UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2252

September Term, 2015

IN RE: ADOPTION/GUARDIANSHIP
OF BENJAMIN F.

Eyler, Deborah S.,
Wright,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: August 5, 2016

Heidi P., the biological mother of Benjamin F., appeals an order of the Circuit Court for Baltimore County, sitting as a juvenile court, terminating her parental rights to Benjamin. The juvenile court terminated Ms. P.'s parental rights to Benjamin after it determined that exceptional circumstances made the continuation of the parent-child relationship detrimental to Benjamin's best interests.

In November 2008, when Benjamin was two months old, he was adjudicated a Child In Need of Assistance ("CINA")[1] by the juvenile court and committed to the custody of the Baltimore County Department of Social Services ("the Department"). Throughout the next seven years, Benjamin remained in the Department's custody and his case was reviewed thirteen times.

In September 2013, Benjamin was placed in the home of prospective adoptive parents. Three months later, in December 2013, the juvenile court changed the permanency plan from a plan of reunification with Ms. P. to concurrent plans of reunification with Ms. P. and adoption by non-relatives. In March 2015, the court changed the permanency plan to a sole plan of adoption, and on April 21, 2015, the Department filed its petition to terminate Ms. P.'s parental rights.

[1] A CINA is a child who requires court intervention because the child has been abused or neglected, or has a developmental disability or mental disorder, and whose parents, guardian, or custodian cannot or will not 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).

A hearing on the termination petition was conducted by the juvenile court on November 3, 4, 5, and 13, 2015. On November 13, 2015, the juvenile court issued a written order terminating Ms. P.'s parental rights to Benjamin.

Ms. P. appeals from that order. We have rephrased Ms. P.'s questions as follows:[2]

1. Did the juvenile court err in denying Ms. P.'s request for a continuance to allow time for her expert to prepare a report for court?

2. Did the juvenile court err by taking judicial notice of facts from previous CINA proceedings?

3. Did the juvenile court err in concluding that exceptional circumstances made the continuation of Ms. P.'s and Benjamin's relationship detrimental to Benjamin's best interest, and thereby terminating Ms. P.'s parental rights?

For the reasons discussed below, we affirm the decision of the juvenile court.

BACKGROUND

Ms. P. gave birth to Benjamin in August 2008, when she was 27 years old and living in a shelter after alleging that she was "verbally, physically, and sexually abused" by Benjamin's 63-year-old father, Mr. F. By October 1, 2008, when Benjamin was less than six weeks old, Ms. P. was using cocaine and drinking alcohol. Ms. P. has bipolar

[2] Ms. P.'s questions presented were as follows:

1. Did the court err by granting the mother's request of a continuance, or in the alternative, to keep the proceedings open to allow her expert to testify or prepare a report for the court?

2. Did the court err by considering factual conclusions reached by the CINA court, which weighted heavily in its ultimate decision?

3. Did the court err by concluding that exceptional circumstances warranted the termination of the mother's parental rights?

disorder, and at that time she self-reported as "being extremely overwhelmed by her caretaking responsibilities," that she was "manic" and "stressed out and needing a break, and [was] unable to handle being a single parent." As a result, on October 3, 2008, the juvenile court committed two-month-old Benjamin to the care and custody of the Department. Ms. P. then moved back in with Mr. F., but soon after she became "increasingly depressed, feeling hopeless [and] helpless." She was admitted to the psychiatric crisis ward at Sheppard Pratt Hospital on October 27, 2008. Shortly thereafter, on November 6, 2008, the juvenile court found Benjamin to be a CINA, concluding that Ms. P. could not care for Benjamin due to her substance abuse and her mental health issues, while Mr. F. was unable or unwilling to provide for Benjamin's care.

On November 6, 2008, the Department provided Ms. P. with a service agreement that identified, among other things, Ms. P.'s need for services to address her mental health, substance abuse, domestic violence, housing, and parenting issues. Initially, Ms. P. participated with her inpatient mental health and substance abuse treatment plans, but she left her treatment facility in December 2008. She was again hospitalized for her mental health in February 2009, enrolled back into substance abuse treatment in March, and left treatment again in April. In May and June 2009, Ms. P. entered a treatment program at the Mosaic Clinic at Sheppard Pratt Hospital and engaged in voluntary drug treatment program. By September 2009, Ms. P. was testing negative for illicit substances, was stable on psychotropic medications, had completed parenting classes, and was participating in services at Mosaic.

On March 5, 2010, a trial home visit was scheduled, reuniting Benjamin with Ms. P. Benjamin was physically and mentally healthy at the time and adjusted well to the trial home visit. However, several months later, on June 26, 2010, Ms. P. was incarcerated.[3] Benjamin was again placed in foster care. Ms. P. was released from incarceration on July 6, 2010, and Benjamin was returned to her care.

By the end of January 2011, Benjamin was again returned to foster care because Ms. P. had resumed using cocaine and had lost her apartment. Over the next few months, Ms. P. attempted various treatment programs but relapsed each time. In May 2011, she began a six-month inpatient treatment program at Gaudenzia Addiction Treatment and Recovery, where she received both substance abuse and mental health treatment. In August 2011, Gaudenzia approved Ms. P. to reside with Benjamin, and he was placed there with Ms. P. on August 17, 2011, for his third trial home visit. However, the following month, Ms. P. returned to Gaudenzia intoxicated from a trip off the property, and in November she left Gaudenzia on a weekend pass to stay with Mr. F. and did not return.

At three years old, Benjamin was returned to foster care for the fourth time on November 17, 2011. He was placed in a therapeutic foster home and had weekly supervised visits with Ms. P. However, at this time Benjamin exhibited anxiety at the new home. He wondered who would pick him up from day care and with whom he would eat dinner. He also tested his new foster parents with oppositional behaviors.

[3] The reasons for Ms. P.'s incarceration are not in the record.

Following an evaluation at Kennedy Krieger, Benjamin was diagnosed with an adjustment disorder.

Ms. P. relapsed after leaving Guadenzia and was using alcohol and cocaine a few days each week. She also became homeless, depressed, and suicidal. By late December 2011, she tried to starve herself to death and overdosed on drugs and alcohol. She also developed a plan to kill another woman.

Ms. P. was admitted three times to Bon Secours Hospital's psychiatric unit between December 31, 2011, and April 2012. Finally, in May 2012, Ms. P. was transferred to a 12-month inpatient dual-treatment program at CAMEO House in Hagerstown. The Department took Benjamin to Hagerstown every other week to visit Ms. P. During her stay at CAMEO House, Ms. P. became pregnant with another child and gave birth to him on January 1, 2013. Soon thereafter, Benjamin began having overnight visits over the weekends. Two months after Benjamin's weekend visits began, Ms. P. fought with another CAMEO client, allegedly hitting her. CAMEO staff concluded that Ms. P. had "sabotaged her recovery process" and discharged her from the program.

Upon discharge, Ms. P. moved in with her foster brother's family, the W.s, in Hagerstown. After Ms. P.'s move, the Department continued to bring Benjamin to Hagerstown for supervised visits. In June 2013, the Department approved the W.s as supervisors for overnight visits from Friday evenings through Sunday. At that time, following a hearing, the juvenile court changed Benjamin's permanency plan from a plan of reunification with either parent to a plan of reunification with Ms. P.

In September 2014, Benjamin did not return to his foster home after his scheduled weekend visit with Ms. P. Ms. P. kept Benjamin in Hagerstown, alleging that Benjamin said something that suggested he had been sexually abused by his foster parent's adult son. After an investigation and an interview with Benjamin, the Child Advocacy Center ruled out the reported abuse; Ms. P. had previously made "repeated false reports of child maltreatment" against his foster parents, and Benjamin explained that he was asked by Ms. P. to say that he had been abused so that he could stay with Ms. P. in Hagerstown. The juvenile court subsequently found that Ms. P. "falsely made" the sex abuse allegations "so that she could keep Benjamin" for a longer visit.

Due to Ms. P.'s false accusations of abuse, Benjamin's then-foster mother withdrew as a placement option for Benjamin. The Department then moved Benjamin to a respite foster home for two weeks before placing him with the M.s, who are prospective permanent resources. Further, because of Ms. P.'s false accusations, the W.s also withdrew as approved supervisors for Ms. P.'s weekend visits with Benjamin in Hagerstown. Without any option for supervised visit locations in Hagerstown, the Department moved Ms. P.'s visits to Baltimore.

When Benjamin was placed with the M.s in September 2013, he had just started kindergarten in the same school where he had attended preschool. Although the M.s lived in a different school district, they drove Benjamin to his school in an effort to maintain a stable school environment. Because Benjamin was "a little bit behind" in school, the M.s met with his teacher, "quickly set up a routine with him," and helped him to "excel very well with his school work."

Ms. P. declined visits with Benjamin after he was moved into the M.s home, and she even refused the Department's offer to pay for a taxi cab to assist her in getting to the visits. The CINA court determined that Ms. P. was at fault for her failure to visit.

Meanwhile, Mr. F., who had regularly visited Benjamin at the Department's offices, bringing candy and gifts, abruptly stopped showing up for visits in November 2013. The Department discovered that Mr. F. had passed away, and Benjamin's caseworker informed him of his father's passing and took him to the memorial services.

That month, Benjamin began therapy with Marci Lovell, a licensed clinical social worker with twenty years' experience. Ms. Lovell's goal was to help Benjamin transition into his new foster home. Initially, Ms. Lovell observed that Benjamin was "anxious," "agitated," and had difficulty focusing, which were behaviors "indicative of a history of trauma." The sudden halt in visitations with Ms. P. as Benjamin was transitioning into the M.s' home caused confusion for him. However, it also allowed him to readily identify the M.s as his primary caregivers. Benjamin developed close bonds with the M.s and "a sense of calmness and affection" and became "more comfortable" in the M.s' home.

By December 2013, Benjamin began referring to the M.s as "Mom" and "Dad." He also began asking to be called "B.J." instead of "Benjamin;" B.J. is Ms. M.'s father's nickname, whom Benjamin referred to as "Pop." Ms. Lovell concluded that the change in names established a "clear delineation" in Benjamin's mind that helped him organize his memories before and after "he started to feel more comfortable and relaxed" with the M.s.

In January 2014, Ms. P. resumed visits with Benjamin once per month. Before the first visit, Benjamin wondered "if she's going to be there" and "what will we do?" At the visit, Ms. P. appeared "withdrawn" and kept her coat on. Although she had been cautioned that making promises about the future to Benjamin could cause him anxiety and confusion, she nevertheless "ma[de] promises of his new bedroom and their life together."

After the visits with Ms. P. resumed, Benjamin exhibited "an increase in confusion, agitation, [and] frustration." His behavioral response worsened after Ms. P.'s visits were expanded in March 2014 to include supervised visits in the community on alternate Saturdays and visits at the Department on alternate Wednesdays. During his sessions with Ms. Lovell, Benjamin would "get so angry" or "avoid" questions about his visits with Ms. P.; he would hide behind furniture, say "I don't remember," "I can't talk about that," and "only my [birth] mom tells me what I can do and what I can say." Similarly, when asked about his school day, Benjamin stated that "he couldn't answer unless he asked his [birth] mom if he could answer." During the several days following his community visits with Ms. P., Benjamin would behave in an "anxious, oppositional" manner. Ms. Lovell concluded that Ms. P.'s comments to Benjamin were "harmful" to him. Ms. Lovell thus recommended that the Department terminate the Saturday visits, and, in September 2014, the Department indeed restricted visits to weekly, supervised sessions at the Department. Benjamin started referring to Ms. P. by her first name, "Heidi," instead of "Mom."

After the Saturday visits ended, Benjamin's "anger subsided" and he experienced "[l]ess confusion." Ms. Lovell explained that after the visitations ended, Benjamin was "happier" and "seemed a lot more peaceful and cooperative." Because Ms. P. did not develop an understanding of the "trauma attachment" and "confusion" that her questions regarding his permanency caused, the Department determined that the visitations between her and Benjamin continued to require supervision in order to limit Benjamin's confusion.

On December 4, 2014, the juvenile court changed Benjamin's permanency plan from reunification to a concurrent plan of reunification and adoption by a non-relative. Then, on March 20, 2015, the court changed the plan to a sole plan of adoption. Ms. P.'s visits were thereafter reduced to twice each month, and in September 2015, the visits were further reduced to once each month. Following the reduction in visits, Benjamin did not exhibit any change in his behaviors, overall functioning, or emotions.

During the time that Benjamin had been in the M.s' care, Ms. P. had refused to communicate with them. In August 2015, the Department's case worker, Abbey Niland, met with Ms. P. to explain to her that Benjamin would benefit from greater interaction between Ms. P. and his foster family, but Ms. P. maintained that she "was not interested in speaking with them." She has continued to refuse speaking to the M.s when they pick up Benjamin from the supervised visits.

Benjamin started second grade in the fall of 2015, remaining in the same school he attended since preschool. He has continued to do well in school with no behavioral concerns. He is an active child; he swims, plays soccer, and enjoys a hip-hop class. He

also has many friends in school and in his neighborhood. He has frequent contact with the extended family of both of his foster parents, and he also has continued contact with Mr. F.'s relatives whom he met at Mr. F.'s memorial service. He no longer has feelings of anger, anxiety, or agitation, and he no longer meets the clinical criteria for an adjustment disorder. Instead, he has "become very confident and strong-willed," "articulate," "calm," and "loving."

Dr. Carlton Munson, a licensed clinical social worker with over 50 years of experience, assessed Benjamin's level of attachment to Ms. P. and to the M.s. Dr. Munson's assessment included a comprehensive review of the Department's records, his observation of interactions between Benjamin and the respective adults, and his administration of various other assessment tools. Each assessment lasted between two and three hours and allowed Dr. Munson to observe the parties' interactions throughout most of that time.

Dr. Munson observed that during Ms. P.'s interactions with Benjamin, the two engaged in "intense play activity" but "did not show many parenting behaviors" towards Benjamin. Ms. P. did not ask questions indicative of parental interest in a child's life, such as questions seeking information about his life, school activities, or other daily events. Their interaction demonstrated to Dr. Munson a "peer-to-peer relationship" rather than a parent-to-child relationship. Dr. Munson's assessment instruments also found that Benjamin had elevated anxiety, agitation, anger, and aggression following his interactions with Ms. P.

In Dr. Munson's view, Benjamin had only a "partial attachment," or "insecure attachment," to Ms. P., resulting in his inability to "fully depend" on her to meet his needs. Because of this "partial attachment," Dr. Munson explained that if Benjamin were to return to Ms. P.'s care, he would likely develop "agitation, anxiety, anger, tiredness, aggression, hitting others, yelling at others, screaming at others, and sleep disturbances." By contrast, Dr. Munson found that the M.s were "positive and securely attuned to Benjamin's needs, expectations, and limitations." He thus concluded that Benjamin has a positive, secure attachment to the M.s and recommended that he maintain that relationship.

On April 21, 2015, the Department filed a petition to terminate Ms. P.'s parental rights. The hearing was initially set for August 17, 2015, but was then continued until September 2015, and then again to November 3, 4, and 5, 2015, after Ms. P.'s counsel requested more time to prepare. On October 22, 2015, Ms. P. again asked for a third continuance, stating that her psychological expert needed additional time to complete an evaluation. The juvenile court initially denied the motion, which was renewed orally on the first day of the hearing. On November 5, 2015, the third day of the hearing, Ms. P. informed the court that the psychological expert could "have a report available the next week." Based on this statement, the court "revisited" its earlier decision to deny Ms. P.'s motion for continuance and scheduled an additional day for the hearing at the end of the following week, on November 13, 2015, inviting Ms. P. to present her expert at that time. Ms. P. did not present a psychological expert on November 13, 2015, and did not seek another continuance.

In support of its petition, the Department presented evidence of the facts described above. Additionally, Dr. Munson, who was accepted as an expert in clinical child welfare, testified that a break in Benjamin's secure attachment with the M.s would be "significantly detrimental to his development psychologically, emotionally, and cognitively" in both the short and long term. Ms. Lovell and Ms. Niland, both of whom were accepted as experts in clinical social work, concurred with Dr. Munson's assessments. Ms. Niland contrasted Benjamin's interactions with the M.s, with whom he discussed his daily activities, expressed preferences about which foods he wanted to eat, and asked for help with his homework, with his interactions with Ms. P. Ms. P. did not ask Benjamin about how he was doing, or what he thought about school, or what his favorite subjects were. Instead, Benjamin's visits with her were "all play," in which they threw balls back and forth. Ms. Niland concluded that Benjamin "has a secure attachment to his foster parents" that would be further served if he were freed for adoption.

Ms. Lovell also observed that Benjamin had a "secure and healthy attachment with the M[.]s" but only minimal bonding with Ms. P. She explained that Benjamin turns to the M.s for support and feels safe with them. In addition, Ms. Lovell noted that the M.s are willing to maintain an open relationship between Benjamin and Ms. P., as well as ensure that he stays connected to his half-brother and his paternal relatives. In Ms. Lovell's view, Benjamin's best interests require that he have "permanency" with the M.s.

Following the hearing, the juvenile court made oral findings of fact on each of the statutory factors set forth in Md. Code (1984, 2012 Repl. Vol.), Family Law Article

("FL") § 5-323(d), which outline the necessary considerations to determine wither terminating parental rights are in a child's best interests. After walking through each factor, the court determined that the "likely impact of terminating parental rights on the child's well-being," FL §5-323(d)(4)(iv), would be to replace his status in "foster care limbo and give him permanency." The court concluded that Benjamin faced significant harm if Ms. P.'s parental rights were not terminated because "a break from [his] current, secure attachment . . . [would] highly likely cause a regression of behavior in this child, and his sense of safety and security may be significantly altered." Based on all of its findings, the juvenile court determined that the Department had met its burden of showing that "exceptional circumstances . . . would make a continuation of the parental relationship detrimental to Benjamin's best interests," and it thus granted the Department's petition to terminate Ms. P.'s parental rights.

Additional facts will be discussed below as they become relevant.

DISCUSSION

When reviewing a juvenile court's decision with regard to termination of parental rights, we utilize three different yet interrelated standards. *See In re Adoption/ Guardianship of Victor A.*, 386 Md. 288, 297 (2005). Specifically:

> [First, w]hen the appellate court scrutinizes factual findings, the clearly erroneous standard of [Md. 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.

Id. (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)) (citations omitted). When reviewing the juvenile court's ultimate conclusions for abuse of discretion, we do "not . . . determine whether, on the evidence, we might have reached a different conclusion. *In re Adoption/Guardianship No. J970013*, 128 Md. App. 242, 247 (1999) (citing *In re Adoption/Guardianship Nos. 2152A, 2153A, 2154A*, 100 Md. App. 262, 269-70 (1994) (internal citations omitted)). Rather, we determine "only whether there was sufficient evidence – by a clear and convincing standard – to support the[]determination that it would be in the best interest of [the child] to terminate the rights of [the natural parent]." *Id.* We, therefore, "must assume the truth of all of the evidence, and of the favorable inferences fairly deducible therefrom, tending to support the factual conclusion of the trial court." *Id.*

The juvenile court, "acting under the State's *parens patriae* authority, is in the unique position to marshal the applicable facts, assess the situation, and determine the correct means of fulfilling a child's best interests." *In re Mark M.*, 365 Md. 687, 707 (2001). This means that the juvenile court is "endowed with great discretion in making decisions concerning the best interest of the child." *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 713 (2011) (citation and internal quotation marks omitted).

I. The court did not err in ruling upon Ms. P.'s request for a continuance.

On November 2, 2015, the juvenile court vacated its initial granting of Ms. P.'s request for a continuance, filed October 22, 2015, based on the Department's and Benjamin's counsel's opposition of the request. The juvenile court then revisited the request the next day, November 3, 2015, after Ms. P. proffered that she needed only

another week to obtain the expert's report for which she requested the continuance. The court then decided to continue the hearing, adding another day for eight days later, on November 13, 2015, and specifically invited Ms. P. to present her expert witness at that time. Ms. P. failed to present her expert witness on that day, but she also did not request another continuance. Now, Ms. P. argues that the denial was not based upon reason or law, but rather, that the juvenile court refused to allow her an opportunity to call an expert based on its conclusion that the expert would not present evidence that was not already covered by the testimony of other witnesses.

The ruling on a motion for a continuance rests in the sound discretion of the court and will not be disturbed on appeal unless there is an abuse of that discretion. *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006). Abuse of discretion has been defined as "'discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *Id.* (quoting *Jenkins v. City of College Park*, 379 Md. 142, 165 (2003)).

Md. Rule 2-508 governs requests for continuances and states, in pertinent part:

> On motion of any party or on its own initiative, the court may continue a trial or other proceeding as justice may require.

Maryland appellate courts have been reluctant to find abuse of discretion by the circuit court when ruling on motions for continuance, absent cases exhibiting "grave and serious error." *In re McNeil*, 21 Md. App. 484, 496-97 (1974) (holding that "there was grave and serious error on the part of the trial judge in compelling the hearing to proceed in the absence of the [mother]," where the mother was allegedly caring for a sick child and the trial court ruled without making realistic inquiry into circumstances of her absence or

ascertaining whether she had been guilty of pattern of unconcern); *see Touzeau*, 394 Md. at 666-67 (holding that the juvenile court did not abuse its discretion when it denied mother's motion for a continuance, based on the ground that mother's pro bono counsel was unable to attend the hearing on the date it had been scheduled, even though a denial of continuance had the effect of leaving mother without the benefit of counsel); *Quarles v. Quarles*, 62 Md. App. 394, 401 (1985) (determining that the "trial judge did not abuse his discretion when he denied appellant's request for postponement" because his attorney was not adequately prepared for trial); *see also Zdravkovich v. Siegert*, 151 Md. App. 295, 305 (2003) (concluding that the circuit court did not abuse its discretion by refusing to postpone the trial due to appellant's current diagnosis of mental illness).

The juvenile court did not abuse its broad discretion in vacating its initial grant of Ms. P.'s continuance nor in later granting her one additional week's continuance. The juvenile court expressed concern about maintaining Benjamin in a stable environment, and decided to continue with the three-day hearing when it realized that the Department and Benjamin's attorney were not in agreement with Ms. P. regarding the postponement. Further, the juvenile court expressed

> [that the November hearing dates were] agreed date[s that were] postponement[s] from an original trial date in August so that counsel could get prepared and considering [sic] the history of the case . . . not just of the TPR [termination of parental rights], but of the entire involvement with [the Department], the child's age, how long he's been in foster care, and the number of placements, I just think there needs to be a conclusion to the proceedings.
>
> I also touched on the fact that there was a witness called out of order by mom's counsel from Washington County's Health Department who

> addressed what sounds like are the same concerns as would be addressed by this psychologist.

Nevertheless, after Ms. P.'s counsel expressed on the third day of the hearing that Ms. P. could see the expert witness that weekend and have a report available the following week, the juvenile court granted Ms. P. that additional time. Even if any error was committed by the juvenile court in initially vacating the continuance, such error was harmless because Ms. P. ultimately received a continuance for the amount of time she requested. *Crane v. Dunn*, 382 Md. 83, 90 (2004). Appellate courts will not reverse for harmless error and the burden is on the appellant in all cases to show prejudice as well as error.

II. The court did not err in relying on the transcripts from the two previous CINA proceedings.

Ms. P. argues that the juvenile court erred when it relied on transcripts from two previous hearings on Benjamin's CINA determination. Ms. P.'s attorney objected to the admission of the first transcript, from November 4, 2013, but did not oppose admission of the second transcript, from March 20, 2015. According to Ms. P., the transcripts contained the CINA court's conclusion that Ms. P. fabricated the statements about Benjamin's sexual abuse while with his foster parents so that she could keep him with her, as opposed to having made an honest mistake. Ms. P. now proclaims that the juvenile court, in its decision to terminate her parental rights, "drew a negative inference based on those conclusions."

The Maryland Rules provide that a court "shall take judicial notice if requested by a party and supplied the necessary information." Md. Rule 5-201(d). For a fact to be

judicially noticed, it cannot be subject to "reasonable dispute," meaning the fact must "either (1) [be] generally known within the territorial jurisdiction of the trial court or (2) cannot reasonably be questioned." Md. Rule 5-201(b). "[P]ublic records such as court documents" are some of the most common of the "types of information [that] can fall under the umbrella of judicial notice." *Abrishamian v. Washington Med. Grp., P.C.*, 216 Md. App. 386, 413 (2014) (citing *Marks v. Criminal Injuries Comp. Bd.*, 196 Md. App. 37, 78 (2010)). We have previously explained why a court's reliance on previous hearings is permissible:

> Taking judicial notice of the prior hearings by the hearing judge was not inappropriate. The mother was a party to the prior hearings; she had the opportunity to defend herself through cross-examination; she was represented by counsel at those hearings; the facts relied upon were identical to the facts in the prior litigation; neither party demonstrated that circumstances had changed for the better since the prior hearings; the prior transcripts pertained to judicial findings deciding the allegations by the same circuit court; the transcripts were identified, moved into evidence, and made a part of the record; and the circuit court independently analyzed the evidence before it and made its own conclusion.

In re Nathaniel A., 160 Md. App. 581, 598 (2005) (footnote omitted).

Ms. P. attempts to distinguish *Nathaniel A.* by opining that there is no law supporting the proposition that a finding from a CINA review court, where the lesser burden of preponderance of the evidence is imposed, *see In re Priscilla B.*, 214 Md. App. 600, 621 (2013) (citing CJP § 3-817(c)), is admissible in a termination of parental rights hearing, where the burden is a clear and convincing standard, *see In re Adoption of Jayden G.*, 433 Md. 50, 101 (2013). However, the line that Ms. P. is drawing with regard to the type of evidence the juvenile court can rely on explicitly contradicts *Nathaniel A.*,

which proclaimed that the circuit court is allowed to take judicial notice of any previous proceedings and could consider the prior matters. The *Nathaniel A.* Court even cited numerous examples of case law from our sister jurisdictions expressing the same notion. 160 Md. App. at 600 n.1 (citing, *e.g.*, *TT. v. State Department of Human Resources,* 796 So.2d 365, 367-68 (Ala. Civ. App. 2000) ("We note that the trial court is allowed to take judicial knowledge of all previous proceedings and that it could consider the prior matters and is not required to forget the past."); *In Re J.M.C.; N.C.,* 741 A.2d 418, 424 (D.C.1999) ("[i]n appropriate cases, a judge may take judicial notice of the contents of court records in a related prior proceeding. This is particularly true where, as in this case, the interested parent was a party to and was represented by counsel in the prior neglect proceeding."); *In re J.P.,* 737 N.E.2d 364, 372 (2000) ("[a] trial court should only take judicial notice of those portions of the underlying court file that have been proffered by the State and to which the respondent is given an opportunity to object."); *In the Interest of J.L.W.,* 570 N.W.2d 778, 780 (Iowa Ct. App. 1997) (In a termination proceeding, a court may judicially notice exhibits which were part of the prior child in need of assistance proceeding. The papers must be marked, identified, and made a part of the record.")).

Furthermore, additional evidence was presented at the proceeding giving rise to this appeal, establishing that Benjamin was asked to make sexual abuse allegations so that he could stay with Ms. P. in Hagerstown, and that Ms. P. had repeatedly made false allegations against his foster mother. Thus, Ms. P.'s allegations that the evidence must be "review[ed] anew" stands meritless because the juvenile court was presented with this

evidence independently. Any reliance on the CINA court's findings was supplementary to what the juvenile court already had before it at the termination hearing. Thus, even if its reliance on the CINA court's findings was in error, any such error was harmless. *Francier v. Debaugh*, 194 Md. 448, 458 (1950) ("when inadmissible evidence is admitted over the objection of the appellant and the same evidence is afterward admitted without objection, it is treated as harmless error") (citations omitted).

III. The juvenile court did not err in concluding that exceptional circumstances warranted the termination of Ms. P.'s parental rights.

Ms. P.'s main challenge on appeal is her allegation that the juvenile court erred in terminating her parental rights. Her primary contention on this issue is that the juvenile court placed too much emphasis on how Benjamin would be "better off" with the M.s, a factor that should be "irrelevant" to the juvenile court's determination because "a child's prospects for adoption *must be a consideration independent from the termination of parental rights*[.]" *In re Adoption/Guardianship of Victor A*, 386 Md. at 317 (emphasis added). While we agree with Ms. P.'s statement of the law, our review of the record does not indicate that the juvenile court placed any undue emphasis on the M.s as "better" parents, beyond what is necessary to discuss what is in Benjamin's best interest.

When reviewing the juvenile court's analysis and decision, we recognize the balance it must strike between the rights of the parent and those of the child. While considerable weight is given to the parental rights, "the child's best interest standard trumps all other considerations." *In re Adoption of Ta'Niya C.*, 417 Md. 90, 111 (2010) (footnote omitted). The Court of Appeals has previously explained:

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

In re Adoption/Guardianship of Rashawn H., 402 Md. 477, 501 (2007) (emphasis in original) (footnote omitted). It is with that lens that we review the juvenile court's decision.

The termination of parental rights in Maryland is governed by FL § 5-323. Subsection (b) of FL § 5-323 grants the right to a juvenile court to terminate parental rights and grant guardianship of the child:

> (b) *Authority*.—If, after consideration of factors as required in this section, a juvenile court finds by clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interests of the child such that terminating the rights of the parent is in a child's best interests, the juvenile court may grant guardianship of the child without consent otherwise required under this subtitle and over the child's objection.

The juvenile court's power to terminate the natural rights of the parent is checked by the lengthy considerations and explanation required by FL § 5-323, mandating that certain procedures be followed.

In this case, there were no allegations that Ms. P. was an unfit parent, and thus the court had to determine whether "exceptional circumstances" existed "that would make a continuation of" Ms. P. and Benjamin's relationship detrimental to Benjamin's best interests. FL § 5-323. "The exceptional circumstances alternative is meant to cover situations . . . in which a child's transcendent best interests are not served by continuing a relationship with a parent who might not be clearly and convincingly unfit." *In re Adoption of K'Amora K.*, 218 Md. App. 287, 302 (2014) (footnote omitted). Exceptional circumstances can exist where the parent's behavior might not necessarily "rise to the level of unfitness, but nonetheless contributes to a broader picture that could justify termination:"

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

Id. at 306 (citing *In re Adoption/Guardianship No. A91-71A*, 334 Md. 538, 563 (1994)).

In determining whether exceptional circumstances exist, the juvenile court must make factual findings for each of the relevant statutory factors provided in FL § 5-323(d). Here, the juvenile court considered in detail the long list of relevant statutory factors, explicitly acknowledging before making its findings that it did so with the "rebuttable presumption protecting parental rights."

First, the juvenile court considered "the child's health and safety, [which] is the primary consideration." Based on the testimony presented by Dr. Munson, Ms. Lovell,

Ms. Niland, and Benjamin's teachers from kindergarten through first grade, the juvenile court made a finding "that Benjamin is in good health and living in a safe, stable environment with the M[.s.]" The court highlighted the testimony from the various experts indicating that Benjamin has "attached and bonded" with the M.s.

The juvenile court next considered the services provided to the parent before the child's placement. FL § 5-323(d)(1)(i)-(ii). The juvenile court explained that Ms. P. received services for a long time; she received domestic violence services and shelter housing as a result of her tumultuous, abusive relationship with Mr. F. The juvenile court also relied on the Department's "extensive services to facilitate reunification between Ms. P[.] and Benjamin" throughout the years. The Department continuously referred Ms. P. to both mental health and substance abuse treatment. The court added as an aside "that Benjamin came to the attention of the Department because his mother had gone into the city to get some cocaine, and she was also noted to be leaving him unattended in the shelter at Hannah More while she went outside and smoked cigarettes." Nevertheless, the court continued, the Department promoted reunification not only by supporting Ms. P. with her recovery, but also by offering transportation so that Ms. P. and Benjamin could visit together. Further, when Benjamin was placed back with his mother, the Department assisted with housing on both occasions. The juvenile court described in detail the Department's efforts to reunite the family and to facilitate visitations, even when Ms. P. was residing in Washington County. Considering also the letters Ms. P. sent Ms. Niland "thanking her for her efforts," the court determined that "the Department

made extensive efforts to promote reunification." These services do not fall short of what is required by Maryland law.

The juvenile court then extensively reviewed each statutory factor pertaining to Ms. P.'s actions and efforts. FL § 5-323(d)(1)(iii) – (2); *see also In re Adoption/Guardianship No. A91-71A*, 334 Md. 538, 564 (1994) (explaining that relevant to the existence of exceptional circumstances is a parent's behavior tending "to show instability with regard to employment, personal relationships, living arrangements, and compliance with the law"). When reviewing Ms. P.'s efforts over the years, as well as her current situation, the juvenile court explained:

> [o]ne of the things that Ms. P[.] was required to do is to demonstrate her independence. She receives assistance from [the Department] still. She receives social security benefits . . . she's not in a place where she is functioning in the community without extensive supports.

The juvenile court then moved on to addressing Ms. P.'s efforts to adjust her circumstances and conduct to make it in Benjamin's best interests, as required by FL § 5-323(d)(2). It found that Ms. P. is not "financially able" to support Benjamin based on the assistance she receives. *See* FL § 5-323(d)(2)(ii). The court detailed that while Ms. P. did maintain regular contact with Benjamin and the Department, she specifically refused to maintain contact with the M.s. *See* FL § 5-323(d)(2)(i)(3) (requiring the evaluation of "the extent to which the parent has maintained regular contact with: . . . the child's caregiver"). Next, the juvenile court addressed the factor required by FL § 5-323(d)(2)(iv), which asks whether additional services for the parent would result in reunification within 18 months of the child's placement. The juvenile court pointed out,

"that would have been in 2010. This little boy has been in placement for a very, very, very long time, and he has basically been in care for his entire life[.]"

The court then moved on to address the statutory factors that primarily concern a child directly. FL § 5-323(d)(4)(ii). Regarding his adjustments to home, school, and the community, the juvenile court contrasted how Benjamin was "confused" and "displayed a lot of anxiety and he was oppositional" when he was transitioning from his mother to therapeutic foster homes, with the "tremendous progress" he made while living with the M.s. During his period of shifting around Benjamin struggled at school. However, "once he was with the M[.s], they became very involved, had open communication with [his teacher] set up a schedule, and Benjamin began to excel in his school work." Benjamin also "has friends in school [and] in his community."

The juvenile court also assessed Benjamin's "emotional ties and feelings" towards Ms. P. and the M.s, who are considered "others who may affect the child's best interests significantly" per FL § 5-323(d)(4)(i). The juvenile court, relying on Dr. Munson's assessments and testimony, explained that Benjamin has "a partial attachment or positive and insecure attachment to Ms.P[.]" However, his attachment to the M.s is "a strong, positive, secure attachment . . . which Dr. Munson describes as a feeling of turning toward a person who will protect you when you are threatened." The juvenile court explained that Benjamin "is very affectionate with the M[.s] and refers to them as his mother and father." He refers to them as "his parents" to his teachers and others, while he refers to Ms. P. by her first name. The juvenile court determined that his "feelings about severance of the parent-child relationship," FL § 5-323(d)(4)(iii), were evident by

the fact that he considered the M.s to be his parents. While he has a "special relationship" with Ms. P., it is evident that Benjamin does not consider their relationship to be one of parent-child. All these factors, weighed in Benjamin's best interest, support the termination of Ms. P.'s parental rights and his adoption by the M.s.

A particular emphasis on permanency in the child's life underlies the statutory factors as an essential component of the "best interest of the child" determination. *In re Adoption of Jayden G.*, 433 Md. 50, 82 (2013) (citation omitted). "[L]ong periods of foster care" are harmful to the children and prevent them from reaching their full potential. *Id.* at 83 (*citing In re Adoption/Guardianship of Victor A.*, 157 Md. App. 412, 427-29 (2004), and listing "numerous studies" evidencing the harm that instability creates in children). As one author described the detrimental effects of the lack of permanency,

> The status of a foster child, particularly *for* the foster child, is a strange one. He's part of no-man's land . . . . The child knows instinctively that there is nothing permanent about the setup, and he is, so to speak, on loan to the family he is residing with. If it doesn't work out, he can be swooped up and put in another home. It's pretty hard to ask a child or foster parent to make a large emotional commitment under these conditions . . . .

Id. at 83-84 (quoting Joseph Goldstein, *Finding the Least Detrimental Alternative: The Problem for the Law of Child Placement*, in Parents of Children in Placement: Perspectives and Programs 188, n.9 (Paula A. Sinanoglu & Anthony N. Maluccio eds., 1981)). Yet, it is this "emotional commitment" and a sense of permanency that are absolutely necessary to ensure a child's healthy psychological and physical development. *Id.* at 84. While the "'passage of time' alone 'is not sufficient to constitute exceptional circumstances[,]' . . . [f]or exceptional circumstances to exist, the court must also find

that the passage of time when the parent and the child were apart makes continuation of parental relationship detrimental to the best interest of the child." *Ta'Niya C.*, 417 Md. at 111 (citations omitted).

Here, the juvenile court emphasized that Benjamin has been in foster care almost all his life and is in a perpetual "foster care limbo." It explained that "this is a case where there's just been so much time that's passed and so many failed attempts at reunification and trying to have some stability and consistency for this little boy that we've just gotten to a point where he's gotten in a better place with another family." The court relied on Dr. Munson's testimony, highlighting that "a break of the current, secure attachment with the caregivers [the M.s] is highly likely to cause a regression of behavior in this child, and his sense of safety and security may be significantly altered." Benjamin is finally in a home that he feels is his and with a couple that he considers to be "Mom" and "Dad." The juvenile court explained that "the likely impact of terminating parental rights on Benjamin would be to take him out of what the Court believes is foster care limbo and give him permanency with adoption by the M[.s] who are a pre-adoptive placement and are the parents that he knows. He's attached and bonded with them." The last time Benjamin lived with Ms. P. was in November 2011. It was, therefore, in his best interests for him to have permanency, and "he can only have that permanency," the court explained, if the petition to terminate Ms. P.'s parental rights is granted. We agree.

Ms. P. accurately states that if the parent is fit, the presumption that the child's best interests are served by being in the custody his biological parent, and not that of a third party, will be overturned only if "extraordinary, exceptional, or compelling"

circumstances exist "that require the court to remove the child from the natural parent[] in order to protect the child from harm." *B.G. v. M.R.*, 165 Md. App. 532, 546 (2005) (citation omitted). However, we find that such "compelling" circumstances exist in this case, as evidenced by Benjamin's seven years in foster care and the instability and anxiety that his relationship with Ms. P. creates in his life. There was ample evidence presented showing how far Benjamin is excelling with consistency and stability in his life. We unfortunately also have evidence of how much the lack of stability has hurt and confused him in the past.

The juvenile court conducted a thorough review of the statutory requirements for terminating parental rights in this case, and the balance of those factors weighed heavily against Ms. P. As we have recounted above, the juvenile court's discussion was centered exclusively on Ms. P. and Benjamin; there was no language or any evidence where Ms. P. was compared to the M.s, or that the M.s were "better" than Ms. P. as parents to Benjamin. The juvenile court only discussed the facts as they related to each FL § 5-323 requirement, and its conclusion was based solely on those factors.

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