [children's] best interests for the [children] to be returned to [her] home." (Quoting Md. Code (1984, 2012 Repl.Vol.), section 5-323(d)(2) of the Family Law Article ("FL")). She disputes that the evidence supported a finding of "serious abuse" or other "exceptional circumstances" that made the continuation of the parental relationship detrimental to the children's best interests. Father argues that, because the evidence showed, and the court found, that Mother perpetrated most of the abuse, the court erred by finding him to be unfit. Finally, Mother and Father both argue that the Department did not provide adequate services to achieve reunification because it failed to facilitate continuing family therapy and to ensure that visitation occurred on a regular basis.

The Department and the children respond that the court made non-clearly erroneous factual findings for each of the applicable statutory factors set forth in FL section 5-323(d) and did not abuse its discretion by determining that it was in both of the children's best interests to grant the petitions for guardianship.

"In order to terminate a parent's parental rights, the State must prove by clear and convincing evidence that such a termination was in the child's best interests." *In re Adoption/Guardianship of Quintline B. & Shellariece B.*, 219 Md. App. 187, 206 (2014), cert. denied, 441 Md. 218 (2015) (citing *In re Priscilla B.*, 214 Md. App. 600, 622 (2013)). Parents have a fundamental right to raise their children. *In re A.N., B.N. & V.N.*, 226 Md. App. 283, 306 (2015); *accord Troxel v. Granville*, 530 U.S. 57, 66 (2000). The

law presumes that a child's best interests are served by remaining with his or her natural parents, but "the parents' right is not absolute and 'must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect.'" *Ta'Niya C.*, 417 Md. at 103 (quoting *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 497 (2007)). "This presumption, however, may be 'rebutted only by a showing that the parent is either unfit or that exceptional circumstances exist that would make the continued relationship detrimental to the child's best interest.'" *Quintline B.*, 219 Md. App. at 206 (quoting *Rashawn H.*, 402 Md. at 498).

In deciding whether to terminate parental rights, the juvenile court must analyze the factors set forth in FL section 5–323(d).[10] In doing so, the court

[10] FL § 5–323(d) provides:

> Except as provided in subsection (c) of this section, in ruling on a petition for guardianship of a child, a juvenile court shall give primary consideration to the health and safety of the child and consideration to all other factors needed to determine whether terminating a parent's rights is in the child's best interests, including:
> (1)(i) all services offered to the parent before the child's placement, whether offered by a local department, another agency, or a professional;
> (ii) the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent; and
> (iii) the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any;
> (2) the results of the parent's effort to adjust the parent's circumstances, condition, or conduct to make it in the child's best interests for the child to be returned to the parent's home, including:
> (i) the extent to which the parent has maintained regular contact with:

(Continued…)

(…continued)

1. the child;
2. the local department to which the child is committed; and
3. if feasible, the child's caregiver;

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

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

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

(3) whether:

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

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

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

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

(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

(Continued…)

> must keep in mind three critical elements. First, the court must focus on the continued parental relationship and require that facts . . . demonstrate an unfitness to have a continued parental relationship with the child, or exceptional circumstances that would make a continued parental relationship detrimental to the best interest of the child. Second, the State must show parental unfitness or exceptional circumstances by clear and convincing evidence. Third, the trial court must consider the statutory factors listed in [FL § 5–323](d) to determine whether exceptional circumstances warranting termination of parental rights exist.

*Ta'Niya C.*, 417 Md. at 103-04 (internal citations and footnotes omitted). Above all, in this consideration, "'the best interest of the child remains the ultimate governing standard.'" *Quintline*, 219 Md. App. at 206 (quoting *In re Adoption/Guardianship of Jayden G.*, 433 Md. 50, 68 (2013)).

The first FL section 5-323(d) factor concerns the "services offered to the parent before the child's placement," "the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent" after the child is in an out-of-home placement, and "the extent to which a local department and parent have fulfilled

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(…continued)

> (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.

their obligations under a social services agreement, if any." FL § 5-323(d)(1). The juvenile court found that, during the "In-Home Services" period, between April 18, 2013 and June 19, 2013, the Department made "valiant and abundantly reasonable efforts to prevent removal, to no avail." This included an attempt to enter into a "Safety Plan" with the S.s. After Ca.S. and C.S. were removed from the S.s' home and placed in foster care, the Department continued to make "abundant reasonable efforts to finalize the permanency plan of reunification." These efforts included therapy for the children; referrals for psychological evaluations for Mother and Father; bonding assessments; parenting classes; facilitation of visitation; and attempts to initiate family therapy. The court found that the Department's efforts at reunification ultimately failed because of the S.s' conduct, not because of a lack of reasonable effort.

Turning to the second FL section 5-323(d) factor, the juvenile court considered whether Mother and Father had "adjust[ed] [their] circumstances, condition, or conduct to make it in the [children's] best interests for the child[ren] to be returned to the parent's home." FL § 5-323(d)(2). The court found that, during the In-Home Services period, Mother and Father refused to sign the "Safety Plan" proposed by the Department because of the provision forbidding the use of corporal punishment, and refused to permit home visits on numerous occasions. In addition, Mother withdrew the children from school for a week without notice to the Department (or the school) and did not respond to attempts to reach her.

The court further found that, after the children were removed from the home, Father became non-compliant with the Department's directives. He was resistant to following through with services and did not maintain adequate contact with Gleaton, instead deferring all questions to Mother. At one point, the Department offered Father additional visitation with the children without Mother present. He declined. While Mother was more proactive than Father and advocated for additional therapy and tutoring for the children, her behavior during visitations and therapy sessions often was "counterproductive."

Of the greatest significance, however, was the court's finding that Mother and Father refused to acknowledge the abuse they had inflicted on the children. The children's therapists all opined that family therapy with a goal of reunification only could be successful if Mother and Father acknowledged the abuse. When the boys first disclosed the abuse, however, Mother had called them liars. She later put her own "spin" on the boys' claim that they were denied food, maintaining that they liked eating cream of wheat. She acknowledged to Gleaton paddling them with a ruler and "occasionally" hitting them with a belt and ruler to "correct ADHD symptoms," but denied that she ever used sleep deprivation or the withholding of food as punishment. Mother's therapist had testified that her individual therapy sessions were addressed primarily to helping Mother cope with the grief of losing her children and that, during her individual therapy, Mother never acknowledged the abuse she had inflicted.

Like Mother, Father never acknowledged any role in the abuse and neglect that led the Department to remove the children from the home. The court found that Mother and Father "appear[ed] determined to prove that they are 'not guilty' of the allegations [of abuse that had] long since [been] found to be facts." They did not acknowledge that the boys' unwillingness to have contact with them was a result of that abuse and not a product of a lack of appropriate efforts by the Department. Given the boys' refusal and the reason for it, the court found that there were no additional services the Department could offer that would facilitate reunification.

The court further found that Mother and Father had not adequately contributed to "a reasonable part of the [children's] care and support" while they were in foster care. FL § 5-323(d)(2)(ii). During that entire period, they continued to receive the $1,700 per month "adoption stipend" for the children. They did not disclose this to the court when it calculated the S.s' child support obligation. Consequently, they only were ordered to pay $200 per month. As a result, while the boys were out of their care, they collected $37,500 in stipend payments.

The third FL section 5-323(d) factor concerns whether the parents have been found to have engaged in abuse or neglect of the children. The court found that Mother and Father abused both boys. It detailed the April 17, 2013 incident of abuse that had prompted the Department's involvement and the consistent and detailed reports of abuse and neglect at the hands of Mother and Father that the children had provided to social workers, teachers, and therapists since that time. Mother had forced the children to stand

with their hands above their heads all night long; had beaten them with a belt if they lowered their arms; had punished them for wetting the bed by making them sleep on rubber sheets and by making them take ice baths; and had denied them food when they didn't maintain a "green level" at school. The court characterized the abuse as "ritualistic." While most of the abuse was inflicted by Mother, some was inflicted by Father, and the court emphasized that Father knew about it and did nothing to stop it.

Under the fourth FL section 5-323(d) factor, the court found that the abuse "irreparably damaged" the relationship between the children and the S.s. As a result, neither child was attached to Mother or Father, and neither expressed a desire to live with Mother and Father. Gleaton testified that "she never before had a case where the children absolutely did not want to go home or interact with their parents."

The court found compelling the evidence of the "night and day" change in the boys' demeanor and behavior after they were removed from the S.s' home. They became playful and open. They began making progress in therapy sessions. Their behavior improved at school. They consistently expressed a desire to stay in their foster home and not to return to live with the S.s.

When visitation between the boys and the S.s increased, they regressed. This pattern repeated itself time and time again. After an increase in contact with the S.s, the boys became more defiant and withdrawn, began wetting the bed, and acted out at school. On one occasion, C.S. threatened to hurt anyone who made him return to the S.s' home.

The court found that, in contrast to their detached relationship with the S.s, the boys were "assimilated" and "flourish[ing]" in their foster home with Mr. A. and Mr. C. They were enrolled in sports, played guitar, attended church, and had made new friends. They were given household responsibilities and responded well to redirection for misbehavior. They had stopped wetting the bed and were very attached to their foster parents.

The court summarized its findings:

> The presumption that a continuation of the parental relationship is in the children's best interest has been rebutted by clear and convincing evidence. Continuation of the [S.'s] parental relationship, were the Court to deny the petition, would be extremely detrimental to the children's welfare. In this case, there is no parental relationship to preserve. The abuse, unhealthy parenting, and lack of protection inflicted on the children by the [S.'s] has resulted in children who are fearful and reject any contact with them. Whenever the children have been forced to engage in contact with the [S.'s], their behaviors have spiraled downward. They became oppositional, acted out, and experienced nightmares. They never appeared to be attached or bonded to their parents, they never appeared to suffer from separation from them. There are no additional services which could have been provided, or which could be provided in the future, in order for reunification to occur. It is not in the children's best interest and is, in fact, detrimental to their welfare to force a relationship with the [S.'s]. The [S.'s] were provided abundant reunification services. They attended therapy, anger management, and parenting classes. While going through the motions, checking off the boxes, and accumulating certificates is commendable, the causes necessitating commitment were never acknowledged by the [S.'s], so they were never addressed.
>
> The Court's granting the petition will allow the children to be adopted by the foster parents whom they love and with whom they are bonded and enjoy a healthy relationship. . . . . The children need and deserve permanence and stability in a safe, stable, loving home, which [Mr. A. and Mr. C.] provide.

In light of these findings, the juvenile court determined that termination of Mother's and Father's parental rights in the children was warranted. The court plainly did not abuse its discretion in so finding.

As noted, both parents complain that the Department's lack of efforts to facilitate family therapy doomed any chance of reunification succeeding. The evidence was overwhelming, however, that family therapy only would advance the children's best interests if (1) Mother and Father acknowledged their roles in the abuse and (2) the children did not regress emotionally as a result of the initiation of therapy. As already discussed, Mother and Father were steadfast in their refusal to acknowledge the abuse. Despite this, the Department twice attempted to facilitate family therapy: once through NOVO and once through Nelson. On each occasion, both children immediately regressed in dramatic fashion. While the Department must make "reasonable" efforts to facilitate reunification, its paramount duty always is "to protect the health and safety of the children." *Rashawn H.*, 402 Md. at 501. The Department's decision not to proceed with family therapy was in keeping with this duty and did not amount to a failure to offer reasonable reunification services to Mother and Father.

Mother contends the evidence did not support a finding of "serious abuse." This contention is utterly without merit. Mother forced her five and seven year old sons to stand with their hands raised above their heads all night long. She threatened to hit them with a belt if they lowered their arms, and did so. She subjected them to serious sleep deprivation. She denied them dinner when they did not maintain the "green level" at

school and routinely deprived them of food as a form of punishment. She made them take ice baths as a punishment. The boys were subjected to what can only be described as physical and psychological torture. These acts rose to the level of serious abuse and the court did not err in so finding.

Father contends the juvenile court's finding that Mother abused the children did not support a finding that he was an unfit parent. We disagree. Father was present in the home when the abuse was ongoing. The court reasonably inferred that he knew of the abuse and did nothing to stop it. This was consistent with Father's deference to Mother at every stage of the case. Moreover, Father did not acknowledge the abuse or make any attempt to show the Department that he could ensure the children's safety in the home he shared with Mother.

Finally, Father argues that the juvenile court improperly drew an adverse inference from his decision not to testify at the guardianship hearing, in violation of his Fifth Amendment right against self-incrimination. He states that the juvenile court "repeatedly emphasized" his refusal to admit abuse and that this improperly formed the basis of the court's decision to terminate his parental rights.[11]

[11] It is worth noting that the majority of the juvenile court's references to Father's (and Mother's) refusal to acknowledge the abuse were not adverse inferences drawn from Father's (and Mother's) decision not to testify at the guardianship hearing. Rather, they were findings of fact drawn from the testimony of witnesses such as Gleaton, Mohler, and Jackson, about the S.s' responses to the allegations of abuse. The juvenile court made one reference to Father's decision not to testify at the various hearings. As we shall discuss, this was not improper.

The Department responds that the juvenile court was permitted to draw an adverse inference from Father's refusal to testify in a *civil* guardianship proceeding without running afoul of the Fifth Amendment. We agree.

The Fifth Amendment provides that "[n]o person . . . shall be compelled in any criminal proceeding to be a witness against himself." To be sure, the Fifth Amendment privilege has been "held to extend to compelling answers by parties or witnesses in civil litigation," such as the instant proceedings. *Whitaker v. Prince George's County*, 307 Md. 368, 384-85 (1986); *In re Ariel G.*, 383 Md. 240 (2004). A party *to a civil proceeding* who invokes the privilege is protected from being forced to disclose facts that could "incriminate [him or her] in a later criminal prosecution." *Whitaker*, 307 Md. at 385. However, the court in the civil proceeding is "entitled to draw an inference from [the party's] refusal to so testify." *Id.* Thus, to the extent that the juvenile court drew an adverse inference from Father's decision not to testify at the guardianship hearing, it did not do so in violation of Father's Fifth Amendment rights.[12]

[12] Father's reliance on *In re Ariel G.* is misplaced. In that case, the juvenile court held a mother in contempt based upon her refusal to testify to the whereabouts of her son, an adjudicated CINA. The Court of Appeals held that the mother had a Fifth Amendment right not to give testimony at the CINA proceeding that could subject her to a later criminal prosecution for kidnapping; and by punishing mother for her refusal to so testify, the court violated her constitutional rights. In the case at bar, Father (and Mother) were permitted to invoke their Fifth Amendment privilege and were not forced to testify or subjected to any punishment for their decision not to testify.

We perceive no error and shall affirm.

**JUDGMENTS OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANTS.**