

Circuit Court for Baltimore City
Case No. T14205010

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1230

September Term, 2016

IN RE: L.F.

Kehoe,
Berger,
Leahy,

JJ.

Opinion by Berger, J.

Filed: March 28, 2017

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Appellant, Ronald F. (“Father”), challenges a judgment of the Circuit Court for Baltimore City, sitting as a juvenile court, terminating his parental rights with respect to his daughter, L.F., and granting guardianship to the Baltimore City Department of Social Services (“the Department”).¹ Father presents three issues for our review, which we have rephrased slightly as follows:

- I. Whether the juvenile court erred by denying Father’s motion to stay the termination of parental rights (“TPR”) proceedings.
- II. Whether the juvenile court erred by excluding evidence regarding a potential relative resource and regarding the foster mother’s divorce.
- III. Whether the juvenile court erred by terminating Father’s parental rights.

For the foregoing reasons, we shall affirm the judgment of the Circuit Court for Baltimore City.

FACTS AND PROCEEDINGS

L.F. was born on September 9, 2012. L.F. was exposed to opiates and cocaine in utero and suffered from withdrawal symptoms shortly after birth. L.F. was also exposed to HIV and Hepatitis C, for which she received medications. Three days after birth, L.F. was placed in shelter care.² Upon her release from the hospital, L.F. was placed with a

¹ L.F.’s mother died in 2013.

² “Shelter care” is the “temporary placement of a child outside of the home at any time before disposition.” Md. Code (1964, 2013 Repl. Vol.) § 3-801(y) of the Courts and Judicial Proceedings Article (“CJP”).

foster parent, Ms. C., with whom she has since remained.³ At the time of L.F.'s birth, L.F.'s mother identified Father as L.F.'s biological father, but Father's name does not appear on L.F.'s birth certificate. The juvenile court found L.F. to be a Child in Need of Assistance ("CINA") on October 23, 2012.⁴ The juvenile court committed L.F. to the custody of the Department. The Department continued to attempt to locate Father.

Throughout the time L.F. remained in foster care, the circuit court held periodic CINA review and permanency review hearings. Father had limited contact with the Department. On November 12, 2012, Father telephoned the Department's case worker, Ella Williams. Father left a message for Ms. Williams stating that he would come to the Department with his attorney. Father left no contact information, but Ms. Williams was ultimately able to contact Father. Ms. Williams scheduled a meeting for December, but Father did not attend.

In January 2013, Father contacted the Department, said that he would attend a future hearing, and requested a paternity test. Father did not appear at the next CINA hearing on March 13, 2013. The Department continued to attempt to contact Father. On April 26, 2013, Ms. Williams' supervisor learned through online records that Father had been incarcerated at the Baltimore City Detention Center. The Department attempted to arrange for paternity testing for Father, but Father was released on May 2, 2013, before paternity

³ It is Ms. C.'s intention to adopt L.F.

⁴ A CINA is a child who requires court intervention because the child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and the child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs. CJP § 3-801(f).

testing could be completed. On May 6, 2013, the Department sent Father a letter asking him to come to an appointment scheduled for May 15, 2013 to discuss L.F.’s permanency plan and develop a service agreement. At Father’s request, the meeting was postponed to May 17, 2013. Ms. Williams prepared a service agreement in preparation for the appointment, but Father failed to attend the rescheduled meeting.

On May 29, 2013, Ms. Williams sent Father a letter via certified mail, asking Father to contact her to schedule a meeting. The certified letter was not claimed from the post office. A CINA review hearing was held on July 17, 2013. Father did not appear. The magistrate issued a recommended order finding that the Department had made reasonable efforts toward the plan of reunification through, *inter alia*, attempting to meet with Father.⁵ The court did not grant Father visitation due to the reason of Father’s abandonment. Furthermore, L.F.’s permanency plan was changed from reunification with a natural parent to concurrent plans of adoption by a relative or custody and guardianship. Father had no contact with the Department for the remainder of 2013.

In January 2014, Father was again incarcerated. Father first attended a CINA hearing on January 15, 2014, when he was transported from the Baltimore City Detention Center. Father requested and received a paternity test at the time. The paternity test confirmed that he was L.F.’s biological Father. The court continued the concurrent permanency plans of adoption by a relative and custody and guardianship.

⁵ The court further found that L.F.’s mother had passed away earlier that year. The court observed that a maternal aunt in West Virginia was being investigated by the Department as a potential relative resource.

Ms. Williams was in contact with Father on January 31, 2014. Ms. Williams telephoned Father while he was incarcerated on a bench warrant. Father told Ms. Williams that he wanted to gain custody of his daughter. Additionally, Father told Ms. Williams that he would visit her office on February 6, 2014, the day after his anticipated release. Father did not visit Ms. Williams's office in early February. When Ms. Williams' contacted the detention center, she learned that Father had been sentenced to a period of six months' incarceration, with an expected release date of May 27, 2014.

Ms. Williams visited Father at the detention center on May 21, 2014. She brought a service plan which she had prepared in advance of the visit. The service plan provided that Father would secure stable and adequate housing, maintain visits with L.F., participate in a drug treatment program, complete a parenting class, and participate in mental health therapy. Father did not sign the service agreement. Ms. Williams and her supervisor discussed with Father the possibility of him voluntarily surrendering his parental rights to L.F., but Father responded that only a coward would allow his child to be adopted. Father told the Department that he did not want to meet L.F.'s foster parent. Father presented the Department with names of prospective relative resources, including the paternal grandmother and a paternal aunt. Father did not provide any contact information for the relatives. Father told Ms. Williams that he anticipated being released from incarceration on May 27, 2014, and Father agreed to visit Ms. Williams in her office on May 28, 2014. Father was advised that if he did not appear for his May 28, 2014 appointment, the Department would proceed with a TPR petition.

On May 28, 2014, Father visited the Department's offices. Father asked for "Emma Williams" rather than "Ella Williams." A Department employee believed that Father was asking for "Emma Williamson," a staff member who was out of the office that day. Father was insistent that he had an appointment, but, due to the miscommunication, Father did not see Ms. Williams. Father left the office before Ms. Williams learned that he had arrived. According to Maryanne Joynes, a Department employee who spoke with Father, Father "reeked of alcohol and appeared to be intoxicated" when he visited the office. Ms. Williams sent Father a letter in which she apologized for "the mix-up" on May 28 and asked Father to schedule another meeting. Father did not respond to the letter. Father had no further contact with the Department for the remainder of 2014. On August 4, 2014, the Department filed a petition to terminate Father's parental rights to L.F.

Father was again incarcerated from December 28, 2014 to January 28, 2015. Upon Father's release, Ms. Williams attempted to contact Father in multiple ways, including sending letters to two different addresses and leaving telephone messages. Ms. Williams scheduled meetings with Father, but Father did not attend. The juvenile court held a review hearing in L.F.'s CINA case on February 25, 2015. Father did not attend. Following that hearing, L.F.'s permanency plan was changed to adoption by a non-relative.

On March 4, 2015, Ms. Williams attempted to visit Father at his residence. The building was padlocked and the windows were boarded up. Ms. Williams sent Father a letter after her attempted home visit, in which she invited him to visit the Department's offices on March 20, 2015. Ms. Williams had scheduled a supervised visit for Father to

meet and visit with L.F. Ms. Williams told Father to “feel free to bring a camera” if he “would like to take pictures of” L.F.

Father attended the March 20, 2015 meeting and met L.F. for the first time. L.F., then two and one-half years old, did not engage with Father at the visit. Ms. Williams acknowledged that L.F.’s “standoffish” behavior was appropriate given the situation. Father was appropriate at the visit, which lasted less than one hour. At the end of the visit, Ms. Williams told Father that it would require more time for him to build a relationship with L.F. Ms. Williams encouraged Father to continue with visits. Ms. Williams presented Father with a service agreement, but Father refused to sign it. Subsequently, Ms. Williams offered Father additional visits, but Father did not visit with L.F. again.

In March 2015, Father’s sister, P.F., contacted the Department and offered herself as a potential relative resource for L.F. The Department assessed P.F.’s home, determined it to be appropriate, and initiated visits for P.F. with L.F. On April 23, 2015, Father conditionally consented to a termination of his parental rights to L.F., provided that L.F. be adopted by P.F. The juvenile court entered an order granting guardianship of L.F. to the Department with the right to consent to adoption. L.F. gradually became more comfortable with visits with P.F., however, when L.F. began overnight visits with P.F., she would cry throughout the night and ask for her “mommy,” referring to Ms. C. Ultimately, P.F. told the Department that she no longer wished to adopt L.F. because she did not want to disturb the relationship L.F. had with her foster mother.

In September 2015, Ms. Williams visited Father when he was again incarcerated. She informed Father that P.F. no longer wished to adopt L.F. Father was upset that P.F.

had not told him that she no longer wished to serve as a relative resource. Father abruptly ended the visit. In March 2016, the juvenile court found that the condition upon which Father had consented to the TPR had failed. The juvenile court found that the condition could not be fulfilled and set aside the guardianship order.⁶ The juvenile court subsequently reopened the CINA proceedings and scheduled a contested TPR hearing on the merits.

During the nearly four years between L.F.’s discharge from the hospital and the final termination hearing, L.F. thrived in foster care. L.F. bonded with her foster mother, Ms. C., whom L.F. calls “Mommy.” L.F. is “really, really attached” to Ms. C, frequently hugs and kisses Ms. C., and tells Ms. C. that she loves her multiple times each day. Ms. C. also loves L.F. and wishes to adopt her. The Department approved Ms. C. as an adoptive resource. L.F. is bonded to her foster sibling as well, and also has developed a relationship with Ms. C.’s extended family.

The case proceeded to a contested TPR hearing, which occurred over seven days in June, August, and September of 2016.⁷ Father filed multiple motions to stay and/or

⁶ Father filed three separate appeals relating to the first TPR proceeding and associated guardianship review proceedings. We dismissed Father’s appeals as moot because Father’s parental rights were terminated after the contested TPR proceeding.

⁷ Hearings in L.F.’s CINA case were conducted before a juvenile magistrate on five days in August 2016. Father filed exceptions to the magistrate’s recommendations, but the exceptions were not heard because the CINA case was closed after Father’s parental rights were terminated.

Father noted two appeals in the CINA matter. Father dismissed one appeal and the other appeal was stayed pending the outcome of this appeal.

postpone the TPR proceeding pending the resolution of the CINA matter. The circuit court denied Father’s motions and ordered that the TPR proceedings continue. On September 8, 2016, the juvenile court issued its ruling, finding that Father was an unfit parent and that exceptional circumstances warranted the termination of Father’s parental rights. This appeal followed. Additional facts shall be discussed as necessitated by our discussion of the issues.

STANDARD OF REVIEW

In child custody and TPR cases, this court utilizes three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003). The Court of Appeals described the three interrelated standards as follows:

We point out three distinct aspects of review in child custody disputes. 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.

Id. at 586. In our review, we give “due regard . . . to the opportunity of the lower court to judge the credibility of the witnesses.” *Id.* at 584. We recognize that “it is within the sound discretion of the [trial court] to award custody according to the exigencies of each case, and . . . a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion. Such broad discretion is vested in the [trial court] because only [the trial judge] sees the witnesses and the parties, hears the testimony, and has the

opportunity to speak with the child; he is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.” *Id.* at 585-86.

DISCUSSION

I.

Father first asserts that the juvenile court erred by denying his motions to stay the TPR proceedings pending the resolution of matters in L.F.’s CINA case.⁸ Father twice moved to stay the TPR proceedings in the juvenile court, arguing that the denial of his opportunity to participate in the CINA matter violated his due process rights and his fundamental liberty interest in parenting his daughter. The juvenile court denied Father’s requests, finding that moving towards permanency best served L.F.’s interests. The juvenile court emphasized that L.F. had been in foster care since birth for a period of nearly four years.

⁸ Father’s argument presupposes that he holds fundamental due process and liberty interests relating to his parenthood of L.F. This is not necessarily so in light of the fact that L.F.’s parents were not married at the time of L.F.’s birth and Father’s only involvement with L.F. up to this point was a single visit. *See, e.g., In re Adoption of Sean M.*, 204 Md. App. 724, 729 n.14 (2012), *aff’d sub nom., In re Sean M.*, 430 Md. 695 (2013), quoting *Lehr v. Robertson*, 463 U.S. 248, 261 (1983) (“When an unwed father demonstrates a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child, his interest in personal contact with his child acquires substantial protection under the Due Process Clause . . . But the mere existence of a biological link does not merit equivalent constitutional protection.”) (internal quotations and citations omitted). We need not reach the issue of whether Father has demonstrated a full commitment to the responsibilities of parenthood such that he would have vested interests in any fundamental rights to parent under the United States Constitution because, as we shall explain, assuming Father is entitled to due process rights with respect to the right to parent, Father cannot demonstrate any grounds for reversal.

We review a juvenile court’s denial of a motion to stay TPR proceedings for abuse of discretion. *In re Adoption of Jayden G.*, 433 Md. 50, 82 (2013). When exercising its discretion to grant or deny a motion to stay in this context, “the court’s paramount consideration is the child’s best interests.” *Id.* The Court of Appeals has further emphasized that “the desire for permanency in [a] child’s life” is “[a] critical factor in determining what is in the best interest of a child” because “[l]ong periods of foster care are harmful to . . . children and prevent them from reaching their full potential.” *Id.*

In *Jayden, supra*, the Court of Appeals considered a motion to stay TPR proceedings pending the outcome of a parent’s appeal of a change in a child’s permanency plan in the corresponding CINA action. The Court commented that CINA and TPR proceedings are “[t]wo intricately connected, yet separate legal mechanisms.” *Id.* at 54. The *Jayden* Court rejected “a blanket rule, which would require automatic stays in all TPR cases with pending CINA appeals.” *Id.* at 78. The Court recognized that a parent has a right to appeal a change in permanency plan in a CINA case and that, without a stay, the parent’s CINA appeal could be rendered moot if a parent’s rights are terminated while the CINA appeal is pending. *Id.* The Court recognized the parent’s right to appeal, but also emphasized the importance of permanency in a child’s life and reasoned that the imposition of a stay “carries an even bigger risk to the realization of permanency.” *Id.*

The Court recognized that, at times, a parent’s constitutionally protected right to parent conflicts with a child’s best interests. *Id.* at 67-68. The Court explained:

Resolving the conflict between the parent’s right to parent and the child’s best interest may get tricky. But, “our case law has been clear and consistent, that, even in contested

adoption and TPR cases . . . , where the fundamental right of parents to raise their children stands in the starkest contrast to the State’s effort to protect those children from unacceptable neglect or abuse, the best interest of the child remains the ultimate governing standard.” [*In Re Adoption/Guardianship of Rashawn H.*, 402 Md. [477,] 496, 937 A.2d [177,] 189 [(2007)]. We have explained that the focus of the inquiry into the child’s best interest -- even with the parental presumption in place -- must be on the child, not the parent. [*In Re Adoption of Ta’Niya C.*, 417 Md. [90,] 116, 8 A.3d [745,] 760-61 [(2010)]. Importantly, “[i]n balancing fairness to the parent and fulfilling the needs of the child, the child prevails.” *In re Ashley S.*, 431 Md. 678, 66 A.3d 1022 (2013).

Jayden G., *supra*, 433 Md. at 67–68 (ellipses in original). Ultimately, the Court held that the appropriate consideration for a juvenile court when deciding whether to grant a motion to stay TPR proceedings must focus on the child’s best interests. *Id.* at 86. The Court further explained that “[w]hether a stay would be in a child’s best interest depends on a given case.” *Id.*

Father attempts to distinguish the ruling in *Jayden G.* from the present case because *Jayden G.* involved a motion to stay pending the resolution of a parent’s appeal in a CINA case, while the present case involves a motion to stay TPR proceedings pending the resolution of the CINA matter in the juvenile court. Although the two cases differ procedurally, in our view, the reasoning of the *Jayden* Court is applicable to our analysis in this appeal. L.F.’s best interests are paramount and were, appropriately, the focus of the juvenile court’s inquiry.

At the time of the TPR hearing, L.F. had been in foster care since birth, for a period of nearly four years. Father had met her once, for a period of less than an hour. Father’s first motion to stay, which he sought in order to allow him the opportunity to present a new

potential relative resource in the CINA case, was denied by the juvenile court on June 28, 2016. The juvenile court explained that it had read and considered Father’s motion as well as the response to the motion. The court denied Father’s motion to stay, commenting that “we’re more than three year[s] down the road,” and emphasizing that L.F. had “been out of [Father’s] care practically [her] entire life.”

The juvenile court additionally denied Father’s second request for a stay, ruling as follows:

The court has considered the request of the parties in this case. [F]ather’s request to delay these TPR proceedings further in order for the CINA case to be heard and then possibly concluded 24 hours from now. The best interest of the respondent as far as this court is concerned with regard to what is heard and the procedural history of this matter, notwithstanding that this TPR has previously been overturned, the best interest of the respondent does not warrant a stay of these proceedings and the petition to terminate [F]ather’s parental rights pending resolution of the CINA proceedings. As I’ve indicated previously, the CINA proceedings and the petition for guardianship require different factors and the court would consider different evidentiary standards with regard to both.

Ja[y]den G. indicates that TPRs can proceed even when the CINA proceeding is pending and in that matter, as [counsel for the Department] has pointed out, there was an appeal. The CINA and TPR proceedings are separate proceedings. And further delay of this TPR case is within the court’s discretion; however, respondent requires permanency. Permanency includes a safe and nurturing home for . . . this child. TPRs normally take place after long periods with an inability to reunify. Whether that inability was brought on by various factors and realistically not working towards a reunification with the child. The court would concern itself that the impermanency could continue even beyond tomorrow. Your request to postpone these matters is denied.

The juvenile court clearly considered L.F.’s best interests when exercising its discretion to deny Father’s motions to stay the TPR proceedings. Where L.F. has spent nearly her entire life in the same stable foster home, with a foster mother to whom she is bonded, with virtually zero contact with her biological family, it was reasonable for the juvenile court to conclude that granting the stay, and thereby further delaying a permanent placement for L.F., would be detrimental to L.F.’s interests. Accordingly, the juvenile court did not abuse its discretion by concluding that it was in L.F.’s best interests to deny Father’s motions to stay the TPR proceedings.

II.

Father’s next allegations of error are based upon two evidentiary rulings by the juvenile court. Father asserts that the juvenile court erred by declining to permit the testimony of his cousin, Ms. M.-P. Father proffered that Ms. M.-P. would testify about her willingness to adopt L.F. as well as about her suitability to do so. Father further asserts that the juvenile court erred by excluding evidence he proffered about Ms. C.’s divorce, which Father claims is relevant to rebut the Department’s claim that L.F.’s foster home is a suitable adoptive resource for L.F. As we shall explain, we are unpersuaded by either of Father’s allegations.

Relevant evidence is defined as evidence that has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Md. Rule 5-401. The juvenile court “has wide discretion when considering the relevancy of evidence.” *In re Adriana T.*, 208 Md. App. 545, 569, 56 (2012) (citing *State v. Simms*, 420 Md. 705, 724

(2011)). “[T]rial judges do not have discretion to admit irrelevant evidence.” *Id.* (quoting *Simms, supra*, 420 Md. at 724). We review the trial court’s conclusion of law that the evidence at issue is or is not “of consequence to the determination of the action” applying the *de novo* standard of review. *Id.* (quoting *Ruffin Hotel Corp. of Md. v. Gasper*, 418 Md. 594, 620 (2011)).

Father attempted to present testimony of Ms. M.-P. at the TPR hearing, despite the fact that Father failed to identify Ms. M.-P. on his settlement sheet.⁹ Father provided no explanation for the untimely disclosure. The Department and L.F. argued that Ms. M.-P.’s testimony should not be permitted due to the untimely disclosure. The Department and L.F. further argued that any evidence relating to Ms. M.-P.’s suitability as a relative resource was irrelevant to the specific issues before the court in a TPR proceeding. The juvenile court agreed with the Department and L.F., explaining as follows:

The issue of custody and guardianship is a matter for the CINA proceeding with regard to the CINA proceedings purposes which is -- dovetails directly in opposition to again, the factors that the court has to consider, the burden of proof in this case. We are in these TPR proceedings and [in] this proceeding this court is only making a determination as to whether there’s an unfitness component here or exceptional circumstances exist[] such that the parental relationship should be terminated or continued. Custody and guardianship is a matter for the CINA court, not this TPR court. Your motion is denied.

* * *

⁹ Father sought to present Ms. M.-P.’s testimony on August 30, 2016. Settlement sheets, identifying witnesses each party intended to present at trial, were provided by counsel on May 16, 2016. Father listed Ms. M.-P. on his amended settlement sheet on August 24, 2016, only four days before testimony began in the contested TPR hearing and more than three months after the close of discovery.

[T]he court has acted overly so to try to protect [F]ather’s rights, but to offer a witness to this court four days before these continued proceedings for the fourth day, the court does not find to be within the rules and settlement sheet was had -- now July, June, May, three months ago. Your request is denied.

The circuit court’s ruling excluding evidence relating to Ms. M.-P. and/or testimony from Ms. M.-P. was not erroneous. Father did not proffer any information which would establish that Ms. M.-P. could provide any information to the court that was relevant to the issues of parental fitness and exceptional circumstances -- the only issues before the court in the TPR proceeding. Father had not spoken to Ms. M.-P. in several years, including the entire time that L.F. was in the custody of the Department, nor had Ms. M.-P. met L.F.¹⁰ Because Ms. M.-P.’s testimony would not make the existence of any fact of consequence more or less probable than without her testimony, the juvenile court appropriately precluded Ms. M.-P. from testifying.¹¹ See *In Re Cross H.*, 200 Md. App. 142, 152 (2011), *aff’d*, 431 Md. 371 (2013) (“[T]he appropriate focus of the TPR hearing was not the potential suitability of the paternal grandmother as a placement for [the respondent] -- as this was an issue properly addressed in the CINA case -- but rather, the fitness of [the mother and father] parents.”).

¹⁰ Indeed, Father misidentified Ms. M.-P. at the TPR hearing. Father testified that he wanted the court to place L.F. with his cousin, “[T.] Marshall.” The “M” in Ms. M.-P.’s name does not stand for “Marshall.”

¹¹ In light of our determination that Ms. M.-P.’s testimony was properly excluded on relevancy grounds, we need not address whether the violation of the juvenile court’s scheduling order provided a separate basis for the exclusion of her testimony.

We next turn to Father’s assertion that the juvenile court erred by excluding evidence he proffered about Ms. C.’s divorce action. Father argues that his Exhibit No. 33, which Father proffered contained copies of court filings pertaining to Ms. C.’s divorce proceedings, was relevant to demonstrate that L.F.’s foster home was not a suitable pre-adoptive placement for L.F. The Department objected to the admission of Exhibit No. 33 for two reasons. First, the Department argued that the documents were not relevant. Second, the Department argued that the exhibit contained redacted copies that were not court-certified. The juvenile court sustained the Department’s objection.

When considering the relevance of Father’s Exhibit No. 33, it is again critical to focus upon the specific issues before the court during the TPR hearing. Father argues that the challenged evidence was relevant because they demonstrated that L.F.’s pre-adoptive placement was not suitable. The suitability of L.F.’s foster home, however, was not an issue before the juvenile court, which was tasked with determining whether parental fitness and/or exceptional circumstances made termination of Father’s parental rights serve L.F.’s best interests. To the extent evidence regarding L.F.’s foster mother was entered into the record, that evidence was relevant to the court’s consideration of L.F.’s emotional ties with her caregiver as well as L.F.’s emotional adjustment to her placement -- factors the court was required to consider pursuant to Md. Code (1984, 2012 Repl. Vol.), § 5-323(d)(4) of the Family Law Article (“FL”). The juvenile court properly determined that the circumstances of Ms. C.’s divorce were irrelevant to the determination of whether Father

was fit to parent L.F. and/or whether exceptional circumstances justified the termination of his parental rights.¹²

III.

Finally, Father contends that the juvenile court erred by terminating his parental rights. The Court of Appeals has explained the process juvenile courts must undertake when determining whether to grant a petition for TPR as follows:

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

Ta’Niya C., *supra*, 417 Md. at 103-04 (internal quotations, citations, and footnotes omitted).

At the conclusion of the TPR trial, the juvenile court carefully considered the interrelatedness and distinctness of CINA and TPR proceedings, explaining as follows:

This matter is here for determination [of] the petition for guardianship in the matter of [L.] F. *In re [Adoption of] Ja[y]den G.*, 433 Md. 50, [(2013)], makes the distinction between CINA proceedings and TPR proceedings. I believe it was Judge A[d]kins [who] wrote the opinion. Although quote, “In CINA adjudication must . . . precede a TPR determination.

¹²Even if we were to assume *arguendo* that the proffered evidence was relevant, Father has not presented any argument with respect to the other ground stated by the Department for excluding the evidence, namely, that Exhibit No. 33 contained heavily redacted and improperly authenticated documents.

It is a separate legal proceeding.” *In re: Cross H.*[,] 200 Md. App [142]. The two are governed by different statutes, serve different purposes, depend on different factors, require different standards of proof and follow different case tracks. And the [C]ourt addressed those differences in this opinion.

As restated above, CINA proceedings are governed by the Courts and Judicial Proceedings Article and TPR proceedings are governed by the Family Law Article. They serve different purposes. CINA proceedings are designed quote “To provide for the care, protection, safety and mental and physical development of quote [‘]children found CINA[,]’ conserve and strengthen the child’s family ties, ensure that parents and local departments work together to remedy the circumstances that required the court’s intervention and achieve a timely permanent placement for the child consistent with the child’s best interest.”

In contrast, when the Department initiates TPR proceedings, it seeks to terminate the existing parental relationship, *In re: Rasha[w]n H.* 402 Md. [477.] It files the TPR petition when it believes a child’s welfare will be best served in the care and custody of others rather than the natural parent. Further distinguishing CINA and TPR proceedings is that in these two types of proceedings courts consider different factors. The CINA statute focuses on factors that most likely have to do with the child’s best -- child’s present well-being and the likely affect of a change of placement or remaining in foster care, the child’s ability to be safe and healthy in the home of the child’s parent, the child’s attachment and emotional ties to the child’s natural parents and siblings, the child’s emotional attachment to the child’s current caregiver and the caregiver’s family, the length of time the child has resided with the current caregiver, the potential emotional, developmental and educational harm to the child if moved from the child’s current placement and the potential harm to the child by remaining in state custody for an excessive period of time. That’s [from] the Family Law Article [§ 5-525(f)(1) (identifying factors to be considered when determining the permanency plan that is in the best interests of a child)].

Although the TPR statute likewise requires courts . . . “give primary consideration to the health and safety

of the child” . . . it covers a broader range of considerations. It requires [j]uvenile [c]ourts to make specific findings with respect to the past actions of the parents toward the child and efforts the parents and the Department made towards reunification including all services offered to the parent before the child’s placement, the extent, nature and timeliness of services offered by [the] local department to facilitate reunion of the child and parent and the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any, the results of the parents’ efforts to adjust the parents’ circumstances, condition or conduct to make it in the child’s best interest for the child to be returned to the parent’s home, whether the parent has abused or neglected the child o[r] a minor and seriousness of the abuse or neglect. From Family Law Article 5-323.

The TPR statute pays particular attention to the parents’ interference at remedying the circumstances that led to the court’s intervention requiring courts to consider under the second category the following factors: the extent to which the parent has maintained regular contact with the child, the local department and if feasible, the child’s caregiver, the parents’ contribution to a reasonable part of the child’s care and support if the parent is financially able to do so, 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 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 [j]uvenile [c]ourt makes a specific finding that it is in the child’s best interest to extend time for a specified period. That in TPR proceedings courts are required to take into consideration additional factors is not the only difference between CINA and TPR proceedings. Different evidentiary burdens also apply. TPR proceedings require a clear and convincing standard of proof, but CINA . . . adjudications are made based on the lesser preponderance of the evidence standard. *In re: Bless[en] H.*[.] 163 Md. App. [1 (2005)].

After setting forth the legal framework governing TPR proceedings and the statutory factors the juvenile court is required to consider pursuant to FL § 5-323, the juvenile court discussed the factual background of L.F.'s case. The court noted that L.F. was born exposed to cocaine and opiates, suffered withdrawal at birth, and was placed with Ms. C. at three days of age. The court found that Ms. C. had fostered several children since 2005, including one child whom she adopted. The court found that L.F. had a properly furnished bedroom, attended a preschool program, and engaged in age appropriate activities outside of school. With respect to L.F.'s relationships with others, the court found that L.F. interacts with other children in the home "as if they were biologically related." The court found that L.F. and Ms. C. enjoy a close relationship. The court further found that L.F. receives appropriate medical and dental care. Based upon the evidence presented, the juvenile court found that the Department had "proved by clear and convincing evidence that [L.F.] is healthy, that [L.F.] is safe, has emotional ties with her caregiver and family and has made a healthy adjustment to home, foster family and community."

The juvenile court found that Father was aware that he was L.F.'s parent since her birth. The court found that Ms. Williams initially had contact with Father on or around November 30, 2012, and that Ms. Williams provided Father with her contact information at that time. The court emphasized the Department's efforts to communicate with Father, as well as Father's lack of communication with the Department and Father's lack of involvement in L.F.'s life. The court found that the Department made efforts to locate Father through various search methods both while Father was incarcerated as well as when

Father was in the community. The juvenile court detailed efforts undertaken by the Department to locate various other relative resources as well.

The juvenile court discussed the many letters sent to Father from the Department, as well as the multiple scheduled appointments that Father failed to attend. As an example, the court observed that after Father failed to appear for a May 17, 2013 visit, the Department sent a letter that “basically was imploring or begging [F]ather to contact the worker.” The court summarized the Department’s efforts and Father’s responses in June through December of 2013 as follows:

The Department continued to send [F]ather letters. There were no responses from [F]ather. There was no further contact with [F]ather in 2013. Father made no visit to the respondent or the Department of Social Services. There was no support for the respondent, no documentation of a lease or housing and no job from the [F]ather. The Department . . . continued to make home visits to the respondent and caregiver and make observations of their relationship. They had no concern with the respondent’s placement.

The Department made multiple referrals for Father for drug assessment, a parenting program, and housing assistance, but Father did not successfully complete any program. The Department visited Father twice while he was incarcerated. Father’s only efforts to work with the Department toward reunification occurred on two isolated occasions in 2014 and 2015. The first was on May 28, 2014, when Father visited the Department’s offices, appearing intoxicated, and gave the wrong name when asking to meet with Ms. Williams. The second was on March 20, 2015, when Father met L.F. for the only time during a visit that lasted less than one hour.

After considering all of the evidence presented, the juvenile court considered the factors enumerated in FL § 5-323 when issuing the following ruling:

Upon consideration of the testimony and evidence in this case, the court finds that the Department of Social Services ha[s] proven by clear and convincing evidence, that is evidence that is certain and precise. Again, that [L.F.] is healthy and safe and that the Department of Social Services ha[s] made timely and appropriate efforts and reasonable efforts to reunify the father and [L.F.]. And that there [were] no services before placement. There was no case plan compliant between the Department of Social Services and [F]ather as [F]ather was either unavailable for a service agreement or refused to sign a service agreement when presented to him. That [F]ather has made no progress towards maintaining regular contact with L.F.], no reasonable support when financially able to do so. As he testified, he did have a job for a period of time. No regular contact with the caregiver. As he testified, I don't know her. And pursuant to Department's Exhibit 95 he didn't want to meet the foster parents after being offered the opportunity.

Based upon his lack of compliance or progress towards reunification, the court finds there are no services that would likely result [in reunification] within 18 months of placement as this case [is] well beyond the 18 month period of time with placement. The court finds by clear and convincing evidence that the child has no feeling towards parents or the siblings. Mother is deceased. Father has had one visit in four years. [The c]ourt finds by clear and convincing evidence that [F]ather -- adjustment of his circumstances has not been done, as [F]ather testified that he has not pursued a general equivalence degree or diploma. He does not have a job, but his interest, as he testified to on the stand, [in] narcotics anonymous was basically to do research to find out why people went to those meetings while he was in lockup.¹³ He's not finished any parenting class, although he says he started it. There's no documentation of same. And that he all along has known he was the father of the child.

¹³ Father testified that he attended Narcotic Anonymous meetings while incarcerated, but explained that he attended only for research/informational purposes.

As to the issue of parental neglect, the court has made previous findings with regards to finding of neglect and I'll just use Department's Exhibit No. 7 as one as to his unavailability for custody or previous visitation by clear and convincing evidence. Again, this child was drug exposed. Mother did enter a drug treatment program. Unfortunately, she passed away.

The court finds by clear and convincing evidence there are no emotional ties between [L.F.] and [F]ather. There's no feeling on the part of [L.F.] about a severance of the parental/child relationship as the child does not know the father or know who he is. The court further finds that the impact of termination of parental rights on the child's well-being can only be positive. The court finds that [L.F.] would not have any stability if returned to the father that she does not know. [L.F.] has never been in [F]ather's care and a change in care to [F]ather would be detrimental to [L.F.'s] well-being and pose complete and unacceptable risks to the child's future safety. The court finds pursuant to the testimony of the caregiver in this case that [L.F.] is attached and bonded to the only people that she had known to care for her and that's the caregiver.

I was to give this opinion few days ago, so I had written -- this case is about one week shy of four years of foster care. Now this case is about two or three days shy of four years of foster care. That is long enough. Upon consideration of the evidence before the court, the Department's substantive -- the Department's meeting the burden of the substantive presumption of law and the fact that it is in the best interest of [L.F.] to maintain the parental relationship, the facts and circumstances of this case demonstrate an unfitness on the part of the father to have a continuing parental relationship with [L.F.], as there is nothing to return the child to.

In addition, the exceptional circumstances lie in the proven fact that the father has no home, no job, no financial stability to care for [L.F.] and has never cared for [L.F.] and has provided no evidence that he can care for [L.F.] now or in the near foreseeable future. The Father has never demonstrated that he would exercise his fundamental right to parent his child. Unfortunately, [F]ather's lack of change in his lifestyle has led to a prolonging of an issue, that is, the best interest of the child

in this case. Again, the court finds the father is unfit to parent [L.F.]. There are exceptional circumstances that exist that would make a continued parental relationship detrimental to the best interest of the child. That which has been proven is [F]ather's persuasively unstable life and lifestyle and no evidence of adjusting his life and lifestyle in preparation for his child.

The court grants the petition for guardianship

On appeal, Father does not argue that the juvenile court failed to consider the requisite factors before granting the Department's petition to terminate Father's parental rights to L.F. Indeed, such an argument would be unavailing, as the record reflects that the juvenile court carefully considered the factors enumerated in FL § 5-323. Rather, Father asserts that he was not provided proper notice of various CINA hearings or notified of his right to participate in the CINA hearings. According to Father, the Department's workers did not make reasonable efforts to communicate with Father until 2014. Father further avers that he was deprived of an opportunity to have his own family participate in reunification services and that he was never given a meaningful opportunity to participate in L.F.'s case.

The record clearly reflects that the Department attempted to engage with Father time and time again. The Department attempted to explore relative resources suggested by Father. Indeed, the Department worked with Father's sister, P.F., for several months in 2015. The Department investigated her home, initiated visits, and moved toward a future placement of L.F. with P.F. The Department only ceased working with P.F. after P.F. informed the Department that she no longer wished to adopt L.F. because she did not want to disrupt the bond between L.F. and her caregiver.

In this appeal, Father asserts that the Department only made reasonable efforts to communicate with Father after establishing his paternity in 2014. Father further asserts that the Department only engaged with Father at that point because it “served their interest” in terminating Father’s parental rights.¹⁴ The record contradicts this assertion. The Department sent multiple letters to Father, scheduled multiple appointments, and created multiple service plans. Despite Father’s acknowledgment that he knew he was L.F.’s father since her birth, Father did not engage with the Department or take steps to engage with his daughter. Father repeatedly failed to attend meetings and did not appear in L.F.’s CINA matter until January 2014, when he was transported to the courthouse from the Baltimore City Detention Center.

Following Father’s appearance in the CINA matter in January 2014, Father did not engage with the Department. Father did not provide the Department with current contact information, nor did he attend scheduled meetings. Throughout the pendency of L.F.’s CINA matter, Father met with the Department on only three occasions -- twice when Ms. Williams visited him in jail in May 2014 and September 2014, as well as when Father met L.F. for the first time in March 2015. Father, however, refused to discuss L.F.’s permanency plans or to enter into any service agreements during the three appointments.

¹⁴ To the extent Father claims insufficiency service of process in the CINA proceedings, such issues are not properly before this Court on appeal because Father never requested the juvenile court to review the CINA file to assess any defects with respect to sufficiency of process in the CINA matter. *See* Md. Rule 8-131(a) (“Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.”).

Father had the opportunity to engage with the Department and to participate in L.F.'s CINA and TPR cases. Father, however, declined to engage.

The overwhelming weight of the evidence presented supports the juvenile court's determination that Father is not fit to parent and that exceptional circumstances support the termination of Father's parental rights. The juvenile court carefully considered the statutory factors set forth in FL § 5-323 and explained why each factor supported the termination of Father's parental rights. In this case, where Father has made virtually no efforts toward reunification with L.F., and where Father has maintained virtually no contact with L.F. during the four years of her life, all of which she spent in foster care, we hold that the juvenile court appropriately applied FL § 5-323 in determining that termination of Father's parental rights was in L.F.'s best interests. Accordingly, we affirm.

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