Circuit Court for Montgomery County
Case No. for S.E.: 6-2-16-29
Case No. for N.I.: 6-2-16-30

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0593

September Term, 2017

IN RE: ADOPTION/GUARDIANSHIP OF
S.E. and N.I.

Eyler, Deborah S.,
Meredith,
Beachley,

JJ.

Opinion by Meredith, J.

Filed: October 23, 2017

Following a three-day trial, the Circuit Court for Montgomery County, sitting as the Juvenile Court, terminated the parental rights of Andrea L. ("Mother"), appellant, with respect to her minor children S.E. and N.I. The court found that Mother was unfit to continue as the children's parent, and that it was in the children's best interest that Mother's parental rights be terminated. Mother appealed.

QUESTIONS PRESENTED

Mother presents this Court with the following issues:

1. Did the court err by denying the mother's motion for recusal?

2. Did the court err by admitting numerous reports, prepared by the Department for litigation in the CINA proceedings, in violation of the rule against hearsay?

3. Did the court err by finding the mother unfit and terminating parental rights?

4. Did the court err by concluding that permanently and irrevocably severing the parental relationship was in the children's best interests, where they were bonded to their mother and would suffer profound loss and grief?

For the reasons that follow, we answer "no" to each of Mother's questions, and shall affirm the judgment of the Circuit Court for Montgomery County.

FACTS AND PROCEDURAL HISTORY

The children involved in this case are S.E., born in February 2005, and N.I., born in June 2009. They came to the attention of the Montgomery County Department of Health and Human Services ("the Department"), appellee, in early September 2012, a

few days after the new school year had begun.[1] S.E., who was seven years old, had not appeared for classes at her elementary school. School personnel contacted Mother, who informed them that she was home-schooling S.E. The school informed Mother "of the risk of being reported to the Truancy Board." On September 6, 2012, S.E. appeared for her first day of school. According to the CINA petition that the Department filed on September 7, 2012, S.E. "was observed to have numerous injuries and bruises on her body. Make-up was covering the injuries on the child's face. [S.E.]'s [non-facial] injuries came to the attention of school staff after she wet herself during school." S.E. later told Department personnel that Mother had told her to tell anyone who asked that her injuries came from being hit by a tire swing. S.E. was taken immediately to be examined by a forensic pediatrician, Dr. Evelyn Shukat, who documented several injuries.

S.E. and N.I. were immediately sheltered by the Department. On September 7, 2012, CINA petitions for each child were filed in the juvenile court, asserting that both children had been neglected, and that S.E. had been physically abused. The court granted

[1] According to the court's findings of fact at the conclusion of the TPR trial, this was not the first time the family had come to the Department's attention. Rather, "Mother came to the attention of the Department in August 2008. The Department conducted a neglect investigation, as the result of a report that Mother left [S.E.] (then 3 years old) unattended in an apartment hallway following a domestic violence dispute between Mother and her then-boyfriend." TPR Findings of Fact, II.A. And, "In October 2009, shortly after [N.I.]'s birth, the Department conducted another neglect investigation after [N.I.] failed to maintain weight while in [Mother's] care. He was sheltered and then returned to Mother, and the family received Continuing Protective Services (CPS)." Id., II.B.

the CINA petitions on the same day they were filed. An order for Shelter Care was filed, granting supervised weekly visitation to Mother, but granting limited guardianship of the children to the Department. Counsel was appointed for the children. N.I. was placed in the licensed foster home of the F. family on September 10, 2012; S.E. joined him in the F. home on September 18, 2012. The children have been with the F. family since that time.

On October 23, 2012, a First Amended CINA petition was filed in each child's case. The following allegations were made in the petition (and were sustained by the juvenile court):

> 3. On September 6, 2012, Dr. Evelyn Shukat of the Tree House Child Assessment Center examined [S.E.] and found, inter alia: Hypo-pigmented area and scar on forehead; purple green bruises on right cheek and upper lid; red linear (1.75 inches) abrasion on anterior neck; multiple bilateral purple brown green bruises on outer aspects of both arms; loop marks on right lateral torso and upper right lateral thigh; bruises on left flank; abrasion to left posterior shoulder; hypo-pigmented marks on posterior neck; multiple healed linear scars on lower lumbar spine and linear scar on left buttocks; and poor hygiene, body odor, smelly/dirty clothes. Dr. Shukat's clinical impressions were inter alia: History of child physical abuse, extremely poor hygiene and physical neglect; r[ule]/o[ut] PTSD.
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> 4. [S.E.] reported to Dr. Shukat that all of the injuries (which sometimes bled) were caused by her mother using her hands or a belt ([S.E.]'s pink belt-matched an injury on her body-or a black belt); that her mother choked her; that her mother physically disciplined her whenever she wets herself or when she fights with her brother; that her mother, because she is on medication, did not mean to hit hard; and that her mother hits her brother with her hand and sometimes with a belt.
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> 5. On September 10, 2012, Dr. Ellen Levin of the Tree House interviewed [S.E.], who related that her mother hits her often with a

belt on her fac[e], back, arms, and neck. Dr. Levin diagnosed [S.E.] with Physical Abuse, Neglect of Child, by reported history, Adjustment Disorder, with mixed anxiety and depressed mood.

6. [S.E.] has also told Social Worker Beth Turner that her mother told her not to talk about her injuries, and to say that a tire swing caused the injuries. [Mother] has expressed no theory to [the department] as to the cause of the multiple injuries – with the exception of the facial injuries, which she contends were caused by a tire swing. She also told Ms. Turner that she had contacted an adoption agency due to the father's failure to provide for the child and stated that she wanted the child to have a better life.

7. Mother and [Daniel E.] assert that he is [the children's] father.[2] He met [N.I.] once, inadvertently, over a year ago and last saw [S.E.] 2 years ago. His only knowledge of [N.I.]'s special needs medical conditions has just [been] provided to him by [the department]. [Daniel E.] and his current girlfriend, [M.M.], have drinking and domestic aggression/violence issues. In 2008 he was convicted of 2nd degree Assault and later violated his probation. In 2009 he was convicted of Reckless Endangerment which resulted in a Frederick County C[hild] W[elfare] S[ervices] investigation.[3] In August 2012 his most recent child tested positive for marijuana (by meconium) and he was aware that [M.M.] had smoked during pregnancy. He has always been concerned about the [children], but failed to seek custody of the children because he felt his own legal problems needed to be resolved before he presented himself as a resource. When he lived with [Mother] she acted aggressively towards him and he left the home soon thereafter. He is willing to be a resource for the children, but he is concerned about [Mother's] history of aggression towards him and [M.M.]. He has 3 children in his house, [M.M.] has mental health disability and is not taking her medications while breastfeeding.

On November 2, 2012, the court filed an order noting that the initial shelter care order of September 7 had not provided for visitation by Daniel E., ordering that he should

[2] No father was named on either child's birth certificate.

[3] Not regarding S.E. or N.I..

have weekly, supervised visitation with the children, and ordering that neither he nor Mother contact or go to the home of the F.s.

Following hearings on November 16 and November 29, 2012, the court entered an adjudication and disposition order on December 6, 2012, finding that the allegations in the First Amended CINA petition had been proved by a preponderance of the evidence, and that S.E. and N.I. were children in need of assistance because they had been "abused and neglected[,] and the parents, [Mother] and [Daniel E.], are unable or unwilling to provide proper care and attention to [them] at this time." The order continued weekly supervised visitation for both parents, and ordered each parent to take certain actions, including parenting education; Mother was to obtain a psychological evaluation and anger management education. The December 6 order provided that the permanency plan was reunification, but noted that it "may be changed to another permanency plan, which may include the filing of a Petition for Termination of Parental Rights if the parents have not made significant progress to remedy the circumstances that caused the need for removal as specified in this Court Order and are unwilling or unable to give the Child[ren] proper care and attention within a reasonable period of time[.]"

In the years that followed, there were regular review hearings. Daniel E. was in and out of jail; the children's visitation with him was sporadic. The order entered as a result of the January 24, 2013, review hearing provided that Daniel E. could have two "loosely supervised" visits with the children, and, if those went well, his visits could be unsupervised, but that he had to submit to urinalysis twice a week for four weeks. He

tested positive for cocaine on May 3, 2013. It was later noted, in the December 20, 2013, review hearing order, that Daniel E. was often late picking up and returning the children for visitation, and that they returned to the F.s in dirty clothes, smelling of cigarette smoke. It appears from the record that Daniel E. last saw the children at Christmastime in 2013. His children with M.M. were eventually the subject of CINA proceedings in their home county. Daniel E. voluntarily relinquished his parental rights to S.E. and N.I. on the eve of the TPR proceedings.

After S.E. went into foster care with the F.s, S.E. told the F.s that Mother had hit her in the eye some months prior, that her eye had swelled shut, and that her vision in that eye was blurry. The Fs took S.E. to an ophthalmologist, who determined that S.E. had sustained a "dense cataract," apparently caused by the described abuse. Mother was charged criminally, and pled guilty to second-degree child abuse on May 1, 2013. She was sentenced to five years, all suspended, with five years' supervised probation. S.E. had surgery to remove the cataract in the summer of 2013.

The order entered on September 10, 2013 (as a result of the permanency planning hearing held on September 3, 2013) noted Mother's recent guilty plea to child abuse, and also noted that Victoria Easthope, the Department social worker who had met with Mother on August 19, 2013, reported "that Mother does not believe [that] her actions will have a lasting impact on [S.E.]. Mother said she would not promise to not use corporal punishment in the future." The order also noted that Mother had "visited consistently with the Children," and that the "visits have largely gone well, though Mother continues

to become agitated quickly." The children remained CINA, and the permanency plan remained reunification.

Another review hearing was held on December 12, 2013, which resulted in a review hearing order filed on December 20, 2013. The order was more positive. The court noted that the children were each doing well, and their "progress under supervision" included "[d]oing well in [the F.'s] home and having a strong bond with" the F.s, "[m]aking progress behaviorally, socially, and medically," doing well in school, attending the Boys and Girls Club after school, traveling with the F.s, and attending church. The court noted that Mother "has consistently visited with the Children [and] [h]er interactions with the Children during the visits are becoming more positive" due to Mother's use of "techniques she has learned from parenting education[.]" The court noted that "the visits have gone so well that they have progressed from supervised to loosely supervised."

Included in the December 20 review hearing order was a recitation of the Department's Reasonable Efforts to effectuate the permanency plan over the review period, which consisted of:

> a. Regularly transporting [S.E.] and [N.I.] to and from visits with Mother;
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> b. Supervising visits between [S.E.], [N.I.], and Mother;
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> c. Providing parenting coaching to Mother;
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> d. Maintaining regular contact with [S.E.], [N.I.], their foster parents, Mother, and [Daniel E.] to discuss the Children's school status,

foster family life, mental health services, medical care, and family visits;

e. Transporting Mother to [S.E.]'s eye surgery at Children's National Medical Center;

f. Attending [S.E.]'s eye surgery and follow-up ophthalmology appointments;

g. Scheduling a gastroenterology appointment for [N.I.];

h. Communicating with [the Children's maternal great-uncle, Keith L.] for the purpose of discussing visitation with the children and guidelines for supervising visits between the Children and Mother;

i. Maintaining regular contact with [S.E.]'s therapist to discuss [S.E.]'s school status, foster family life, mental health services and family visits;

j. Maintaining more than monthly face-to-face contact with [S.E.] and [N.I.];

k. Communicating with Mother's individual therapist;

l. Referring Mother to A Wider Circle to receive furniture donations;

m. Communicating with Washington County Health Department to monitor [Daniel E.] and [M.M.]'s progress in substance abuse testing; [and]

n. Communicating with the CASA about issues related to [S.E.] and [N.I.]'s CWS case.

A review hearing was conducted on May 12, 2014, which resulted in a permanency planning review hearing order filed on May 22, 2014. Among the court's findings were the following:

[4.] . . . Mother has consistently visited the Children and is scheduled to participate in a nutrition counseling session with [N.I.]'s allergist on May 30, 2014. The visits have generally gone well and increased in length to

include overnights. However, Mother and [S.E.] do not always get along, and some of Mother's recent comments regarding [S.E.] have been inappropriate.

[5.] . . . [S.E.], through counsel, expressed that she does not feel comfortable having overnight visits with Mother. The Court will not order overnights at this time. However, a motion may be filed with the Court to request that overnight visits resume if [S.E.]'s concerns have been resolved.

The Department's efforts in this review period consisted of the same efforts as recited above, for the previous review period, plus:

g. Transporting [S.E.] to family therapy sessions;

h. Attending [N.I.]'s Individualized Education Plan meeting;

i. Communicating with the Children's medical providers to discuss their conditions and recommendations for treatment;

* * *

r. Referring Mother to the Reboot computer program;

s. Referring Mother to multiple food pantries and offering to transport her to pick up food;

t. Visiting Mother's home on multiple occasions to inspect its suitability for overnight visits with the Children; [and]

u. Offering to provide Mother with bus tokens for transportation to and from her medical appointments[.]

The permanency plan remained reunification, but the court included a cautionary warning about the need for more progress: "The Court reaffirms the permanency plan of Reunification for the Children for the reasons stated herein and on the record, noting that significant progress must be made in the next reporting period."

The next review hearing occurred on August 6, 2014, and a review hearing order was filed on August 12, 2014. The court noted that it was "concerned that efforts toward reunifying Children and Mother have stalled. Mother must participate in therapeutic services and the Department must intensify efforts to support her. The upcoming review period is critical to the reunification effort." Among the court's findings of fact pertinent to this review period were the following:

> [4.] Mother is currently unemployed and attending classes at Montgomery College. She participates in weekly unsupervised visits with the Children. The Children have exhibited anxiety surrounding the visits. Mother participates in family therapy with the Children, but does not participate in individual therapy. Mother needs to obtain employment and **must** participate in individual therapy.

(Emphasis in original.)

The Department's reasonable efforts during the review period included the fact that it paid Pepco $536.81 to have Mother's power restored after it was shut off for non-payment, and the Department's attempts "to meet with Mother to discuss budgeting, financial planning, and her efforts to seek employment." Mother had never been employed at any time during this case. She told the Department that she was "disabled" with asthma and eczema, and had applied for federal disability benefits, although it does not appear this effort was successful.

On October 23, 2014, another review hearing order was filed, as a result of a hearing held on October 16, 2014. The Children had been in foster care with the F.s for twenty-five months at this point. The court made the following factual findings:

[4.] Mother is currently unemployed. She is attending classes at Montgomery College so that she does not lose her housing voucher. Mother has been consistently participating in individual therapy, but not consistently participating in family therapy with the Children. Mother must both obtain employment and participate consistently in individual and family therapy.

[5.] Mother is pregnant, due to give birth on October 24, 2014. The Department is concerned about the impact this will have on the Children. Mother did not tell the Children about her pregnancy until October, 2014.

[6.] [D]uring this reporting period visits between the Children and Mother have taken place inconsistently. Due to an incident between the foster father and Mother over Labor Day weekend, the foster parents are no longer willing to have contact with Mother.

[7.] [T]he Court finds that Mother changed the pick-up location for the visit, was late, and demanding, and that the foster father became angry and raised his voice at Mother in front of the Children.

[8.] [A]s a result of this incident on Labor Day Weekend, the foster parents are no longer willing to have one-on-one contact with Mother, nor to transport the Children for visits directly to Mother. As a result, all visits have been coordinated by the Department. This limits visits to week days. Mother has not been able to consistently attend visits and resents the time restrictions on the visits. Mother seeks weekend visits with the Children, which is premature given the Children's recent regression, and unpractical given the impending birth.

[9.] [T]he foster father testified to recent dramatic changes in [S.E]'s behavior. There has been a reoccurrence of bed wetting at home and in school. [S.E.] has also been acting out verbally and been physically aggressive towards her foster parents. There has been an increase in fighting between [S.E.] and [N.I.]. The increase coincides with the Children learning of Mother's pregnancy in family therapy. The Court is very concerned about the changes.

[10.] [T]he Court is concerned that progress toward Reunification has stalled. Mother must participate in therapeutic services and the Department must intensify efforts to support her. Mother must accept the Department's assistance, even if it is not exactly what and how she would like. The upcoming review period is critical to the Reunification effort.

> [11.] [T]he Court is also concerned about Mother's reluctance to reveal the name of her baby's father to the Department, insisting that [S.E] and [N.I.] will have no contact with him. The Court finds this implausible.

The Court "reaffirm[ed] [ ] the permanency plan of Reunification for the Children, noting that Mother must direct her focus to compliance with Reunification efforts for the reasons stated herein and on the record." It found that the Children were doing well in school and had "a strong bond with [their] foster parents[.]" It ordered, *inter alia*, that Mother participate in weekly individual therapy, and family therapy with the Children minimally every other week "or as indicated by the family therapist," that she cooperate with the Department regarding services, that she "seek, obtain, and maintain stable employment, by applying to at least one job a week and provid[ing] proof of employment applications to the Department," and that she "[p]rovide the Department with the name and address of her baby's father and ensure that he has no contact with [S.E.] and [N.I.][.]"

On January 29, 2015, a permanency planning review hearing order was filed, following a review hearing held on January 15, 2015. The court noted that Mother was still unemployed, and that visitation with the Children during the review period had been "inconsistent due to Mother's transportation issues and . . . health complications related to her pregnancy, delivery, and post-partum." Although the permanency plan of reunification with Mother was reaffirmed, the court noted for the first time that "the Department is exploring potential adoptive resources for the Children, specifically the foster parents."

The next review hearing occurred on May 1, 2015, and the permanency planning review hearing order relative to that proceeding was filed on May 12, 2015. The court noted that Mother had made progress since the January review hearing, including:

> [8.] . . . Mother has been consistently participating in individual therapy, is engaged in parenting education and has been an active participant in the Children's education during this reporting period.
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> [9.] . . . progress has been made toward reunification during this review period. Overnight visits have increased in frequency. The Children spent five nights with Mother during spring break.
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> [10.] . . . [S.E.] and [N.I.] are attached to their foster parents. The transition back to Mother's home is a positive step, but emotionally challenging for both children. At this hearing, the foster parents stressed the need for therapeutic support for both children as they return to Mother.

As of the May 2015 review hearing, the Department and Mother were "working towards a Trial Home Visit at the end of the current school year." As such, one of the items the court ordered was that the Department "explore, and if appropriate, provide trauma focused therapy for the Children to assist them with the specific challenges of leaving the foster home, especially for [N.I.][.]"

Unfortunately, Mother's progress was short-lived. On June 10, 2015, an emergency hearing was convened because the Trial Home Visit was set to occur beginning on June 15, 2015, and the Department had recently learned of "allegations of physical punishment of the Children" by the Mother. Accordingly, the Department requested that the Trial Home Visit be delayed pending the results of the Department's investigation. The court granted this request, via order entered June 16, 2015, and set a review hearing for June 25, 2015. That hearing resulted in an order being filed on July 2,

2015; the court continued the children's status as children in need of assistance. The court expressly found that it was not in the children's best interests for them to return to Mother for a Trial Home Visit, and it ordered that Mother's weekly visitation be supervised.

Following hearings on September 8, September 29, and October 9, 2015, the court filed a permanency planning hearing order on October 30, 2015. The court noted that its July 2, 2015, determination that it was not in the children's best interest to have a Trial Home Visit with Mother was "still the case." It further noted that the foster parents, the F.s, had "come forward as a resource for Custody and Guardianship for the Children." In contemplation of a change in permanency plan, the court considered the factors set forth in Md. Code (1984, 2012 Repl. Vol.), Family Law Article ("FL"), § 5-525(f), and made the following findings:

> **a. The child's ability to be safe and healthy in the home of the child's parent(s):** The Court is unable to say the Children will be safe if permanently returned to the care of Mother. Mother's parenting has followed a pattern of progress and regression. She has been unable to safely navigate the management of three children at once. She is not employed and has for many months expected a determination in her favor regarding a disability finding. After three years, questions still exist about her use of inappropriate physical discipline, as recently as summer, 2015.
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> **b. The child's emotional attachment and emotional ties to the child's natural parents and siblings:** There is no question that the Children are attached to Mother. They love her, but are also afraid of her. They are currently in treatment to identify and process the trauma that they have experienced. The Children are very connected to their baby sister, [A.]. They have had less opportunity to spend time with Father, due in part to his incarceration.

> c. **The child's emotional attachment and emotional ties to the child's current caregiver and the caregiver's family:** The Children are very attached to the foster parents. [N.I.] refers to their home as "home." [S.E] and [N.I.] have both thrived with their foster family.
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> d. **The length of time the child has resided with the current caregiver:** *The Children have been with this foster family for three years.*
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> e. **The potential emotional, developmental and educational harm to the child if moved from the child's current placement:** The Children are doing very well in school and have been able to develop developmentally, so that they are at age-appropriate levels. Their lives are consistent, stable, and predictable. To remove them from this placement would be contrary to their welfare.
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> f. **The potential harm to the child by remaining in State custody for an excessive period of time:** *The uncertainty in their lives if the Children remain under the jurisdiction of the Court is destabilizing and anxiety provoking. Knowing where they will be and how they will be cared for is in their best interests, and it is what they deserve.*

(Italics added.) Accordingly, the court changed the Children's permanency plan from reunification with Mother to Custody and Guardianship by a Non-Relative.

On April 21, 2016, the court filed a permanency planning review hearing order, following a hearing on April 14, 2016. The court reaffirmed the plan change. Additionally, it noted that the F.s wanted to adopt the children, and set a permanency plan review hearing for July 14, 2016.

The court's July 21, 2016, permanency plan review hearing order reflected that the F.s had informed the Department, on the morning of the July 14 hearing, that they "were no longer able to be adoptive resources for the children," and requested that another placement be found before the start of the 2016-2017 school year. It was decided that no one would discuss with the children the potential change of placement until a specific

plan was in place to help the children transition to another foster placement. The court found that it was in the children's best interests to continue the permanency plan of custody and guardianship to a non-relative.

Another permanency plan review hearing occurred on September 22, 2016, and was followed by an order, filed November 10, 2016. The order reflected that the F.s had testified at the hearing on September 22, had explained their previous change of heart to the court's satisfaction, and were again asking to adopt S.E. and N.I. The Department and the children, through counsel, agreed with a change in plan from custody and guardianship to a non-relative to adoption by a non-relative (the F.s). Mother was opposed. Daniel E., who was in jail in West Virginia but represented at the hearing by counsel, deferred to the court on the matter.

The court granted the requested change in permanency plan to adoption by the F.s, and explained its findings based upon its consideration of the relevant FL § 5-525(f) factors:

> **a. The children's ability to be safe and healthy in the home of the children's parent(s)**: [S.E.] and [N.I.] have been out of the home since fall 2012, four years ago. Both children needed significant help to regain their health when they were removed. [S.E.] had been physically abused by Mother; [N.I.] had severe allergies that needed attention they hadn't gotten in Mother's care.
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> Throughout the case, Mother has worked slowly at some improvements. Her housing has been stable, although the visits have been supervised at the Department, as the social worker has testified several times that she smelled marijuana when at Mother's home. Another witness, the CASA, Ms. Gladney, said she's been to the house at Mother's request, and did not smell marijuana. Mother continues to struggle with her own health issues. At this time, the Court can't say that the Children would be

safe with Mother, given the record, but it also can't say that they would be unsafe in the way they were as younger children.

b. The children's emotional attachment and emotional ties to the children's natural parents and siblings: [S.E.] and [N.I.] are attached to Mother and to their sister [A.]. They are less tied to [Daniel E.], who has been absent from their lives for at least three years, and to their siblings [D. and K.], who are [Daniel E.]'s children by another woman. Early in this case, [S.E.] and [N.I.] had fairly frequent visits with [Daniel E.] and their siblings, but that ended as a result of unsafe conditions in [Daniel E.]'s care. [Daniel E.] was subsequently arrested and incarcerated, where he remains at this time.

While not a parent or sibling, [Keith L.], Mother's uncle, had in the past been part of the Children's lives; they visited with him for a time early in the case, but he discontinued seeing them when his marriage fell apart. He testified he did so to focus on raising his son. He has not been a part of the Children's lives in at least two years.

c. The children's emotional attachment to the children's current caregiver and the caregiver's family: There have been times during this process when the Court was very concerned about the stability of the placement for [S.E.] and [N.I.], given Ms. [F.]'s hesitance with regard to a more permanent arrangement, and most especially when it appeared that the Children might leave the [F.]'s home.

However, the testimony in the case, over its four-plus years before this member of the bench, overwhelmingly confirms that the Children are bonded to and thriving with the foster parents. The Children are healthy and excelling; they have identified their gifts and have been enabled to develop and use them with the guidance and love of the [F.]s.
Ms. [F.] struggled with the concept of adoption; Mr. [F.] was ready to proceed in that direction sooner. Ms. [F.]'s testimony in this Review Hearing described the emotional journey she took getting to the realization that, as she put it, the children are the "yes" element in her life. It is difficult to process that in a court setting, and compelling.

d. The length of time the children have resided with the current caregiver: The Children have been with the [F.]s for just over four years.

e. The potential emotional, developmental, and educational harm to the children if moved from the children's current placement: The

> bond formed between the Children and the [F.]s is strong. [N.I.] has been with them for well over half his young life. His good health is attributable in no small measure to the work the [F.]s did to identify his dietary needs and consistently provide him with proper nutrition. [S.E.], at 11 ½ years old, has blossomed into a magnet school student, with the help of the enrichment the [F.]s have provided her. With the [F.]s' guidance, both children have navigated the emotional shoals of being abused, removed from a parent, and living in foster care. The [F.]s are their safe harbor. Removal would cause significant harm to the Children.
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> **f. The potential harm to the children by remaining in State custody for an excessive period of time**: While these Children are not in a state facility, they live with uncertainty. That uncertainty causes anxiety, of which the Children have had enough. After more than four years in foster care, they are entitled to certainty.

Thereafter, the Department filed a petition to terminate parental rights to each child, to which Mother filed an objection. Trial was set for May 1, 2, and 4, 2017, before the same judge who had presided over all of the previous CINA proceedings in the children's cases.

On February 13, 2017, the Department filed a Motion in Limine to Allow the Use of CINA Court Reports, Court Orders, Sustained Petitions, Exhibits, Transcripts and Other Related Documents at TPR and Maryland Rule 5-1006 Notice, arguing that the various documents admitted in the CINA case were admissible in the TPR trial under Maryland Rule 5-803(b), the public records exception to the Rule Against Hearsay; that the court could also take judicial notice of the CINA filings in the TPR trial; and that the documents were also admissible as summaries, pursuant to Rule 5-1006.[4] Mother filed a

[4] Rule 5-1006 provides:

continued…

timely opposition, asking that the motion be denied, "and that matters of evidence and proof be reserved for and addressed at trial, item by item."

On March 2, 2017, the court held a hearing on the motion in limine, and on Mother's motion to recuse the judge who had heard the CINA proceedings.[5] The court granted the motion in limine, and denied the motion to recuse. The recusal issue is the subject of Mother's first question presented on appeal, and the evidentiary motion is the subject of her second question.

The termination of parental rights trial took place as scheduled on May 1, 2, and 4, 2017. On May 17, 2017, the court filed a comprehensive opinion, including findings of fact and conclusions of law, accompanied by a final order terminating Mother's parental rights in S.E. and N.I. Because Mother's third and fourth questions presented on appeal

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continued…

> The contents of voluminous writings, recordings, or photographs, otherwise admissible, which cannot conveniently be examined in court may be presented in the form of a chart, calculation, or other summary. The party intending to use such a summary must give timely notice to all parties of the intention to use the summary and shall make the summary and the originals or duplicates from which the summary is compiled available for inspection and copying by other parties at a reasonable time and place. The court may order that they be produced in court.

[5] There is no original, written motion to recuse in the record, but there is a motion for reconsideration of denial of recusal request, filed by Mother on February 16, 2017. At the March 2 hearing, when the parties argued and the judge rendered her ruling denying the motion to recuse, there was no discussion about reconsideration of the denial of an earlier-filed motion to recuse. The argument and the ruling were couched in terms of "a motion to recuse."

contend that the court's decision to grant the TPR petition was in error, we will include liberal excerpts below.

STANDARD OF REVIEW

In *In re Adoption/Guardianship No. 95195062/CAD in Circuit Court for Baltimore City*, 116 Md. App. 443, 453–54 (1997), we described review of cases ordering termination of parental rights:

> In decisions regarding the termination of parental rights, the best interest of the child has long been the guiding standard. *In Re Adoption No. 10941,* 335 Md. 99, 112, 642 A.2d 201 (1994); *In Re Adoption No. A91-71A,* 334 Md. 538, 561, 640 A.2d 1085 (1994). Indeed, the child's welfare is of "'transcendent importance'." *In Re Adoption No. A91-71A,* 334 Md. at 561, 640 A.2d 1085 (quoting *Dietrich v. Anderson,* 185 Md. 103, 116, 43 A.2d 186 (1945)). Termination of parental rights, however, implicates the fundamental constitutional right to raise one's own child. Because this right "is so fundamental . . . it may not be taken away unless clearly justified." *In Re Adoption No. 10941,* 335 Md. at 112, 642 A.2d 201; *see also Santosky v. Kramer,* 455 U.S. 745, 759, 102 S.Ct. 1388, 1397, 71 L.Ed.2d 599 (1982) ("When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it.") The Court of Appeals has long recognized the gravity of the decision to terminate a person's legal status as a child's parent. In *Walker v. Gardner,* 221 Md. 280, 284, 157 A.2d 273 (1960), the Court said:
>
> > [A]doption decrees cut the child off from the natural parent, who is made a legal stranger to his offspring. The consequences of this drastic and permanent severing of the strongest and basic natural ties and relationships has led the Legislature and this Court to make sure, as far as possible, that adoption shall not be granted over parental objection unless that course clearly is justified. The welfare and best interests of the child must be weighed with great care against every just claim of an objecting parent.
>
> As termination of parental rights involves two strong but often conflicting interests, the Legislature has provided a detailed statutory scheme that must be satisfied before a parent's rights may be terminated. Maryland Code

> (1957, 1991 Repl.Vol. & 1996 Supp.), Family Law Article ("F.L."), § 5-313.[6] In these proceedings, the State bears the heavy burden of proving, by clear and convincing evidence, that termination of a parent's rights serves the best interests of the child. *In Re Adoption No. 09598,* 77 Md. App. 511, 518, 551 A.2d 143 (1989).

The statutory authority for a juvenile court to terminate parental rights over the objection of a natural parent is found in FL § 5-323(b), which provides:

> 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 factors a juvenile court must consider are those enumerated in FL § 5-323(d). The statute "does not require a trial court to weigh any one statutory factor above all others. Rather, the court must review all relevant factors and consider them together." *In re Adoption/Guardianship No. 94339058/CAD in Circuit Court for Baltimore City*, 120 Md. App. 88, 105 (1998).

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[6] FL § 5-323 is currently the successor statute to former FL § 5-313, as the Court of Appeals noted in *In re Rashawn T.*, 402 Md. 477, 489 n.6 (2007):

> In its 2005 Session, the General Assembly enacted 2005 Md. Laws, ch. 464, the Permanency for Families and Children Act of 2005, which substantively revised the laws relating to guardianships and the termination of parental rights. The standards previously set forth in FL § 5–313, as revised, are now found in FL § 5–323.

When an appellate court reviews a child-custody determination --- including a determination that a petition to terminate parental rights should be granted --- there are "three distinct aspects of review," *In re Yve S.*, 373 Md. 551, 586 (2003):

> When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Secondly,] [i]f it appears that the chancellor 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 chancellor founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the chancellor's decision should be disturbed only if there has been a clear abuse of discretion.

(Quoting *Davis v. Davis*, 280 Md. 119, 125-26 (1977); alterations in *Yve*). *Accord In re: Adoption/Guardianship of C.A. and D.A.*, ___ Md. App. ___, ___, No. 2234, September Term 2016, slip op. at 12-13 (filed August 30, 2017).

DISCUSSION

I. The motion to recuse

Mother's first appellate contention is that the trial judge erred by denying Mother's motion for recusal. Mother argued that recusal was necessary because the same judge who presided over the CINA proceedings was assigned to preside over the TPR trial; Mother argued that, because that judge had already recommended adoption in the CINA proceedings, that judge had already formed a strong opinion that termination of Mother's parental rights was in the best interests of the children, and, therefore, the judge "would be unable to make a decision that was contrary to the decisions she had made in the CINA case." Mother also argues, in the alternative on appeal, that, even if the judge did not in fact pre-judge the TPR result, a reasonable observer would have "compelling

reason to question the ability of a judge to be impartial and disinterested, when that judge presided over all of the [previous] critical hearings in this matter[.]" She asserts recusal was required by *Karinikas v. Cartwright*, 209 Md. App. 571, 579 (2013) ("A Maryland judge 'shall disqualify himself or herself in any proceedings in which the judge's impartiality might reasonably be questioned. . . .' Md. Rule 16-813 . . . Rule 2.11(a).").

The Department points out that the standard of appellate review of a denial of a motion to recuse is an abuse of discretion standard. The Department also points out that judicial ethics do not require a trial judge who has presided over one case involving a defendant to recuse himself or herself from presiding over a subsequent trial involving that defendant. *Jefferson-El v. State*, 330 Md. 99, 106-07 (1993). And, when there is a question about how a "reasonable person" would assess the "appearance of impropriety," the proper test to be applied "is an objective one which assumes that a reasonable person *knows and understands all the relevant facts*." *Id*. at 108 (italics in original.). Applying that test to this case, the Department asserts, compels the conclusion that the trial judge was not disqualified from presiding over the TPR trial merely because the judge had presided over the CINA hearings involving the same parties. We agree with the Department.

Mother's principal argument in favor of recusal is that a reasonable observer could question the impartiality of the trial judge because she had "presided over all of the critical hearings in this matter[.]" In her brief, Mother correctly states that "the party requesting recusal must show that the trial judge has a personal bias concerning the

motioning party, or personal knowledge of disputed evidentiary facts concerning the proceeding," citing *Jefferson-El, supra*, 330 Md. at 107. But, as *Jefferson-El* makes clear:

> To overcome the presumption of impartiality, the party requesting recusal must prove that the trial judge has "a personal bias or prejudice" concerning him or "personal knowledge of disputed evidentiary facts concerning the proceedings." Only bias, prejudice, or knowledge derived from an extrajudicial source is "personal". Where knowledge is acquired in a judicial setting, or an opinion arguably expressing bias is formed on the basis of information "acquired from evidence presented in the course of judicial proceedings before him," neither that knowledge nor that opinion qualifies as "personal."

Id. (internal citations omitted).

Mother did not make any showing of "personal bias or prejudice," as those terms are defined in *Jefferson-El, id.* And Mother's argument, taken to its logical conclusion, would mean that no judge who presided over CINA or guardianship proceedings could later preside over TPR proceedings involving the same child or parent. No case has been brought to our attention that requires such a result.

Mother has failed to demonstrate on appeal that the trial judge abused her discretion when she failed to recuse herself from the TPR trial.

II. The Department's Exhibits 10-26

The Department's Exhibits 10-26 consisted of reports prepared by the Department for the CINA review hearings. They were the subject of the Department's pretrial motion which asked the court to rule *in limine* that the Department would be permitted to introduce these documents into evidence at trial. Mother's opposition to the motion *in limine* asked that the court deny the motion and rule "that matters of evidence and proof

be reserved for and addressed at trial, item by item." The court granted the motion and entered a written order, filed on March 8, 2017, which provided that the Department "shall be permitted to introduce into evidence at the [TPR] hearing in these matters Court Reports, Court Orders, Sustained Petitions, Transcripts, Exhibits, and other related documents," and that the court "may" take judicial notice of the same.

On May 1, 2017, the first morning of trial, Mother renewed her opposition to the motion *in limine*. On May 2, 2017, during the Department's direct examination of Victoria Davis --- the social worker who had handled the children's case since September 2012, and who was qualified as an expert in social work in this case --- the Department asked her to identify Exhibits 10-26. Ms. Davis identified them as her reports:

> [BY THE WITNESS]: **[Exhibit 10 is] [m]y report** dated January 11, 2013. A report for review hearing. **Exhibit 11 is my report** for review hearing dated June 14, 2013. **Exhibit 12 is my report** for review hearing dated August 23, 2013. **Exhibit 13 is my report** for review hearing dated August --- the first August 23 one [Exhibit 12] was [my report] for [S.E.]. And Exhibit 13 is the August 23 report for [N.I.]. **Exhibit 14 is my report** for review hearing dated December 2, 2013. **[Exhibit] 15 is my report** for review hearing dated May 2, 2014. **[Exhibit] 16 is my report** for review hearing dated July 25, 2014. **[Exhibit] 17 is my report** for a permanency planning and review hearing dated October 6, 2014. **[Exhibit] 18 is my report** for a permanency planning review hearing dated January 5, 2015. **[Exhibit] 19 is my report** dated April 21, 2015. **[Exhibit] 20 is my report** dated August 28, 2015. **[Exhibit] 21 is my report** dated September 18, 2015. **[Exhibit] 22 is my report** dated February 29, 2016. Then there's [Exhibit] 22A which is the report dated April 4, 2016. . . . **[Exhibit] 23 is my report** dated June 28, 2016. **[Exhibit] 24 is my report** dated September 8, 2016. **[Exhibit] 25 is my report** dated September 13, 2016. **[Exhibit] 26 is my report** dated February 6, 2017. **And those are all my reports.**

(Emphasis added.)

Ms. Davis further testified that Exhibit 10-26 "fairly and accurately set out progress and supervision, recommendations, efforts and the like," which drew an objection from Mother's counsel on the grounds of broadness and being a leading question. The court overruled the objection, but stated that Mother's counsel could explore the point on cross-examination. The Department then offered Exhibits 10-26 into evidence, and Mother's counsel again objected, explaining that her objection was two-pronged: she objected both to the reports and to the attachments to the reports. Ms. Davis testified that the attachments, which were therapist and school records, were required by COMAR to be kept as part of the record of S.E. and N.I.'s case. The following colloquy then occurred:

> [BY THE DEPARTMENT]: So Your Honor, what we would suggest is those records are also cognizable by the Court under the public record exception to hearsay rule with regard to the facts --- not with regard to any opinion in those record[s], in the attachments, because those --- as [Mother's counsel] pointed out --- those individuals are not here and subject to cross-examination. However, as part of the record, the facts would be cognizable under public record and elsewhere.
>
> [BY THE COURT]: Okay, [Mother's counsel]?
>
> [BY MOTHER'S COUNSEL]: Well, Your Honor, this is where we really get into the Supreme Court law and procedural due process and rules of evidence and the importance of not having an easy way to terminate rights because it's convenient to everyone. We really need to look at each of these documents. We need to examine the extent to which this is hearsay within hearsay. These are documents that are created not at the time something happened --- *In re: Faith A.* is a permanency planning hearing.[7]

[7] The case mentioned by counsel is apparently *In re: Faith H.*, 409 Md. 625 (2009), a case in which the Court of Appeals stated:

continued…

So the law of *In re: Faith A.* should not be applied to --- we're sort of morphing the permanency relaxed rules of evidence into the termination of parental rights case. And we should not be doing that.

[THE COURT]: [Mother's Counsel], if I could just interrupt you for a second? I think the problem here is that we are conflating two separate ideas, and trying to make an overriding rule out of them. There's no question that there are things in these reports that are hearsay. **There's also no question that these reports are required by law to be filed and that there is case law that talks about the special treatment those kinds of documents get.** Not based on whether it's clear and convincing evidence or preponderance of the evidence or frankly beyond a reasonable doubt, but what the nature of the record being made with regard to the hearsay is and how it relates to the case. So tedious, but accurate, I think is that we could go through every one of these reports and you can tell me which things you think are hearsay.

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continued…

The statutory scheme governing dispositional and review hearings in CINA cases envisions that the juvenile court will rely on reports submitted by the Department and other entities. . . . In preparation for a hearing, the Department of Health and Human Services is statutorily required to develop and implement a permanency plan that is in the best interests of the child pursuant to Section 5–525(b)(2) of the Family Law Article and to provide all parties and the court with a copy of the plan at least 10 days before any scheduled disposition, permanency planning, or review hearing. Sections 3–823(d) and 3–826(a) of the Courts and Judicial Proceedings Article. . . .

In addition to the departmental reports, other studies "concerning the child, the child's family, the child's environment, and other matters relevant to the disposition of the case" may be required by the court pursuant to Section 3–816(a) of the Courts and Judicial Proceedings Article, and are admissible as evidence at a dispositional hearing, so long as the report of the study is filed and provided to all parties at least 5 days before the hearing. Section 3–816(c) of the Courts and Judicial Proceedings Article; *see also* Rule 11–105.

Id. at 641-45 (footnotes omitted).

But the reality of it is just so nobody loses the thread is another set of two things. I have been the judge in this case, so I've obviously had the benefit of these --- although have I committed this to memory? No. So I don't know what's in each of these specifically, let's say – I don't [have] that kind of a memory of what they are.

So one way to say it is that at least right now I don't know what's in them. Not that I didn't know at some time, but I don't know right now. **To the extent that there is an attachment that is objectionable not because it's an attachment but because of what it says, I'm happy to hear whatever ---- because I do think that the other thing that the case law says about these kinds of records that are mandated by law is that I can make a judgment about whether they're more prejudicial than probative. And if that's the case, then not receive them.** Obviously they've been received in another context. But in this proceeding, not receive them.

But that requires that somebody point out to me where the problems are. Because I think it's clear from the case law that it is the obligation of the person who would like to make the argument that they're more prejudicial than probative, that to make the case about what is and what is not. So I'm not saying you can't pick these apart. You can. But you have to do it. And there has to be, you know, some basis for it. But I think that's your right. **I don't think excluding all of it is what's contemplated by the law.**

[BY MOTHER'S COUNSEL]: Well, I think that the law that said that she is to create a recommendation and put it in writing for the permanency planning hearing should not be read to mean that she writes a position paper and gives her opinions and supports them with facts that are not complete facts, and then put it into the lower level case, should overrule the importance of having the rules of evidence strictly applied at the termination of parental rights case where the risk of error in state procedures is far more grave than at the level where we're talking about when the parents should visit and the degree of services that the parents should have.

When we get to this level, the value of making the case go quickly and getting everything in and not looking at the details is far less because this procedure that I'm challenging makes Your Honor not see the granular detail that you need to see in order to make a decision about the children.

And I shouldn't have to go through her four and a half years of documents and tell you what's wrong with all of them in order to be able to have a fair hearing. And the way we should have a fair hearing is she's on the stand. She should testify as to the things that she's observed and I should be able to cross-examine her. Beyond that ---

[THE COURT]: And indeed, you will have that opportunity. She's sitting right here.

[MOTHER'S COUNSEL]: I will be doing that.

[THE COURT]: Okay, but you have these records, you've had these records. You know, I think one of the things we have to try to do, [counsel] is not get ourselves wrapped around a concept that doesn't actually make any sense. Because the reality is what the law says is not what you just said. It might be that somebody will decide it should be. But at least at the moment, that's not what's happened. **So these reports are part of the record. They're part of how we got here.** They're not substandard pieces of paper that are position papers. I think there are things in them that are requests by the Department that are either granted or not. But I don't think that makes them a position paper.

I think what it makes them is a document required to be made by law and so because of that, it gets some special treatment. Then I'm happy to have you do whatever you think you need to do with regard to certain aspects of it. I can't say, no, we're not going to receive these. Because this is part of the record of the case, and there's no basis for me to say no, I'm not going to receive them.

Having said that, again, if there are things in these reports that are more prejudicial than probative, then I will consider those requests very seriously and make sure that if there are things that are not appropriate in terms of opinion or triple hearsay or some other thing, then that may well be where we are. But you have to be prepared to do that, because alas, it falls to you.

[MOTHER'S COUNSEL]: Well, I am, Your Honor.

[THE COURT]: Okay.

[MOTHER'S COUNSEL]: So I guess I'm ready to cross-examine her on this. So maybe we could wait until after --- or ***maybe I'll move to strike*** **at**

> **the end of my cross of each particular document,** ***after I cross-examine her about it. If you want to do it that way*** ---
>
> [THE COURT]: ***Well, I think it's fine to do it on cross-examination, and then I think what I will be doing is making a determination about what if any part of any of the reports should be redacted or stricken from this record***.
>
> [MOTHER'S COUNSEL]: ***Okay, so we'll do it that way.***

(Boldface and italics added.)

The exhibits were later admitted, subject to Mother's cross examination and requests for redaction.

The trial court's comments in the above-quoted colloquy indicate that the court agreed with the Department's assertion that Ms. Davis's reports that had been filed in the CINA proceedings were admissible at the TPR trial pursuant to the hearsay exception for public records and reports, Maryland Rule 5-803(b)(8), which provides, in pertinent part:

> (8) *Public Records and Reports*.
>
> (A) Except as otherwise provided in this paragraph, a memorandum, report, record, statement, or data compilation made by a public agency setting forth
>
> (i) the activities of the agency;
>
> (ii) matters observed pursuant to a duty imposed by law, as to which matters there was a duty to report;
>
> (iii) in civil actions and when offered against the State in criminal actions, factual findings resulting from an investigation made pursuant to authority granted by law; or
>
> (iv) in a final protective order hearing conducted pursuant to Code, Family Law Article, § 4-506, factual findings reported to a

court pursuant to Code, Family Law Article, § 4-505, provided that the parties have had a fair opportunity to review the report.

Committee note: If necessary, a continuance of a final protective order hearing may be granted in order to provide the parties a fair opportunity to review the report and to prepare for the hearing.

(B) A record offered pursuant to paragraph (A) may be excluded if the source of information or the method or circumstance of the preparation of the record indicate that the record or the information in the record lacks trustworthiness.

See also Maryland Code (1984, 2012 Repl. Vol.), Family Law Article, § 5-3B-22(b)(3), which provides:

(3) In determining whether it is in the best interests of a prospective adoptee to terminate a parent's rights under this subsection, a court shall:

(i) give primary consideration to the health and safety of the prospective adoptee; and

(ii) consider the report required under § 5-3B-16 of this subtitle.

In Professor Lynn McLain's treatise on evidence, she points out that Rule 5-803(b)(8) "recognizes a broad hearsay exception for records prepared by public officials or employees." She explains the policy considerations for the exception as follows:

The rationale for the admissibility of public records is tri-fold. First, there is a circumstantial guarantee that official records, like "business records," are likely to be reliable, because the public agency will want to maintain accurate records in order to facilitate its business. Second, at the time of trial, public officials are unlikely to remember more accurately the events recorded than they will be reflected in the records. Third, public policy dictates against requiring public employees to testify in court, which would impede the government's work.

LYNN MCLAIN, 6A MARYLAND EVIDENCE, STATE & FEDERAL, § 803(8):1 at 579 (3d ed. 2013). Professor McLain further observes, *id*. at 583:

> Like the business records exception in Md. Rule 5-803(b)(6), Md. Rule 5-803(b)(8) contains a safety valve: a record "may be excluded if the source of information or the method or circumstance of the preparation of the record indicate that the information in the record lacks trustworthiness." . . . The federal case law construing the rule from which Md. Rule 5-803(b)(8) was derived establishes that the burden is on the party opposing admission of the record to show its unreliability.

(Footnotes omitted.)

Mother complains on appeal that the court erred in admitting Exhibits 10-26 because they "constituted inadmissible hearsay." She argues: 1) that the documents were not properly authenticated because Ms. Davis did not testify that she was the custodian of the records; 2) that the Department did not lay "a foundation to demonstrate the proffered evidence satisfied the requirements of the public record exception"; 3) that, even if the documents were public records, "it was error to admit them because they lacked trustworthiness"; and 4) that the reports "were rife with double hearsay."

The above-quoted colloquy between the court and Mother's counsel reflects that Exhibits 10-26 were conditionally admitted in bulk, subject to the court's assurance to consider "very seriously" any requests to strike or redact any specific portions of the exhibits that Mother considered inappropriate or more prejudicial than probative. At the conclusion of the colloquy, Mother's counsel agreed to follow that procedure, stating: "Okay, so we'll do it that way."

But, after the colloquy quoted above, Mother pursued none of these issues any further at trial. She did not cross-examine Ms. Davis on the reliability of the information in her reports. Although Mother's counsel questioned Ms. Davis about the contents of the reports, asking questions about what the reports said and what actions Ms. Davis took or did not take in response to statements in the reports, counsel did not thereafter ask the court to strike or redact any portions of the reports as being incorrect or untrustworthy.

Near the conclusion of Mother's cross-examination of Ms. Davis, she asked Ms. Davis about Exhibit 19 (Ms. Davis's report prepared for the May 1, 2015, review hearing). One of her questions drew an objection from the Department, on the basis that "[t]he document speaks for itself." The court agreed and sustained the objection, but added the comment: "And I think they're all in evidence anyway, aren't they? **Subject to request for strike?**" (Emphasis added.) The Department responded, "yes," and the court noted, "Which I haven't had yet."

Despite the court's reminder, Mother never moved to strike any specific passage or attachment from the disputed exhibits. Nor did she apprise the court of any specific portions of the exhibits she wanted redacted. Consequently, we regard Mother's appellate contentions about Exhibits 10-26 to be inadequately preserved.

III. The sufficiency of the evidence underlying the TPR decision

Finally, Mother complains, in her third and fourth issues presented, that the court erred in finding her unfit and terminating parental rights. She emphasizes the fact that there was evidence that the children "were bonded to their Mother and would suffer

profound loss and grief." She argues that, "because the evidence showed that the children would be harmed emotionally by severing the maternal bond," the decision to terminate parental rights was erroneous.

We disagree. The paramount concern, and the overriding factor, is the child's best interest. The court's decision to terminate parental rights in this case was in furtherance of that interest, and we find no error.

The court exhaustively considered each factor under FL § 5-323(d), which includes a requirement that the court consider the following.

As to (d)(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," the court found:

> The Children are extremely bonded with each other. The Department's reports indicate that [S.E.] and [N.I.] share a strong bond and love each other. They have endured a long period of uncertainty. As with all siblings, they occasionally argue. It is a normal sibling relationship.
>
> The Children are also bonded with Mother and younger sister, [A.]. Mother has mostly consistently visited the Children while they have been in the care and custody of the Department and their relationship has grown. Mother has been unable to become a responsible parent. The Children are also bonded with their foster parents, [Mr. and Mrs. F.].
>
> The Children are not bonded with [Daniel E.] or with his other children. He has not visited the children or been in contact with the Department since 2014. The Children visited with maternal relatives ([Keith L. and his ex-wife]), but that was discontinued when the couple separated. The Children saw [Keith L.] a few times in 2016.
>
> The Children are very bonded with their foster parents. Particularly [N.I.], as he was only three (3) when removed, has a strong bond with the F's. Both Children have thrived in the F's household.

As to (d)(4)(iii), "[t]he child[ren]'s feelings about severance of the parent-child relationship," the court found:

> The Children are bonded with Mother and enjoy visits with her. Dr. Stephanie Wolfe testified that losing the emotional bond with their Mother will affect the Children, and that therapy and the stable, loving environment in the foster home will help the Children manage their feelings of loss. The Children continue to report that they enjoy being in their foster home and are content with the idea of living there permanently.

And as to (d)(4)(iv), "the likely impact of terminating parental rights on the child's well being," the court found:

> Ms. Davis testified that the Children are thriving in their placement, bonded with their foster parents, and have the consistency and care that has enabled them to thrive. All parties have stated that it would be harmful to the Children to be removed from their current placement. In 2015, during an unsupervised overnight visit, Mother physically abused [N.I.], after receiving at least two years of services, and working towards reunification with her Children. This is perhaps the best example of Mother's unwillingness to change her harmful behavior towards her children, her minimization of the trauma she caused them, and the likelihood that the abuse will continue in the future.

In *In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718 (2014), this Court addressed an argument similar to Mother's. A mother whose parental rights had been terminated argued on appeal that the termination should not have been granted because her bond with her daughter, Jasmine D., was "very strong," and she had "never [given] up on reunification with her daughter." *Id*. at 736. We were not persuaded by the mother's argument, and said:

> We have previously stated that FL § 5-323(d) "does not require a trial court to weigh any one statutory factor above all others. Rather, the court must review all relevant factors and consider them together." *In re*

> *Adoption/Guardianship No. 94339058/CAD*, 120 Md. App. 88, 105, 706 A.2d 144 (1998). In the instant case, the juvenile court acknowledged Jasmine's bond with her mother, but decided that it was not sufficient to overcome the negative aspects of [mother's] parenting abilities that make it in Jasmine's best interests to terminate the parental relationship. [The mother's] alcoholism, her unwillingness to accept her alcoholism or receive treatment, and her abusive relationship with [her current paramour] contributed to the decision.[8] In addition, the court noted that Jasmine's bond with her mother had changed over the years that she was in foster care, and that now Jasmine wants to be adopted. Thus [mother's] argument that she and Jasmine share a strong bond does not convince us that the trial court should have concluded [mother] was a fit parent, in light of the other evidence adduced at the TPR hearing.

Id.

So it is in this case. The trial court sifted through the voluminous evidence generated by a three-day trial, after years of the Department's involvement with the family. The court considered all of the statutory factors, and extensively documented its findings. The court's determination that Mother was unfit, and that it was in the children's best interest that Mother's parental rights be terminated, was summed up as follows:

> For nearly five (5) years, the Department has offered services to Mother. During this period, there has never been a point when [S.E.] and [N.I.] would have been stable and secure in her full-time care and custody. The Children have waited for Mother to become a competent parent. She has not.
>
> To her credit, Mother frequently visited the Children. The Department, the Court, and Mother were hopeful that reunification would occur. Her visits moved from supervised, to unsupervised day visits, to unsupervised weekend visits. However, Mother's denial of her abuse of the

[8] There was no evidence of physical abuse or serious injury inflicted upon the child by the mother in *Jasmine D.*, in contrast to the instant case.

Children, inconsistent and inappropriate behavior towards her children, lack of interest in receiving services and general lack of motivation to adequately parent her Children continue to be obstacles to reunification.

Concerns regarding Mother's commitment to the process of reunification began in 2013, soon after she began to receive services. Even after she was convicted of 2nd degree child abuse, for physically abusing [S.E.], she failed to accept responsibility for the issues that led to the children coming into care, and she began to miss visits with the Children. Later that year, Mother began to improve and make progress in individual and family therapy. She was appropriate with the children during visitation and she participated in services on a consistent basis. From April until May, 2014, the Department's concern with Mother resumed because she missed all individual therapy sessions, she reported to the CASA that "[S.E.] knows I was just disciplining her" in reference to the past abuse, and remained unemployed and unequipped to resume care of her Children. The Children exhibited increased anxiety with their mother during the unsupervised overnight visits and expressed discomfort surrounding these visits as well as being reunified with Mother.

In October, 2014, Mother failed to inform the Children or the Department that she was pregnant and was due to deliver that year. She minimized the impact having another baby would have on the Children and the reunification process and was unwilling to provide a plan for caring for all three children once the baby was born. She continued to miss multiple appointments and was uncooperative with committing to a regular schedule for visits and family therapy sessions, stating concern that the visits would conflict with "other appointments" or evening classes. She has continued to miss multiple appointments for services and visitation ever since.

The Department was most concerned about Mother's behavior in May, 2015, when after receiving numerous services over the course of two and a half years, she physically abused [N.I.], and in June 2015, Mother left her baby, [A.], unattended. In 2016, Mother continued to demonstrate a lack of understanding of the impact of her actions regarding past and recent physical abuse, and missed multiple scheduled appointments and visitation with [N.I. and S.E.]. Mother also failed to comply with requests for urine samples after a series of reports of an odor of marijuana repeatedly observed in her home between February and April, 2016. These and other incidents demonstrate that despite the multiple services that Mother has received, she has not internalized the harm to the Children. The Children's safety is still at risk while in the care of their Mother.

> The Children, by contrast, have thrived in foster care with the F's. They have made great strides and drastic improvements in their development and behavior and are in a safe and consistent place. Their foster parents have adjusted their lives to the needs of the children. [Mrs. F.] testified about the challenges of taking on the responsibility for two children, and the adjustments that are required and the compromises that have to be made. That is the role of a parent. That is the role to which [Mother] could not accommodate.
>
> The Children and Mother are on different trajectories.
>
> Mother had and continues to have many more issues to resolve if she is to become a competent parent for these Children. She is unable to provide a safe and stable environment for her children after nearly five (5) years of Department intervention. The Court finds that Mother is not a fit parents for the Children and likely will not take the steps to become a fit parents in the foreseeable future.
>
> The Court is aware that there are challenges ahead for the Children. However, they are best served by having real permanency. The Children have strong, loving relationships with their foster parents, [the F.s]. They have strong bonds with each other. The Guardianship Order will not affect those relationships.
>
> The Court has made findings of fact pursuant to the statutory factors found in § 5-323(d). The Court has weighed the evidence in its entirety, including the credibility of the witnesses before it. Taking all of the above into consideration, the Court finds by clear and convincing evidence that Mother is unfit, that Mother poses an unacceptable risk to the Children's future safety, and that it is in the Children's best interest that the parental rights of [Mother] and, by consent, [Daniel E.], be terminated.

Mother does not dispute any of these findings. But she asserts, nevertheless, that her parental rights should not have been terminated because the children's bond with Mother "militated against terminating parental rights." As in *Jasmine D.*, however, the children's bond with their Mother here was found insufficient to overcome Mother's

extensive and longstanding parental deficiencies, and the court did not err in finding that it was in the children's best interest that Mother's rights be terminated.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. APPELLANT TO PAY COSTS.