UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2101

September Term, 2015

IN RE: T.S., CL. S., LEI.S, LE.S.

Eyler, Deborah S.,
Berger,
Nazarian,
JJ.

Opinion by Eyler, Deborah S., J.

Filed: November 4, 2016

On December 22, 2015, the Circuit Court for Dorchester County, sitting as a juvenile court, entered orders granting petitions filed by the Dorchester County Department of Social Services ("the Department"), an appellee, to terminate the parental rights of Timothy S. ("Father"), the appellant, in T.S., Cl.S., Lei.S., and Le.S, also appellees.[1] The children's mother, Teresa S. ("Mother"), consented to the termination of her parental rights. At the time of the proceedings, T. was 11 years old, Cl. was 10, Lei. was 9, and Le. was 7. Two older children, M.S., age 16, and Ca.S. age 15, are not involved in this appeal.

Father presents three questions,[2] which we have combined and rephrased as: Did the juvenile court err in terminating Father's parental rights? For the following reasons, we shall affirm the orders of the juvenile court.

[1] For ease of discussion, we shall refer to the children by their first initials only.

[2] Father asks:

> 1. Did the trial court commit reversible error in failing to specify how a waiver of reunification assistance and the severance of a continued relationship with the children is in the best interests of these children?
> 2. Did the trial court fail to consider the ample and credible evidence of the progress and commitment of father to maintain his parental relationship with the children in accordance with Family Law § 5-323(d)(2)?
> 3. Was the denial of effective assistance of counsel coupled with a denial of any reunification services reversible error in the termination of father's parental rights?

FACTS AND PROCEEDINGS

Father and Mother have six children together: three daughters, M., Ca., and Lei., and three sons, T., Cl., and Le. Father and Mother have never been married, but they have lived together with their children on and off for many years.

The Department has a long history of involvement with Father and Mother stemming from reports of child physical abuse and neglect and numerous incidents of domestic violence between the parents dating back to 1999. As relevant here, in August 2012, Mother was arrested after a report that she had abused T. She was ordered not to have any contact with him. The Department provided intensive in-home services to Father to assist him in caring for the children alone, but he quickly became overwhelmed.

In December 2012, the Department received a report that Mother and Father had "gone on a date, drank alcohol, and later . . . had a physical altercation." Father was arrested and Mother was transported to a hospital for treatment. The Department made a safety plan for M., Ca., and T. because they were afraid to return to the family home. They were placed with a family friend.

On January 10, 2013, the Department received a report that Father had been arrested and charged with assault after allegedly hitting Cl., then 7 years old, with a soft lunchbox filled with DVDs and chasing him down the street. Cl. told the police officer that Father had hit and kicked him because Father thought Cl. had taken his "weed." Cl. had a bruise on his head and an abrasion on his back. A child protective services ("CPS") investigation was opened as a result.

The next day, the Department held a family involvement meeting ("FIM") with Father and Mother.[3] The Department advised that it was considering removing all the children from the home. Mother and Father identified relatives and friends who could be resources. By agreement, Cl. and Le. were placed with a paternal cousin; Lei. was placed with a different paternal cousin; and T. remained with the family friend.

On January 16, 2013, Father was released on bond.

By January 22, 2013, the placements for Cl., Le., and Lei., had fallen through. The Department arranged another meeting with Father and Mother. Because Cl. needed to return to the family home and because Father was not allowed to have contact with him pending the resolution of the criminal assault charges and the CPS investigation, Father agreed to move out of the home and stay with his sister.

On February 14, 2013, in response to another incident involving Mother,[4] the Department removed the children from the home and placed them in a therapeutic foster home with foster parent Debbie F.[5]

On February 28, 2013, an adjudication hearing was held before a juvenile court magistrate. The magistrate recommended that the court sustain the facts in the juvenile petition. An order to that effect was entered on March 6, 2013.

[3] It is unclear from the record whether this meeting took place at the jail where Father was then being held or whether Father participated by telephone.

[4] The details of that incident are not apparent from the record.

[5] Initially, all six children were placed with Ms. F. Ultimately, M. and Ca. were removed from that home and placed elsewhere.

On April 8, 2013, the juvenile court entered a Consent Disposition Order. As relevant here, it found that Father and Mother were unable or unwilling to provide proper care and attention for the children because of the "extensive history of domestic violence, neglect, allegations of physical abuse by both parents, untreated addictions issues, failure to follow through with safety plans, housing and financial instability, and failure to follow through with mental health treatment for the children." The court found that return of the children to the home would be "contrary to [their] safety and welfare" because Father was prohibited from having contact with two of his children due to pending criminal charges; the CPS investigation had resulted in a finding of indicated physical child abuse by Father; both parents needed continued addiction treatment and mental health treatment; and Mother and Father did not have appropriate housing at that time. The court found that all six children were children in need of assistance ("CINA")[6] and ordered that they be committed to the custody of the Department. The court ordered that Mother would have supervised visitation with the children at their foster home and Father could have telephone contact with T., Lei., and Le. at reasonable times designated by the foster parent.

On August 18, 2013, Mother was visiting Father at his sister's house. They argued and Father stabbed Mother multiple times on her hand and shoulder with a steak

[6] 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.), § 3-801(f) of the Courts & Judicial Proceedings Article ("CJP").

knife. Mother was transported by ambulance to Peninsula Regional Medical Center, where she was treated and released the next day. More than a month later, on September 25, 2013, Father was apprehended in Boston, Massachusetts by United States Marshals. He was extradited to Maryland and indicted on charges of attempted first degree murder, attempted second degree murder, first degree assault, second degree assault, reckless endangerment, and wearing and carrying a dangerous weapon with intent to injure.

Meanwhile, on September 17, 2013, a permanency plan review hearing was held before a juvenile court magistrate. Father's whereabouts were then unknown. The magistrate recommended a permanency plan of reunification with Mother, and the juvenile court entered an order to that effect on October 2, 2013.

On May 6, 2014, in his criminal case, Father entered an *Alford* plea[7] to the charge of first degree assault and was sentenced to a term of 15 years, all but 5 years suspended, and 5 years of supervised probation. The State entered a *nolle prosequi* as to the remaining charges. Father was transferred to the Eastern Correctional Institution to serve out his sentence. He was eligible to be released on parole, at the earliest, on March 25, 2016.

At a June 2, 2014 permanency plan review hearing, the Department recommended that the court change the permanency plan to guardianship/adoption by a non-relative. Father opposed the recommendation. He also advised the magistrate that his assigned public defender had not met with him. In light of Father's allegation, the hearing was

[7] *North Carolina v. Alford*, 400 U.S. 25 (1970).

postponed until August 2014 and the permanency plan of reunification with Mother was continued, with a secondary plan of relative placement.

At the continued hearing on August 12, 2014, Father moved for the court to appoint him new counsel. The magistrate recommended that the appearance of Father's counsel be stricken and that the Office of the Public Defender appoint Father new counsel. An order to this effect was entered on August 28, 2014, and the case was set in for a status conference before a judge on September 16, 2014.

On September 8, 2014, the Department filed a request for waiver of reunification efforts pursuant to Md. Code (1973, 2013 Repl. Vol.), section 3-812 of the Courts and Judicial Proceedings Article ("CJP").[8]

The permanency plan review hearing scheduled for September 16, 2014, was continued until November 18, 2014. On that date, Father appeared with new counsel. He did not oppose the Department's motion to waive reunification efforts and that motion was granted. His counsel advised the court that, in light of the waiver of reunification efforts, Father did not "actively" contest a change in the permanency plan to adoption. Given that the hearing went forward without Father's counsel present. At the conclusion of the proceeding, the court directed the parties to file memoranda of law.

[8] As relevant here, CJP section 3-812(b) states that the Department "may ask the court to find that reasonable efforts to reunify a child with the child's parent or guardian are not required if the local department concludes that a parent or guardian has: . . . [b]een convicted . . . of . . . [a] crime of violence against . . . [a]nother parent or guardian of the child." First degree assault is a crime of violence as that term is used in CJP section 3-812. *See* CJP § 3-812(a)(2); Md. Code (2002, 2012 Repl. Vol.), section 14-101(a)(19) of the Criminal Law Article.

On November 19, 2014, the court issued orders ruling that the Department was "not required to make reasonable efforts toward reunifying [the children] with [Father]."

On March 3, 2015, after considering the memoranda of law, the court entered an order changing the permanency plan to adoption by a non-relative. Father noted a timely appeal from that order. On Father's motion, this Court stayed that appeal pending the outcome of the upcoming TPR proceeding. *See In re T.S., C.S., L.S., and L.S.*, No. 129, Sept. Term 2015.

On April 20, 2015, the Department filed petitions for guardianship and to terminate Father's (and Mother's) parental rights. Father timely filed an opposition to the petition. Mother filed a consent to termination of her parental rights.

A contested TPR hearing went forward on October 8, 2015. In its case, the Department called ten witnesses. Jenna Smith, an out-of-home placement worker for the Department, had been assigned to the children's case for seven months, beginning on February 14, 2013, the day they were removed from their home. She testified that at the time of removal, the Department took the position that the children "couldn't be safe with either [parent]." The children had lived with Ms. F. continuously since entering foster care and she was willing and able to adopt them.

Sandra Harrington, a CPS investigator for the Department, was assigned to investigate the January 10, 2013 allegation that Father hit Cl. with a lunch bag filled with DVDs. Father also was alleged to have hit Cl.'s head into the kitchen counter a few days prior and to have kicked him in the back. Ms. Harrington made a finding of "indicated

physical abuse" with respect to the allegation that Father kicked Cl. because he (Cl.) had a scrape on his back consistent having been kicked.

Jeff Tyler, also a CPS investigator with the Department, testified that he made a finding of indicated child physical abuse against Father in July 2010 relative to an allegation that Father had hit M.

Felix Nathan, a psychotherapist at Marshy Hope Family Services, had been treating Lei. and Le. since October 23, 2014. He opined that when the children entered treatment, they displayed "rocking" behaviors, inattentiveness, and disruptive behaviors. Over time, those behaviors had "minimized" or "abated." He explained that Lei. and Le. needed "[c]onsistency, structure, love, [and] attentiveness" from their caregivers. Ms. F. demonstrated "positive, supportive, caring, and sometimes correcting" behaviors with the children. Lei. and Le. expressed to Mr. Nathan that they wanted to be adopted by Ms. F., but that they wanted to be able to "talk" to Father.

Taylor Binell-Young, an out-of-home services worker with the Department, was assigned to the children's case in September 2013. At that time, Mother was living in a hotel and Father's whereabouts were unknown. Mr. Binell-Young testified that since the children entered their foster home, their attendance and achievement at school had improved. Cl., T., and Le. all played football and Lei. was involved in cheerleading and took piano lessons. When they first moved into Ms. F.'s home, there were some "ongoing" behavioral issues, like stealing and lying, but those behaviors had decreased or stopped. Ms. F. had a "very strong relationship with all [four] of [the children]." The

children also had "support people" outside of Ms. F.'s home, including members of Ms. F.'s family and neighbors and friends. The children had a loving and bonded relationship with Ms. F. and showed a "great deal of care and concern for her."

Mr. Binell-Taylor stated that Father regularly wrote letters to the children and those letters were passed on to the children through Ms. F. The children asked about Father "infrequent[ly]." They were not having any telephone contact with Father because their therapists did not think it would be beneficial to them. The children told Mr. Binell-Taylor that they wanted the TPR proceeding to move more quickly so they could be adopted by Ms. F.

Mr. Binell-Taylor opined that termination of Father's parental rights in the children would be in their best interests because they needed permanence and stability. They were receiving that with Ms. F., with whom they had been living for 32 months, but had not received it with Father.

Susan Parker, a psychotherapist at Marshy Hope, had been Cl.'s treating therapist since 2010, prior to his removal from the home. She testified that Cl. had been diagnosed with AD/HD, a disruptive mood disorder, and Tourette's syndrome, and was being evaluated for a possible autism spectrum disorder. She opined that Cl. had made a lot of progress since she began treating him. In the past year, she had observed him display more "spontaneity, more [t]aking initiative, multi step commands he's doing more readily." His relationship with Ms. F. was very positive, in her view. He was demonstrating "attachment seeking behaviors . . . meaning [that if he] start[s] to get into

distress he will seek comfort from her and . . . seek[] her out for contact." In Ms. Parker's view, Cl. was "emotionally bonded" with Ms. F.

Ms. F. testified that she was willing to be a potential adoptive parent for the children.

Anita Murphy, a clinical coordinator for children in therapeutic foster care for the Department, had been the case manager for the children since February 2013. She testified that when the children entered foster care, their lives were in chaos. Le. had a severe speech delay and his speech was incomprehensible; Lei. was withdrawn; Cl. was "totally out of control"; and T. was "very angry and aggressive." Since then, Le. had received speech therapy and could communicate with his teachers and caregivers; Lei. had become friendly and warm; and Cl. and T. had become calmer and more in control of themselves. Ms. Murphy observed the children's relationship with Ms. F. to be "very nurturing."

Private First Class Joseph Beans with the Cambridge City Police testified that on August 18, 2013, he responded to the house where Father was staying and found Mother lying on the front porch "covered in blood." She had sustained lacerations on her fingers on her left hand and a puncture wound on her shoulder. He recovered a brown handled steak knife from an upstairs bedroom.

The court conducted an *in camera* interview of the children. They all expressed the desire to be adopted by Ms. F. but maintain contact with Father. They did not want to have continued contact with Mother. They all told the court that they were very happy at

Ms. F.'s house because they had enough food to eat and she made sure they had clothes for school. T. said that Ms. F. "treat[ed them] right." Cl. said that Ms. F. "love[d] [them and] feeds [them] good." He said, "we give her respect and she gives us respect." Lei. said that she "really want[ed] to get adopted" because Ms. F. took care of her and loved her. Le. said he wanted Ms. F. to adopt him because she was "nice."

Father testified and called three witnesses in his case. His brother, Larry S., testified that Father loved the children. Larry S. saw the children frequently because he worked as a security officer at the church Ms. F. attended. Father's sister, Mamie T., testified that Father had taken good care of the children prior to his incarceration. She had observed the children with Ms. F. recently and had spoken to the children. Ms. F. was pleasant and never tried to prevent her from having contact with the children.

Sophia Shockley was the in-home-services worker for the Department assigned to the children prior to their removal from the home. She testified that she found Father to be loving and bonded with the children. She further testified, however, that Mother and Father were continually involved in physical altercations and that Father had a substance abuse problem.

Father testified that he loved his children and that he always had supported them financially and emotionally when they were living with him. He had not been permitted to speak to them for more than two years. He expressed concern that his sons, in particular, would be devastated to lose their bond with him. Father said that Ms. F. seems

like a "good person" but that she cannot give the children "what a father can." Father expected to be released from incarceration on parole in March 2016.[9]

On December 22, 2015, the juvenile court entered its second amended opinion and order, which we shall discuss in greater detail, *infra*.[10] The court found by clear and convincing evidence that Father was unfit to continue in a parental relationship with T., Cl., Lei., and Le. and that the Department had properly waived its obligation to provide reunification services to Father after he was convicted of first degree assault against Mother. The court found that the children's best interests would be served by permitting them to achieve permanence and stability in a safe and loving home, which they were able to receive with Ms. F. For all those reasons, the court granted the petitions and terminated Father's parental rights in the children.

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

[9] At oral argument on November 1, 2016, Father's counsel informed the Court that Father remains incarcerated, with a mandatory release date in February 2017.

[10] The Department had moved the juvenile court to amend its first opinion and order, entered on October 22, 2015, because its findings improperly referenced Father's failure to participate in mediation sessions with the Department; erroneously stated that Father had voluntarily relinquished his parental rights to his two oldest children; and contained several other minor mistakes.

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

"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 Md. Code (1984, 2012 Repl. Vol.), section 5-323(d) of the Family Law Article ("FL").[11] In doing so, the court

[11] 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;

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(2) the results of the parent's effort to adjust the parent's circumstances, condition, or conduct to make it in the child's best interests for the child to be returned to the parent's home, including:

(i) the extent to which the parent has maintained regular contact with:

1. the child;

2. the local department to which the child is committed; and

3. if feasible, the child's caregiver;

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

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

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

(3) whether:

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

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

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

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

(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

(…continued)

> 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.

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 their obligations under a social services agreement, if any." FL § 5-323(d)(1). The juvenile court did not address these factors because the Department had waived reunification efforts. Father contends the court committed legal error by not doing so. We disagree.

CJP section 3-812(d) states that if the juvenile court "finds by clear and convincing evidence that any of the circumstances specified in subsection (b) exists, the court *shall* waive the requirement that reasonable efforts be made to reunify the child with the child's parent or guardian." (Emphasis added.) Subsection (b) sets out the statutory waiver circumstances, including if the parent or guardian has been convicted of "[a] crime of violence against . . . [a]nother parent or guardian of the child." CJP § 3-812(b)(2)(i)(3). This Court has held that "the language of CJP § 3-812(d) is mandatory." *In re Joy D.*, 216 Md. App. 58, 80 (2014). Thus, if "a local department requests the court to waive its obligation to continue reunification efforts, and the court finds, by clear and convincing evidence, that one of the statutory waiver conditions exists . . . the court is *required* to grant the motion." *Id*. at 80–81 (emphasis in original).

As discussed, on May 6, 2014, in the Circuit Court for Dorchester County, Father was convicted of first degree assault arising from his having stabbed Mother multiple times. On September 8, 2014, the Department moved to waive its obligation to offer reunification services to Father as a result of his conviction of a crime of violence against

Mother. At the November 18, 2014 permanency plan review hearing, the court found by clear and convincing evidence that Father had been convicted of a crime of violence against a parent of the children and granted the Department's motion. An order was entered to that effect the same day.

FL section 5-323(e)(3) states that if the juvenile court has "waive[d] reunification efforts under [CJP] § 3-812(d) . . . , the juvenile court *may not consider any factor under subsection (d)(1) of this section*." (Emphasis added.) Thus, because the juvenile court properly waived reunification services, the court was not permitted to consider the subsection (d)(1) factors.

Under the second FL section 5-323(d) factor, the juvenile court considered whether Father had "adjust[ed] [his] 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 Father had had limited contact with the children since August 18, 2013. He wrote to the children, but had otherwise not had contact with them for more than two years. Due to his incarceration, Father also had not been able to financially support the children. The court found that Father's incarceration until "at least March 2016" made it impossible for him to provide for the children's present and future needs. The court emphasized that Father had no permanent residence, no job, and no employment prospects. There was no evidence that the provision of "additional services" to Father would be likely to "bring about a lasting parental adjustment." The court found that the Department had been offering services to Father (and Mother) for

many years prior to the children's removal from the home and, despite those services, Father had been unable to "maintain a safe and secure environment for his children." The children had been in their foster home for 32 months at the time of the TPR proceedings and Father was not due to be released from prison until, at the earliest, 6 months later. The court found that it would not be in the children's best interests to prolong the impermanency any longer.

Father argues that the court clearly erred because it "failed to consider the ample and credible [evidence] of the progress and commitment of [F]ather to maintain his parental relationship with the children" pursuant to FL section 5-323(d)(2). This argument is without merit. For most of the 32 months that the children were in foster care, Father was incarcerated. The court noted that Father wrote to the children, but he was not permitted in-person visitation or telephone contact because the children's treating therapists did not believe it would be in their best interests to facilitate those types of contact. The fact that he successfully completed programs in prison, while commendable, simply did not outweigh the evidence of his past neglect and abuse of his children, and the court made non-clearly erroneous findings that Father had not adjusted his circumstances to return the children to his care.

The third FL section 5-323(d) factor concerns whether the parent has been found to have engaged in abuse or neglect of the children. The court found that since 1999 there had been four indicated abuse findings against Father and Mother and three unsubstantiated findings.

Finally, under the fourth FL section 5-323(d) factor, the court found that while the children had emotional ties to Father, they nevertheless were very "vocal" about their wish to be adopted by Ms. F. The children were bonded to Ms. F. and had "progressed and thrived while living with [her]." Moreover, the children had not lived with Father and only had had very limited contact with him for over thirty months, making it unlikely that they would experience "severance issues." The court found that termination of Father's parental rights in the children would be in the children's best interests because it would ensure that they had a "stable, safe, and healthy family and home in which to grow up."

Father challenges these findings, emphasizing that the children all expressed a strong desire to continue to have contact with Father and that this was inconsistent with the court's finding that the children were unlikely to experience "severance" issues. We perceive no error. At the time of the TPR proceedings, Father had not had any direct contact with the children for nearly three years. During that time, while the children expressed an abstract desire to talk to their Father, they rarely wrote letters to him and did not bring him up during therapy sessions. This evidence supported the court's finding that the children were unlikely to experience any emotional turmoil if Father's parental rights were terminated given that that change would not alter the status quo for them in their daily lives.

In light of these non-clearly erroneous findings, the juvenile court determined by clear and convincing evidence that Father was unfit to continue in a parental relationship

with the children and that termination of Father's parental rights in the children was warranted. The court plainly did not abuse its discretion in so ruling. The evidence overwhelmingly showed that while the children were in Father's care, they had been abused, neglected, and exposed to multiple instances of domestic violence between their parents. At the time they were removed from the home, Father was not permitted to have contact with Cl. because of the child abuse investigation that ultimately resulted in an "indicated" finding. After the children were removed from the home, Father stabbed Mother and has been incarcerated since that time. In contrast, the children have thrived in the stable and nurturing therapeutic foster home where they have lived since their removal. Their behavior, school attendance, and school performance all have improved since they entered foster care. The court did not err by finding that Father was unfit to continue in a parental relationship with the children and that it ultimately would be in the children's best interests to terminate Father's parental rights.[12]

ORDERS OF THE CIRCUIT COURT FOR DORCHESTER COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.

[12] Father also contends he was denied effective assistance of counsel because his attorney failed to contact him between December 17, 2013, and August 7, 2014. As the Department points out, however, this alleged deficiency occurred eight months prior to the filing of the guardianship petitions and, as such, is properly raised in Father's CINA appeal, not in the TPR case presently before this Court. As mentioned, Father's CINA appeal was stayed, at his request, pending the resolution of the TPR petition.