Circuit Court for Washington County
Case No. 21-Z-15-80904

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 529

September Term, 2016

IN RE: ADOPTION/GUARDIANSHIP OF
R. R.

Graeff,
Kehoe,
Rodowsky, Lawrence F.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: January 17, 2017

The Circuit Court for Washington County, sitting as a juvenile court, granted the petition of the Washington Department of Social Services ("the Department") for guardianship with the right to consent to the adoption of R. R., a minor child, thus terminating the parental rights of R.'s mother, S. L.[1] Ms. L. has appealed and presents one issue, which we have reworded:

> Did the juvenile court err when it found that Ms. L. was unable to care for R. in a safe and appropriate manner and was thus unfit to remain in a parental relationship with R.?

We will affirm the judgment of the juvenile court.

Background

The juvenile court conducted a three-day trial on the Department's petition in March and April of 2016 and issued an order granting the petition on May 18, 2016. The court explained the basis for its decision in a carefully-reasoned and exhaustive 67 page memorandum opinion that set out the facts giving rise to the filing of the petition and fully and carefully addressed each of the factors set out in Family Law Article ("FL") § 5-323(d). Additionally, the court found by clear and convincing evidence that termination of Ms. L.'s parental rights was in R.'s best interest. Our summary of the facts is focused on Ms. L.'s appellate contentions.

The evidence, taken in the light most favorable to the Department as the prevailing party, can be summarized as follows.

[1] R.'s father consented to the termination of his parental rights and is not a party to this appeal.

(1) R.'s developmental deficiencies.

R., who was seven years old at the time of the TPR hearing, has been diagnosed as having autism spectrum disorder and disruptive behavior disorder. An expert witness at the trial testified that she was currently functioning at the .1 percentile, meaning that 99.9% of children her age function at a higher level. She has very limited verbal skills and needs constant adult supervision because she wanders and is very vulnerable to accidents or injuries.

(2) The Department's involvement with Ms. L. and R. prior to R.'s foster care placement.

R. first came to the Department's attention in 2011, when police discovered R. restrained in her stroller, which was tied to a door of Ms. L.'s apartment. There was food within R.'s reach but it was swarming with flies. The officers reported that Ms. L. explained that R. was tied into her stroller in order to protect her from demons. Ms. L. was admitted to the Meritus Medical Center for an in-patient evaluation. Physicians at Meritus diagnosed Ms. L. with delusional disorder. Ms. L. disagreed with this diagnosis and refused treatment. The Department instituted a safety plan, by which Ms. L. retained custody of R., but was required to live with her mother, step-father, and half-sister.

This arrangement was not successful. Mark Conrad, a licensed clinical professional counselor with the Department, visited the maternal grandmother's home in September 2011 to assess R. and found that someone had written "Elohim"[2] on each of her limbs

[2] Elohim is a transliteration of a Hebrew word for God.

and that she was delayed in terms of speech and mobility. Conrad and Robin Stoops, another Department social worker, arranged for R. to be enrolled in the Washington County Public School's Early Intervention Program, which is a program designed to provide services to families having young children with, or at risk for, developmental delays. Initially, Ms. L. refused to permit R. to be enrolled but eventually did so after R. was evaluated by Amy Kao, M.D., a neurophysiologist at the Children's National Health Center. However, R. missed half of her scheduled group sessions.

The Department arranged for Ms. L. and R. to be evaluated by Carlton Munson, Ph. D.[3] Dr. Munson diagnosed Ms. L. with a delusional disorder and concluded that she presented a high level of risk for R. because Ms. L. was not in treatment. He opined that R. had significant developmental delays with no language or social interaction skills. Ms. L. continued to deny that she needed mental health services.

After living with her mother for about six months, Ms. L. moved out and returned to her own apartment with R. Ms. L. refused to cooperate with Conrad and Stoops in their efforts to visit with R. When the social workers were able to have access, they found R. confined in a crib or strapped into a car seat. R. was scheduled to begin receiving services through a local Head Start program, but her actual attendance was sporadic because Ms. L. often pulled her out of the program. In November 2012, Conrad met with Ms. L. to emphasize the importance of R.'s attending the Head Start program on a regular basis.

[3] Dr. Munson is Professor at the University of Maryland School of Social Work, whose areas of professional expertise include clinical child welfare and psychopathology.

Ms. L. stated that she would no longer work with him. The Department assigned another caseworker to accommodate Ms. L., but she did not cooperate with that caseworker either.

Because Ms. L. refused to engage with mental health services and did not cooperate with the Department's efforts to assist R.'s development, the Department filed a petition to have R. declared a child in need of assistance. The court granted the CINA petition in December 2012, but R. remained in Ms. L.'s custody. The court ordered Ms. L. to engage in mental health services and to allow R. to fully participate in the Head Start program. Ms. L. fully complied with neither of these requirements.

For these reasons, in March 2013, the Department filed a petition to have R. placed in foster care, which the court granted. The court permitted Ms. L. to have supervised visits with R.[4]

(3) The Department's Re-Unification Efforts While R. was in Foster Care.

Because R. was now in foster care, Julia Jensen, a foster care worker with the Department, assumed the lead role in her case. She stated that in April 2013, R., then 4 years old, was unresponsive and nonverbal and often hit herself as a means of communication. Additionally, R. could not walk. Ms. Jensen stated that the Department's goals with the case were addressing Ms. L.'s mental health, and supporting R.'s development. To that end, in May 2013, Ms. L. was evaluated by Thomas J.

[4] The evidence at the hearing indicated that R.'s developmental and behavioral issues improved markedly while she has been in foster care.

Oglesby, M.D., a psychiatrist. Like Dr. Munson and the Meritus psychiatric staff, Dr. Ogelsby diagnosed her with delusional disorder. More specifically, Dr. Oglesby concluded that:

> Ms. L. is very secretive and, if left to her own free will, she will make every effort to keep people out of her house and out of her life. . . . Her behavior appears to be calculated to accomplish what she really would like—that is, complete isolation and control over her daughter.
>
> . . . .
>
> Concerning her mental disorder, she is delusional about demonic possession. This is a mental disorder not consistent with her cultural background. The most disturbing part of her illness is that she has no insight and poor judgment.
>
> . . . .
>
> The prognosis for improvement in Ms. L. is guarded.

He recommended that Ms. L. take anti-psychotic medication in conjunction with psychiatric therapy, but Ms. L. refused.

In late 2013, Ms. L. was evicted from her apartment for non-payment of the electric bill. The Department learned of the eviction too late in the process to assist Ms. L., and, moreover, Ms. L. refused to give the Department a release so that they could assist her. After eviction, Ms. L. lived with her mother for a time before purchasing her own trailer in April 2014.

Ms. L.'s supervised visitations with R. were not encouraging. Ms. L. told Sandra Snyder, a Department employee, that the Department made R. throw tantrums. Snyder also observed that in a majority of visits, Ms. L. spoke to the cameras in the visitation room about her unhappiness or the case instead of paying attention to R. Ms. L. consistently refused to listen to parenting advice from Department workers and often

failed to pick up on R.'s cues. Ms. L. told Jensen, the lead case worker, that R. was behaving badly because the Department had "put wires in [her] head." During one visit, R. soiled her diapers. Ms. L. refused to change her. When Department workers asked what Ms. L. would do if she was at home with custody of R., Ms. L. responded that she would call the Department to have someone come out and change R.; if someone did not come, Ms. L. would call the police. Ms. L. brought inappropriate items to visits, such as knives, scissors, and matches. The Department took unusual steps during Ms. L.'s visits with R., such as wanding her for security purposes and having two Department workers observe visits.

On at least two visits, Ms. L. incorrectly claimed that the child brought into the visitation room for the visit was not R. During the hearing, Ms. L. showed six pictures of children to the court—three of which she believed to be another child and three depicting R. Department workers, however, identified all of the images to be of R.

In 2014, the Department learned that the residence Ms. L. occupied did not have running water. Ms. L. was under the belief that the court had ordered QCI, a mental health service provider, to repair the plumbing issue, but, in actuality, the court had merely recommended that Ms. L. work with QCI to learn of resources to assist her with this task. After being evicted from this residence, Ms. L. resided in a Salvation Army shelter before taking up residence at a hotel.

(4) Mental Health Services for Ms. L.

As we have related, the staff at Meritus Health Center, and Dr. Ogelsby diagnosed Ms. L. as suffering from a delusional disorder and recommended that she obtain mental health treatment. The Department arranged for Ms. L. to participate in several treatment programs.

In approximately March, 2013, Ms. L. was referred to Turning Point of Washington County, a local mental health care provider. Sabrina Massett, Ms. L.'s caseworker at Turning Point, testified that Ms. L. refused to meet with a psychiatric nurse, a requirement of the Turning Point program. Turning Point eventually discharged Ms. L. in July 2013 because of her refusal to meet with the nurse and her sporadic attendance at therapy sessions.

In March 2014, a psychiatrist at the Mental Health Center of Washington County evaluated Ms. L. and recommended that she receive therapy and medication. Ms. L was discharged a month later, however, because of her aggressive behavior towards MHC staff.

Ms. L. was next referred to QCI Behavioral Health in May 2014. After an intake assessment, QCI recommended Ms. L. attend bimonthly psychotherapy and take anti-psychotic medication. Christina Forescu-Williams, the QCI therapist who worked with Ms. L., testified that Ms. L. occasionally missed appointments, and there was little to no progress with Ms. L.'s condition. Forescu-Williams testified that, during their sessions, Ms. L. would sometimes respond to stimuli that was neither present nor observable. Ms.

L. also expressed a belief that the Department caused R.'s autism. Furthermore, Ms. Forescu-Williams developed a concern that Ms. L. was non-compliant with her medication. In June 2015, QCI discharged Ms. L. because she was not open to therapy.

After her discharge from QCI, the Department referred Ms. L. to Brooklane Health Services ("Brooklane"). Brooklane was in walking distance of Ms. L.'s residence. Ms. L., however, refused to go to Brooklane for services because she believed that the Department was required to transport her there. Jensen, the Department's case worker, testified that Ms. L. also refused to use the bus passes the Department provided to her.

In September 2015, Ms. L. began attending weekly therapy sessions with Richard Ertter at Innovated Therapy Services ("ITS"). Ms. L., however, failed to attend some sessions. Furthermore, Ertter testified that he had observed Ms. L. having an animated conversation with herself, as if she were responding to another voice. Ertter referred Ms. L. to a psychiatrist to that she could receive medication but she did not attend the scheduled appointment because she thought Ertter would drive her to the appointment. Ertter, however, told her on several occasions that he would not do that but that the Department might provide her with cab fare. Ms. L. stopped attending sessions with Ertter in January 2016 because she was unable to obtain medications.

At the time of the TPR hearing, in the spring of 2016, Ms. L. was not seeing a psychiatrist on a regular basis. Ms. L. showed the court two prescription pill bottles for anti-psychotic medication. One bottle was empty and had been filled on November 20, 2015, but the other was full and had been filled on February 11, 2016.

At the TPR hearing, the court accepted Dr. Munson as an expert in clinical social work and child welfare. He testified that he had updated his 2011 evaluation of R. in late 2015. He also observed the TPR proceedings. Dr. Munson opined that, in light of R.'s extreme and lifelong needs, combined with Ms. L.'s persistent refusal or inability to accept mental health treatment, Ms. L. "will never be able to care for her child." Dr. Munson further noted that Ms. L.'s mental health had actually appeared to worsen, and she could develop schizophrenia. In response to a question from the court, Dr. Munson stated that if R. were returned to Ms. L., R.'s life would be in danger.

In its memorandum opinion, the court also found that R. has been thriving in foster care, that she displays little attachment to, or bonding with, Ms. L.; and that "there will be little, if any, long-term negative impact on R. from the termination of Ms L.'s parental rights." *See* FL 5-323(d)(4). Ms. L. challenges none of these findings on appeal.

The court ultimately concluded that Ms. L. was unfit to parent R., and the child's best interests would be served by terminating Ms. L.'s parental rights. Ms. L. noted this appeal.

Analysis

In reviewing TPR cases, appellate courts utilize three related standards of review:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. Second, if 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 of Quintline B., 219 Md. App. 187, 199 (2014) (citation, brackets and quotation marks omitted). We will not reverse a judgment on abuse of discretion grounds unless "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." *North v. North*, 102 Md. App. 1, 14 (1994).

In considering whether to terminate a natural parent's parental rights, the court "must balance the presumption that 'a continuation of the parental relationship is in the child's best interests,' 'against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect.'" *In re Adoption of K'Amora K.*, 218 Md. App. 287, 301 (2014) (internal citations omitted). To that end, FL § 5-323(b) provides that if, after considering the factors listed in that statute, "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[,]" then the court may terminate the parental rights of the parent in the child.[5]

[5] FL § 5-323(d) provides that, with exceptions inapplicable to this case,

> 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;
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> (ii) the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent; and

This Court has recognized that "[a] parent's right to raise her children 'is not absolute[.]'" *K'Amora K.*, 218 Md. App. at 302 (quoting *In re Adoption/Guardianship of*

(iii) the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any;

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

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

1. the child;

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

3. if feasible, the child's caregiver;

. . . .

(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. . .

and . . .

(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.

Darjal C., 191 Md. App. 505, 530 (2010)). Indeed, the presumption that a child's best interests are best served by remaining with the natural parent "'may be rebutted upon a showing either that the parent is unfit or that exceptional circumstances exist which would make continued custody with the parent detrimental to the best interest of the child.'" *In re Adoption of Ta'Niya C.*, 417 Md. 90, 103 (2010) (quoting *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 495 (2007)). The ultimate consideration in TPR cases is the child's best interests. *See K'Amora K.*, 218 Md. App. at 302 ("[A] parent's rights do not drive our decision. As the Court of Appeals recently reaffirmed, 'the child's best interest has always been the transcendent standard in . . . TPR proceedings[.]'" (quoting *Ta'Niya C.*, 417 Md. at 112) (emphasis omitted)).

Ms. L.'s Appellate Contentions

Ms. L. asserts that the court abused its discretion in terminating her parental rights and that the court's findings as to some of the § 5-232(d) criteria were flawed. Specifically, she asserts that the Department did not take reasonable efforts to reunite her with R. Ms. L. also challenged the opinion of Dr. Munson on the basis of his limited observations of her. Moreover, she argues that the Department should have provided her additional services due to her mental health and should have required her to attend parenting classes with an outside party. Furthermore, she contends that the court did not take into account her progress and that she is engaged with treatment. Ultimately, she asks the court for more time to achieve stability in hopes of reuniting with her daughter. These contentions are not persuasive.

First, Ms. L. contends that the Department failed to provide her with sufficient services to permit her to reunify with R. after she was declared to be a CINA in 2013. The juvenile court found to the contrary, noting that the Department "offered numerous and diverse services to [Ms. L.] to support reunification with the Child at every stage," and that the Department's efforts in this regard were "diligent and persistent." There is ample evidence in the record to support the court's finding.

The court placed R. in foster care because it was clear that Ms. L.'s mental health problems prevented her from safely and effectively parenting R. The Department attempted to involve Ms. L. with five separate mental health care providers. Ms. L. was unable to remain in any program long enough to realize meaningful progress towards being able to care for R. At the TPR hearing, Dr. Munson testified that, in his opinion, Ms. L.'s mental health status had actually deteriorated and that she would not be able to care safely for R.

Second, we cannot say that the juvenile court gave undue weight to Dr. Munson's opinion testimony. This is because it is the role of the trial court, not an appellate court, to weigh the credibility and probative value of a witness's testimony. Md. Rule 8-131(c). Additionally, the crux of Dr. Munson's testimony was that Ms. L.'s mental health problems would prevent her from caring effectively for R. Dr. Munson's conclusions were supported by Dr. Oglesby's evaluation. Ms. L. presented no expert testimony to the contrary.

Third, Ms. L.'s contends that the Department should have provided her additional services for her mental health issues and should have required her to attend parenting classes with an outside party. As we have related, the Department arranged for Ms. L. to enroll in five separate mental health treatment programs. She was unwilling or unable to remain in any of them for a period long enough to make progress. She points to no other available or suitable mental health provider in Washington County. Her claim that the Department failed to offer her parenting assistance is inaccurate. The Department arranged for the Early Intervention Program to provide such services but Ms. L. imposed an unreasonable demand, *viz.*, that a doctor must first prescribe each service, before she would permit R. to participate.

Fourth, Ms. L. asserts that the juvenile court did not take into account her progress and that she is engaged with treatment. However, Dr. Munson testified at the TPR hearing that, in his opinion, Ms. L. had made no progress in addressing her mental health problems and there was no evidence that she had ever remained in any health care program long enough to realize significant progress.

Fifth, she asks the court for more time to achieve stability in hopes of reuniting with her daughter. However, the juvenile court is not required to maintain R. in foster care indefinitely against the possibility that, at some undetermined point in the future, Ms. L. will be able to care for her safely and appropriately. As the Court of Appeals has explained:

> "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. . . ."

In re Jayden G., 433 Md. 50, at 83–84 (2013).[2]

All termination of parental rights cases are distressing. Ms. L. clearly loves her daughter but, just as clearly, she is unable to care for her effectively. Additionally, as the juvenile court noted in its opinion, R. is "stable and thriving in her current foster home." R.'s best interest is the "transcendent standard" in this proceeding. *Ta'Niya C.*, 417 Md. at 112.

The juvenile court thoroughly discussed its factual findings, all of which were based on largely uncontested evidence in the record, and concluded that Ms. L. was unfit to parent R., and that it is in R.'s best interest to terminate Ms. L.'s parental rights. The court did not abuse its discretion in reaching this result.

THE JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY, SITTING AS A JUVENILE COURT, IS AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

[2]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) (emphasis added in *Jayden G.*).