Circuit Court for Somerset County
Case No.: 19-Z-15-070145
Case No.: 19-Z-15-070144

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1315

September Term, 2016

IN RE: ADOPTION/GUARDIANSHIP OF D.W.J. AND M.W.

Leahy,
Shaw-Geter,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: February 28, 2017

Appellants, Ericka W. ("Mother")[1] and Dewane W. ("Father") jointly appeal an order of the Circuit Court for Somerset County granting the Somerset Department of Social Services's ("SDSS's") Petitions for Guardianship with the Right to Consent to Adoption or Long Term Care Short of Adoption ("Petitions") and terminating their parental rights for their minor children D.W.J. and M.W.

Appellants present a single question for our review:

1. Did the circuit court err by granting [SDSS's] petitions for guardianship of M.W. and D.W.J.?

For the reasons that follow, we affirm the order of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On July 20, 2016, the circuit court held a hearing on SDSS's Petitions for guardianship of D.W.J. and M.W. and issued an oral decision terminating the parental rights of Mother and Father. This appeal represents the third case in this Court involving D.W.J. and the fourth case involving M.W.[2]

[1] Several different spellings are used for Mother's name throughout the record, for consistency, we use the spelling in the transcript for the termination of parental rights hearing.

[2] In June 2013, the Circuit Court for Somerset County, sitting as a juvenile court, issued a comprehensive memorandum opinion and order finding M.W. and D.W.J. to be CINA, and Father appealed to this Court; in November 2014, that court changed the children's permanency plans from relative placement with a secondary plan of adoption to adoption by a non-relative, and both parents appealed to this court; and in May 2015, that court, sitting as a juvenile court, suspended Mother's and Father's visitation with and M.W., and Father appealed to this Court. We affirmed all three decisions in unreported opinions: *In re: Maria W. and Dewane W.*, No. 803, September Term, 2013 (filed April 15, 2014); *In re: Maria W. and Dewane W.*, No. 2196, September Term, 2014 (filed July 2, 2015); and *In re: Maria W.*, No. 321, September Term, 2015 (filed January 7, 2016).

We quote *In re Maria W. and Dewane W.*, No. 2196, September Term, 2014 (filed July 2, 2015) to provide the factual and procedural context leading up to the Petitions now before us:

> [D.W.], born March 7, 2001, and [M.W.], born October 30, 2006, are the children of Mother and Father. Mother and Father are married. Mother also has two older children who are not the subject of this appeal. For most of the children's lives, the family resided in Delaware. The State of Delaware conducted multiple child protective services investigations concerning the children and their older siblings between 1998 and 2009. The investigations were based upon allegations of sexual abuse, lack of parenting skills, drug use, unexplained injuries to the children, family dysfunction, Mother's mental health issues, truancy, and homelessness.
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> In January 2011, Mother and the children were residing at a Holiday Inn in Ocean City, Maryland. After receiving a referral regarding concerns of instability and neglect, the Worcester County Department of Social Services began investigating the children and their parents. Mother and the children moved residences approximately eight times throughout 2011, resulting in investigations by the Worcester, Wicomico, Caroline, and Somerset County Departments of Social Services. The various departments attempted to provide services to Mother and the children in order to assist with housing, education, lack of income, and Mother's mental health issues. By the summer of 2012, [D.W.J.] – then age eleven – had come into contact with the Princess Anne Police Department due to alleged criminal activity. Workers from the Somerset County Department of Social Services ("the Department") continued to attempt to assist the family, providing temporary cash assistance benefits and arranging for the family to stay in a shelter. The children continued to reside in deplorable conditions, and the family was evicted from a hotel on August 19, 2012, after the hotel determined that Mother stole property from the hotel room and left the room filthy.
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> The Department ultimately filed a juvenile petition on August 28, 2012, alleging that the children were CINA. The children were taken into shelter care and the matter was adjudicated before a juvenile master over four days from November 2012 through February 2013. Mother and Father failed to appear for the first three days of the hearings but appeared on the last day, February 1, 2013. The master recommended that the facts in the petition be sustained, that the children be found CINA, and that the

Department be awarded custody of the children. On April 1, 2013, the court denied a motion for change of venue to Delaware, having deemed Somerset County, Maryland the proper jurisdiction

Both parents filed exceptions to the master's recommendation, and the matter came before a judge for a de novo hearing on May 3, 2013 and May 10, 2013. Mother did not appear on either date, or for pre-trial hearings, and the court dismissed Mother's and Father's exceptions. The court found the children to be CINA and placed them in the Department's custody. Father appealed, but Mother did not. We affirmed the juvenile court's CINA determination. *In re Maria W. and Dewane W.*, supra, No. 803, Sept. Term 2013. We further affirmed the juvenile court's denial of the motion to transfer jurisdiction to Delaware, holding that the court considered the requisite standards when denying the motion to transfer and that "the factors favored keeping the case in Maryland." *Id.*, slip op. at 46.

While the appeal of the CINA case was pending before this Court, the juvenile court held periodic hearings for the children. On August 13, 2014, the juvenile court held a review hearing for [D.W.J.], [M.W.], and [their half-sister A.L.]. The court consulted with the children on the record and then postponed the matter.

On November 8, 2013, the court held an initial permanency plan hearing for the children. Mother and Father did not appear, and Mother's attorney was unable to attend. The court ordered that the permanency plan for both children would be a primary plan of reunification and a secondary plan of relative placement. After a permanency plan review hearing on March 28, 2014, the plan remained the same. Counsel appeared for both parents at the March 28, 2014 hearing, but neither Mother nor Father appeared.

The juvenile court conducted another permanency plan review hearing on May 28, 2014. Mother and Father did not appear. Counsel for both parents requested postponements, which the court denied. The Department submitted documentary evidence including a court report. Counsel for both parents declined to cross-examine the children's therapists. After argument, the court modified both children's permanency plans. The court eliminated reunification as one of the permanency plans and ordered that the primary plan would be relative placement with a secondary plan of adoption. The modified permanency plan was formalized in a written order dated June 3, 2014. Neither parent appealed the modification of [D.W.J.]'s and [M.W.]'s permanency plans.

> Another permanency plan hearing was held before the juvenile court on November 21, 2014. The court considered modifications to the permanency plans for [A.L.], [D.W.J.], and [M.W.]. The court also held a review hearing in [D.W.J.]'s delinquency case. Mother and Father again did not appear, having submitted a written request to the clerk of court for a postponement. Counsel on Mother's and Father's behalf requested a postponement, which was denied. The Department submitted a written report without objection but subject to cross-examination. There were no proffers of Mother or Father's potential testimony. Following the hearing, the juvenile court modified the permanency plans from concurrent plans of relative placement (primary) and adoption (secondary) to a primary plan of adoption with no secondary plan.

On January 30, 2016, SDSS filed the Petitions in this case. In the Petitions, SDSS requested "an Order awarding guardianship of [D.W.J. and M.W.] with the right to consent of adoption or to consent to long-term care short of adoption unto [SDSS]", to "terminate the parental rights of . . . [M]other, and . . . [F]ather, in regard to [D.W.J. and M.W.]", and to grant SDSS "such other and further relief as its cause may require."

A hearing was scheduled for July 20, 2016. Neither Mother nor Father was present for the hearing, but Father was represented by counsel. Father's counsel objected on his behalf. Both M.W. and D.W.J. were present at the courthouse to respond to any issues that may have arisen, but they were excused from the hearing and did not ultimately testify. The children's interests were represented by counsel. Because M.W. lacked "considered judgment" counsel for M.W. consented to the Petitions on her behalf, while D.W.J., who had "considered judgment" indicated that he would prefer the court to determine the best decision for him.

Counsel for SDSS began its case in chief by calling Donna Leffew, a licensed clinical professional counselor, to testify as an expert witness in the field of trauma therapy. Ms. Leffew, who served as M.W.'s trauma therapist, stated that M.W.'s school based therapist had made a referral in December 2013 after M.W. disclosed that she had been sexually abused. Ms. Leffew stated that initially M.W. was "fearful" to discuss the abuse because "she was afraid that if and when she returned to her family she would get beatings for talking about what had happened." Due to M.W.'s obvious fear of Mother and Father, Ms. Leffew stated that she agreed with M.W.'s school based therapist's recommendation to discontinue visitation and phone calls between Mother and Father and M.W. It was her opinion that it would not be "beneficial to [M.W.] to have contact with her parents."

When asked to adduce the reasons for her opinion, Ms. Leffew stated:

> The contact in the past, what was going on with that contact is that the parents were not showing up for, from my understanding, it was about seventy percent of the visits that were scheduled. And I was seeing [M.W.] being continually disappointed, sad, angry, her words, and feeling abandoned over and over again by the fact that they were not showing up. When they did show up for their visits, it was my understanding that there were, according to [M.W.] . . . promises made because she would come into her sessions excited about, they have a new house, I have my own room, I'm going to have a puppy, my mom is going to have a baby for me and I'm going to get to name the baby. So, [M.W.] would get very excited about that. Then the placement would get disruptive, as you can understand, and, again, they would not show up, none of these things happened. At one point she was told within two weeks she was going to be coming home to her mother. And so it's just repeated disappointments and abandonment over and over again, and that can't be good for anyone.

Ms. Leffew also stated that M.W. had sustained "physical abuse," "[n]eglect, educational neglect," "chronic homelessness," "witness[ed] domestic violence," and, on one occasion, "a man showed up at [the] household with [a] gun [and] the parents left him with the children there." According to Ms. Leffew, M.W. had been less anxious after the contact with Mother and Father was discontinued, and further stated that she had "seen progress" with M.W. But, M.W.'s progress had been circumscribed by the impermanent status of her placement.[3]

On cross examination by counsel for the children, Ms. Leffew affirmed her belief that M.W.'s "ongoing contact with her parents impeded her progress in treatment." On cross examination by Father's counsel, Ms. Leffew stated that she initially met with M.W. "weekly," but she recommended reducing the frequency of visits to "one to two times a month" until M.W. had a more permanent placement due to M.W.'s anxiety over retribution from Mother and Father for any disclosures that she made.

Following Ms. Leffew's testimony, SDSS called M.W.'s school based therapist, Samantha Kenney,[4] to testify as an expert licensed certified social worker clinician. Ms. Kenney stated that she had been M.W.'s school based therapist since May 2013 and met with M.W. weekly. M.W. first began seeing Ms. Kenney due to problems adjusting to foster care "and some problematic behaviors that were observed including hyperactivity, impulsivity, some sexualized behaviors, and general acting out in school and at home."

[3] Despite being asked repeatedly by SDSS, Mother and Father did not provide the names of any relatives with whom M.W. could be placed.

[4] Ms. Kenney is not known to be a relative of the author of this opinion.

She stated that when she first began working with M.W., M.W. did not "know her numbers, . . . [or] her letters, [and] she didn't have much ability to read at that time."

Ms. Kenney stated that, in 2015, she recommended that M.W. discontinue contact with Mother and Father due to "problematic behaviors and acting out, . . . bullying . . . , increased anxiety, and also issues related to body image and eating," which seemed to be "related to missed visits with her parents, or false promises that they had made to her." That recommendation followed a particular incident in which M.W. had been acting out significantly at school. On that date,

> [M.W.'s] teacher had told [Ms. Kenney] that [M.W.] had, . . . told [the] teacher that her parents said they had signed a paper and [M.W. would] be returning home in two weeks. When [Ms. Kenney] discussed this with [M.W.], [M.W.] had said, yes, she had been told that in a phone contact with her parents. And [M.W.], at the time, told [Ms. Kenney] that she knew that it wasn't true, but that it made her feel sad, mad, and unloved, and that she did have hope that it would actually happen.

According to Ms. Kenney, when visitation by Mother and Father was suspended, she no longer had to interrupt M.W.'s treatment to "deal with her anxiety and her feelings of abandonment and disappointment" following visits.[5]

SDSS continued its case by calling psychologist Dr. Katherine Seifers, an expert in psychology, family dynamics, domestic violence, family trauma and psychological evaluations. Dr. Seifers served as "a clinical supervisor of therapists [who] have been

[5] The attorney for the respondent children declined to cross-examine this witness. On cross, Father's counsel asked Ms. Kenney whether she knew how often visits or scheduled phone calls had occurred prior to when they were discontinued, to which she replied she did not "have an exact number on that" because she would only be told about visits by M.W.

involved with this case." She did not interact with M.W. or D.W.J. directly, but she had reviewed the presenting issues for M.W. and D.W.J. when they began treatment with her company Eastern Shore Psychological. She stated:

> [D.W.J.] and [M.W.] both had significant behavior problems and anxiety, developmental delays, and our evaluation determined that there are problems related to attachment. And, . . . that there were neurological problems, [which we do not evaluate, and therefore, did not] determine the exact source of that, but because there were attachment problems – neurological problems in the brains of children come from a couple of different issues. One is attachment, severe neglect, severe abuse, but can also be genetic. And so you almost need a neuropsych to fetter that out.

Dr. Seifers also stated that

> if you take a child out of an unsafe, neglectful, abusive environment, and put them into a safe environment where all their needs are met, and brain function is protected and taken care of, those developmental delays will start to disappear. And the child will go from being developmentally delayed to in the average spectrum. That's how you determine whether the child was born mentally retarded, or the child is showing the signs of delay based on environmental toxins and environmental lack of attachment and lack of needs being met. And so both of these children showed the signs of being developmentally delayed and acting out behaviors and anxiety, but you put them in a home where their needs are met, they're not being abused, they're not being neglected, their needs are being taken care of and they start to blossom. They catch up developmentally. Then you know, that gives you diagnostic clarity that they weren't born that way. That it was based on their environment.

And, Dr. Seiffers stated that she believed that the issues presented by M.W. and D.W.J. were the result of prior trauma experienced while living with Mother and Father. On cross examination, counsel for the Father asked Dr. Seifers whether any neuropsychological problems could be genetic, to which she responded affirmatively.

SDSS also called Mark Similus, a foster care worker for D.W.J. since October 29, 2013, during its case-in-chief. Mr. Similus stated that D.W.J. presented with "[s]chool difficulties, academic problems, oppositional defiance, attention deficit disorder, hyperactivity, immature juvenile behavior, and a history of juvenile delinquency." Mr. Similus stated that within the previous year D.W.J. had "been involved in fist fights with other kids in school, [including] one occasion while [he] was on electronic monitoring that . . . resulted him being detained . . . ." He stated that D.W.J. remained "easily provoked when kids call him names, . . . [and] when kids make fun of him or members of his family, he rejects authority, especially when it comes in the form of teachers, foster parents, [and] it take[s] him a while to warm up to them because he [demonstrates], very immature behavior."

Mr. Similus stated that the last time he remembered D.W.J. visiting with Mother or Father was December 2014 or January 2015 and he was not aware of any phone contact since that time. On cross examination, Father's counsel asked whether D.W.J.'s "behavioral and academic issues" continued, and Mr. Similus replied that D.W.J. was "par for the course."

SDSS then called Robin Jones a case management specialist for the Department of Juvenile Services in Somerset County ("DJS"). Ms. Jones stated that she knew D.W.J. because of his multiple contacts with DJS over the years. Ms. Jones stated that at one point, D.W.J. had been placed on electronic monitoring, and that case was successfully closed on June 19, 2013. She did note, however, that while in foster care placement

D.W.J. committed another offense and on February 11, 2015, he was placed on probation but not in DJS custody. She stated that after a hearing on August 27, 2012, Mother and Father did not attend any of D.W.J.'s four or five subsequent court proceedings.

SDSS's final witness was Beverly Morris, a licensed graduate social worker with SDSS. Ms. Morris served as D.W.J.'s and M.W.'s foster care social worker beginning in July 2014. She stated that M.W. had entered into foster care on September 13, 2012, and D.W.J. had entered into foster care in June 2013, following his detention with DJS. The primary reasons for their placement in foster care were "educational neglect" and "neglect." When the children came into foster care, M.W. was overweight and D.W.J. "had a calcified roach in his ear." In addition, both children were behind on their medical appointments. At one point while D.W.J. was in SDSS custody, there was an issue getting the parent's signature so that D.W.J. could undergo testing for an Individualized Education Program ("IEP"), and SDSS needed to get a court order for a parent surrogate.

Ms. Morris stated that, while the children were in foster care, SDSS provided Mother and Father with updates concerning the children, referrals for needed immediate services, and financial assistance, including funds for rent and psychological evaluations, much of which Mother and Father failed to take advantage. In addition, SDSS tried to help the parents "establish reunification with the children," and as proof of those efforts, she stated that eight service agreements were developed and presented to Mother and

Father either through mail or at supervised visits,[6] but they only signed "the initial service agreement" in 2012. The agreements set forth goals and conditions for the parents to meet for reunification to occur. The conditions required Mother and Father to sign school consent forms, participate in psychological evaluations (which they declined to do), secure stable housing and income, and provide SDSS with current addresses and phone numbers. SDSS also made several referrals for the Interstate Compact on the Placement of Children ("ICPC"), which required a home study prior to placement with Mother and Father.

Ms. Morris further stated that she traveled to Mother's and Father's residence in Delaware on two occasions, but her knocks at their door went unanswered, despite hearing "a TV inside the apartment" on the first visit and being informed by a neighbor that "they were there" on the second visit. Regarding visitation, SDSS initially tried to accommodate the parents by scheduling visits at the Lower Visitation Center in Salisbury rather than in Somerset County, but Mother and Father did not complete the intake process at that location. Thereafter, several visits occurred at the Wicomico County Department of Social Services, but Mother "felt unsafe there," so the visits were relocated to SDSS in Somerset County. In the summer of 2015 Mother complained that her wheelchair would not fit through the doors at SDSS, although she had previously

[6] Service agreements are contracts that "provide goals so that the parents can reach reunification with the children." Those service agreements were entered into evidence collectively as exhibits 5 (M.W.) and 6 (D.W.J.).

visited the children there. Following Mother's complaint, SDSS made arrangements so that Mother would only have to use double doors.

According to Ms. Morris, SDSS had difficulty working with Mother and Father because they had "a lot of problems, medical problems, which [SDSS] could not confirm." When SDSS attempted to confirm the health claims by asking the parents for documentation or to sign consent forms to permit SDSS to contact the providers directly, those requests were not granted. From the date she took over the case in July of 2014 to the time the visits stopped, Mother and Father were offered twenty-six visits, but only attended nine. Due to all of the issues with the visits, SDSS instituted a procedure requiring Mother and Father to call by noon on the day of a scheduled visit to indicate whether they were coming.

Ms. Morris stated that visits with M.W. were suspended on May 4, 2015, because of the problems they were "causing with [M.W.] in school and in the home setting." Following May 4, 2015, Mr. Morris stated that Mother and Father "probably" visited D.W.J. "once" but subsequently stopped because "they felt it was not fair that they visit with [D.W.J.] and not be able to visit with [M.W.]." Ms. Morris stated that the last time she had heard from Mother or Father was around Christmas time when they left her a voicemail regarding bringing Christmas presents to D.W.J. She returned their call, but she was unable to get in touch with them. She had not heard from them since.

Ms. Morris testified that M.W. had been with her current foster family for almost the entire time she had been in foster care and was "very bonded with the foster

parent[s]," calling them "mommom and poppop." According to Ms. Morris, M.W. was also "doing very well" in school, had "adjusted to the community," and was a member of the "community cheerleading team." She stated that D.W.J. was "adjusting better" to his community and was "able to do what he really likes to do, which is fish" in his current placement and had "voiced that he wants to stay there."[7]

Ms. Morris does not believe that SDSS could provide additional services that would enable Mother and Father to regain custody. In her view, Mother's and Father's parental rights should be terminated because "the children have been in foster care for over three years, three years plus, and the parents have not showed any progress with any goals to try to have the children placed back in their care."

On cross examination by counsel for the children, Ms. Morris stated that to return the children to Delaware, the parents' present home state, an ICPC would have to be approved by the interstate compact agency. For that to occur, there would need to be a home study by an ICPC worker, which had been attempted on two separate occasions: on the first occasion, the parents "did not have an address," and on the second, the home placement was denied due to the parents' criminal history.[8] Therefore, the children cannot be placed with Mother and Father in Delaware "without violating the law." She recounted the parents' visitation history for a second time, and stated that although

[7] Although Mother and Father had made several Child Protective Services referrals alleging sexual and physical abuse by foster parents and have filed complaints against the social workers, none have resulted in findings of abuse.

[8] Mother has a substantial criminal record in Delaware including possession of a controlled dangerous substance, possession of a firearm, extortion, identity theft, offensive touching, and reckless endangerment.

D.W.J. is permitted to initiate phone contact with Mother and Father, he chooses not to do so.

On cross examination by Father's attorney, Ms. Morris discussed the financial services offered to Mother and Father, including some services prior to when the children were placed in foster care. She discussed the general procedures concerning reunification. She stated that initially the parents' relationship with SDSS was positive but "went downhill" when SDSS requested that parents refrain from bringing a lot of food to their visits. When asked by Father's counsel why mediation with Mother and Father was not pursued prior to the Petitions, she stated that mediation was typically warranted in situations with more "active parents," and if SDSS "could have verified that the medical [issues were] of the magnitude that they were claiming, . . . and [Mother and Father] had requested mediation, then that could have been an option." She stated that Mother and Father would have had to request mediation because SDSS had provided "all the services that [it] possibl[y] could think of providing for this family."

Following Ms. Morris's testimony, SDSS rested its case. Counsel for the children began by calling A.B., the half-sister of M.W. and D.W.J. A.B. stated that she was removed from Mother's and Father's care approximately four years ago, and she did not believe that they were "financially stable" or "mentally right to be taking care of [M.W. and D.W.J.]." Her maternal grandmother is bipolar and schizophrenic and she believes her mother is afflicted with those conditions as well. A.B. further stated that Mother and Father did not have stable housing when she lived with them and there were times that

the family lived in a vehicle; that she did not attend school. Although Mother and Father claimed they homeschooled the children, they "never really did any homeschool;" and when she began school following her placement in foster care, she was "years behind." She further stated that Father had "touch[ed her] inappropriately" when she was a child and beat her. She has monthly visits with M.W. and D.W.J. and that they appear to be "doing well where they are."

On cross examination by Father's attorney, A.B. stated that she was aware of Mother's and Father's financial instability because they "had never worked" and "always bummed money off [her] grandparents [and aunt] and [were] making up lies." When asked whether her maternal grandmother had been diagnosed with mental health issues A.B. responded affirmatively. She indicated that Mother and Father refused "to go to therapy or get any tests run at all," so she did not know whether they had been diagnosed with any mental conditions.

On cross examination by SDSS, A.B. stated that she did not want to have any contact with Mother after her last visit approximately two years ago. She had never heard about allegations regarding abuse at the hands of her foster placement. In addition, A.B. stated that her credit had been used by Mother and Father, which she reported, but she is unsure whether Mother and Father have used the other children's credit.

Following A.B.'s testimony counsel for the children called A.L., the other half-sister of M.W. and D.W.J. A.L. described her living conditions with Mother and Father as "very terrible." They were "moving all the time" and slept "in the car" some nights.

Mother and Father removed her from school in the second grade and she received "no schooling" until seventh grade. She stated that she could not read or do math until after she was removed from Mother's and Father's care, and when she returned to school she was four years behind. In addition, Mother and Father treated her badly. More specifically, they took food away and doled out "cruel punishment," including beatings with "extension cords, belts, pots," and burnings, "punche[s] in the face," "hair pull[ing]," and "dragg[ing] across the floor."

A.L. wanted M.W. and D.W.J. "to have the ability to do something with their [lives], and [in] th[ose] living condition[s] [they]'re not going to do anything with [their] live[s]." A.L. had decided to terminate visits with her parents in March of 2013 because she "found that it wasn't beneficial to [her] to keep going to visits and [Mother and Father] saying snarky remarks to [her] and kind of putting [her] down in all different kinds of ways, and, you know, trying to get [her] to do stuff that [she] knew that wasn't right, and [she] didn't want to do."

On cross examination by Father's counsel, A.L. stated that she keeps up to date on M.W. and D.W.J's lives at their monthly sibling visits. On cross examination by SDSS, A.L. stated that Mother had led her to believe that Father was her biological father. Following cross, counsel for the children rested.

Due to the absence of both parents, Father's counsel did not have any witnesses or documents to introduce as evidence. When prompted, counsel stated that Father was

aware of the hearing and elected not to appear. Once Father's counsel rested, SDSS requested that the court terminate Mother's and Father's parental rights:

> Your Honor, after the evidence presented before this Court, [SDSS asks] that the Court find by clear and convincing evidence that the termination of parental rights against both [Mother] and [Father] is in the best interest[s] of both [M.W.] and [D.W.J.], and find that both parents have been unfit and that no special circumstances exist that would prevent the termination of their parental rights petition for each child. That the Court find that pursuant to Family Law 5-323(d), both [M.W.] and [D.W.J.] were –
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> That the Court find that [S]DSS did, in fact, offer both parents timely and appropriate services, including a number of service agreements. . . . That, as you heard from the testimony of [SDSS], they only signed the very first service agreement, and chose not to engage with [SDSS] for service agreement[s]. That the role of the service agreement was to give the parent[s] an opportunity to have goals towards reunification. These parents have chosen not to engage[], period, with [SDSS]. That the Court find that [SDSS] did, in fact, also seek relative resources. . . .
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> That this Court find that [SDSS] used reasonable efforts to effectuate the permanency plan with these particular children. Reunification continue[d] to be . . . the initial plan until it was changed to adoption around, I think, November 2015. At that point in time, by right, [SDSS] is obligated to file for the termination of parental rights. The Court find that the parents have not met their obligations under the service agreements, that the Court find that there had been no, short of some visits that the parents did with these children, and we've heard the worker say there were twenty-six offered and only about nine were executed.
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> That this Court find that the, these parents have done nothing, short of some visits, towards reunification. . . . This counsel would say to this Court that I thought this case was about to change, because they showed up for something, but they never followed through after that. The record before this Court is that these particular parents, short of their last attempt to appear at the CINA adjudication sometime in January 2013, they have not appeared for any subsequent, physically appeared, for subsequent hearings.
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> They, the Court testimony was presented that therapists for M.W. have, they determined that it was not working, that contact with the parents should have been severed, or suspended, and as of, I believe more than a year ago, this Court granted a petition to suspend the visits as a result of the recommendation made by the therapist and [SDSS]. Since that time there

> has been no visits with [M.W.] and her parents, and, according to the therapist, the continued contact was preventing [M.W.] from progressing with her trauma treatment. And it would have had to stop so that she can at least get to a place where she's comfortable again talking about the issues or disclosing issues.
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> That the Court find that it's not in the best interest for any contact, even post guardianship, to occur between [M.W.] and [Mother] and [Father], and no contact continuing between [D.W.J.] and [Mother] and [Father]. The Court heard testimony that when [Mother] and [Father] could no longer visit with [M.W.], they chose, they voluntarily chose, not to visit with the boy. That reasonable efforts were made by [SDSS] to facilitate reunification, reasonable efforts to facilitate a permanency plan, [SDSS] filed for the termination of parental rights.
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> I believe adoption is in the best interest. That [it is] in the best interest of the minor to grant the TPR and allow the children, at least, at minimum, to commence a process towards permanency, and having a permanent family of their own. After all the evidence and testimony that the Court, again, find that, by clear and convincing evidence, that the TPR should be granted and it's in the best interest of both children, find the parents unfit and no special circumstances exists.

Counsel for the children also requested that the court terminate the parental rights of Mother and Father, and in doing so, address "all the factors in [Md. Code (1984, 2012 Repl. Vol.) § 5-323(d) of the Family Law Article ("FL § 5-323(d)")]," and the standards set forth in *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477 (2007) and *In re Adoption of Ta'Niya C.*, 417 Md. 90 (2010) which state that "the Court needs to find that it is detrimental to the children's best interest to continue the parental relationship."

Counsel for the Father stated that he was "in a bit of a difficult position" because he had "never met [his] client, and [his] client hasn't been present for any of the proceedings thus far." He had been unable to meet with his client, despite several attempts to do so. Nevertheless, counsel pointed out that no evidence of Father's finances had been produced and that the court should "consider the strength of the attachment

between the child and the prospective adoptive parents, which, speaking specifically to [D.W.J.], I think he's been placed in at least two placements right now, and the testimony was that this one isn't going well either." He also argued that regarding the "appropriateness and timeliness of services provided by [SDSS], during [SDSS's] testimony there was some indication that two attempted visits had been made to try to get signatures, and they were well over a year in span," and "several red flags have been raised regarding the type of services that [SDSS] may have provided, and the avenues that may have been taken short of TPR." Counsel further argued that SDSS had not met its burden when considering the factors in FL § 5-323(d).

SDSS responded that it "bent over backwards" to accommodate Mother and Father and that it could not "do anything for someone who won't even engage with us." In support, SDSS pointed to "no-shows" for psychological evaluations, failure to complete parenting classes and a lack of visible efforts towards reunification.

Following rebuttal, the court stated:

> Alright, this Court is tasked with the job of determining whether or not it would be in the best interest of [D.W.J.] and [M.W.] to continue the parental rights of [Mother] and [Father].
>
> The two children involved in this proceeding are [M.W.] and [D.W.J.]. [M.W.] will be ten in October and [D.W.J.] was sixteen in March. The children have been in the care of [SDSS] or [DJS] since October 2012.
>
> [SDSS] made extensive efforts to reunite the children with the parents but received little or no cooperation from the parents. [SDSS] prepared eight service agreements, but the parents only signed one. In the one signed by the parents they were asked to undergo psychological evaluations and provide stable housing. The parents failed to meet either requirement.

> While the children have been in foster care, the parties, the parents, excuse me, failed to show up for seventy percent of the scheduled visits, causing repeated disappointments and feelings of abandonment.
>
> [SDSS] offered financial assistance to the parents, [it] assisted with rent, [it] offered the parents any services [it] could in order to improve their home situations.
>
> The parents have not made regular, maintained regular contact with the children, with no visitation since March of 2015 with [M.W.], and since April of 2015 with [D.W.J.]. There is no evidence of any financial contribution by the parents to the care of the children.
>
> I find no evidence of any parental disability of either parent. I find no evidence that additional services that could be offered by [SDSS] would facilitate a return of the children to the parents within any reasonable time, certainly not within eighteen months.
>
> The children, while with their parents, were not sent to school, they were not home schooled, they were in poor physical condition, I believe one of the children was found to have a calcified roach in his ear.
>
> [M.W.] is now doing well in school and apparently is thriving in the community. [D.W.J.] has had more severe problems, [D.W.J.] has had problems with the Department of Juvenile Services, but the evidence presented, when he, that he is now doing better, and both children have indicated a preference not [to] be returned to their [parents], although when a child, [M.W.] is very young, she wanted the court to know that she like[d] it where she was.
>
> The older two half-sisters of the two children involved in this case testified, [A.L.] and [A.B.]. They have not been in their [M]other's care for some time and testified as to terrible conditions that existed while they were in the care of their [M]other.
>
> The Court believes there will be a positive impact on both children from the termination of the parental rights to the children. And the Court finds that it would not be detrimental to the best interests of [D.W.J.] and [M.W.] to terminate the parental rights, and the Court will therefore grant the petition of [SDSS] as to both children.

In addition, the court ordered "no further contact with the parents." Before concluding the proceeding, the court asked the parties if there were "any findings of fact that I did not make that I am required to make that you can think of?" And the parties responded in the negative.

On August 4, 2016, the Circuit Court for Somerset County, acting as juvenile court, terminated Mother's and Father's parental rights to D.W.J. and M.W. in a seven page written Order for Guardianship that stated, in part:

> After consideration of the facts relevant to all factors in Family Law Art., secs. 5-323(d), (2012 Repl. Vol. & 2015 supp), as stated above, The Court finds by clear and convincing evidence that the biological parents, [Mother] and [Father] are unfit as parents; and exceptional circumstances exist that make it contrary to the children's best interest to continue the parental relationship.

Mother and Father noted timely appeals on August 19, 2016, and Mother filed an amended notice of appeal on August 22, 2016, to correct an error in the captioning of her filing.

STANDARD OF REVIEW

On review of a juvenile court's decision to terminate the parental rights of a biological parent, we use three different interrelated standards:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Maryland Rule 8–131(c)] applies. [Second,] [i]f it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

In re Adoption of Ta'Niya C., 417 Md. at 100 (quoting *In re Adoption/Guardianship of Victor A.*, 386 Md. 288, 297 (2005) (citations omitted)).

DISCUSSION

Contentions

Mother and Father contend that "the circuit court erred by granting [SDSS's] petitions for guardianship of M.W. and D.W.J." In particular, they assert that SDSS failed to meet its burden of demonstrating that either Mother and Father were unfit parents or exceptional circumstances existed that would make a continuation of the parental relationship detrimental to the best interests of D.W.J. and M.W. In doing so, they assert several deficiencies in SDSS's case and the circuit court's findings, including that the circuit court failed to "make specific statutory findings" required under FL § 5-323. More specifically, they assert that the circuit court failed to consider "either child's emotional ties with and/or feelings toward their parents; their siblings, or others who may affect the child's best interests significantly," and that the circuit court "needed to have information regarding the children's potential for future permanency and to make specific findings with respect to that factor." The circuit court also failed, they aver, to sufficiently consider whether the parents engaged the services offered by SDSS or whether the services offered were appropriate.

Mother and Father further argue that the court failed to "adequately consider the parents' circumstances both in their difficulties in attending court hearings, due to medical and mobility concerns, and their difficulties in attending hearings due to distance." In their view, "the evidence did not support" the circuit court's conclusion that they were unfit because their lack of regular contact was the result of the above difficulties and they "fought continuously to have this case moved to Delaware, where they were better able to receive services." Mother and Father also argue that although

"terminating the parental rights in any case may expedite a potential adoption," termination is not appropriate here because "the children do not have any expectation of permanency in foster care and are bonded to their parents."

SDSS counters that the "juvenile court considered the requisite factors set forth in [FL § 5-323(d)] and, based on its findings, appropriately exercised its discretion by terminating [Mother's] and [Father's] parental rights to D.W.[J.] and M.W." In SDSS's view, the juvenile court "addressed the statutory factors" and correctly decided that Mother and Father were "unfit to remain in a parental relationship with M.W. and D.W.[J.]" and that "exceptional circumstances" made the continuation of a parental relationship detrimental to the children's best interests. In support of the juvenile court's findings, SDSS points to Mother's and Father's "severe[] neglect" of the children and their failure to "demonstrate any steps to address their neglectful behavior by engaging in services or visiting regularly." More specifically, it points out that Mother and Father "sporadically visited the children," did not write to M.W. after visitation and phone calls were suspended, declined to visit D.W.J. after April 2015, did not attend court hearings after February 2013, did not avail themselves of services offered through social services in Maryland and Delaware, and entered into just one of eight proposed service agreements. SDSS, quoting *In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 737 (2014), posits that even if the juvenile court did not consider every factor listed in FL § 5-323, "it is not necessary that every factor apply, or even be found, in every case."

In SDSS's view, Mother's and Father's assertion "that their progress was impeded by distance or [Mother's] confinement to a wheelchair is not supported by the evidence," which is evident from their failure to "adduce any evidence in support of their contention." SDSS contends, citing *In re Dustin T.*, 93 Md. App. 726, 731 (1992), that Mother's and Father's "multiple past failures to provide appropriate supervision, coupled with their adamant, long-standing refusal to engage in services, demonstrated their future inability to be a safe resource for their children." Citing *In re Adoption/Guardianship of Victor A.*, 386 Md. at 317, SDSS further argues that the juvenile court "did not need to consider whether M.W. or D.W.[J.] had an adoptive home because a child's prospects for adoption [is] a consideration which is independent of the decision to terminate parental rights."

Analysis

When the State seeks to terminate an individual's parental rights without consent, a juvenile court must determine "by clear and convincing evidence [whether] a parent is unfit to remain in a parental relationship with the child or [whether] exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interests of the child . . . ." FL § 5-323(b). The paramount consideration in that calculus is "the child's best interest." *In re Adoption of Ta'Niya C.*, 417 Md. at 94. To determine what is in the child's best interest, the juvenile court must "give primary consideration to the health and safety of the child" and consider other relevant factors, including:

(1) (i) all services offered to the parent before the child's placement, whether offered by a local department, another agency, or a professional;
(ii) the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent; and
(iii) the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any;
(2) the results of the parent's effort to adjust the parent's circumstances, condition, or conduct to make it in the child's best interests for the child to be returned to the parent's home, including:
(i) the extent to which the parent has maintained regular contact with:
1. the child;
2. the local department to which the child is committed; and
3. if feasible, the child's caregiver;
(ii) the parent's contribution to a reasonable part of the child's care and support, if the parent is financially able to do so;
(iii) the existence of a parental disability that makes the parent consistently unable to care for the child's immediate and ongoing physical or psychological needs for long periods of time; and
(iv) whether additional services would be likely to bring about a lasting parental adjustment so that the child could be returned to the parent within an ascertainable time not to exceed 18 months from the date of placement unless the juvenile court makes a specific finding that it is in the child's best interests to extend the time for a specified period;
(3) whether:
(i) the parent has abused or neglected the child or a minor and the seriousness of the abuse or neglect; . . .
(iii) the parent subjected the child to:
1. chronic abuse;
2. chronic and life-threatening neglect;
3. sexual abuse; or
4. torture;
(iv) the parent has been convicted, in any state or any court of the United States, of:
1. a crime of violence against:
A. a minor offspring of the parent;
B. the child; or
C. another parent of the child; or
2. aiding or abetting, conspiring, or soliciting to commit a crime described in item 1 of this item; and
(v) the parent has involuntarily lost parental rights to a sibling of the

child; and
(4) (i) the child's emotional ties with and feelings toward the child's parents, the child's siblings, and others who may affect the child's best interests significantly;
(ii) the child's adjustment to:
1. community;
2. home;
3. placement; and
4. school;
(iii) the child's feelings about severance of the parent-child relationship; and
(iv) the likely impact of terminating parental rights on the child's well-being.

FL § 5-323(d). These same factors "equally serve to determine whether exceptional circumstances exist." *In re Adoption of Ta'Niya C.*, 417 Md. at 104.

Because an order terminating parental rights involves the State's encroachment into a parent's fundamental right to parent, the juvenile court must make express findings regarding all of these factors. *In re Adoption/Guardianship of Rashawn H.*, 402 Md. at 501; *In re Adoption/Guardianship No. 95195062/CAD in Circuit Court for Balt. City*, 116 Md. App. 443, 460-61 (1997). In other words,

> [t]he court's role in TPR cases is to give the most careful consideration to the relevant statutory factors, to make specific findings based on the evidence with respect to each of them, and, mindful of the presumption favoring a continuation of the parental relationship, determine expressly whether those findings suffice either to show an unfitness on the part of the parent to remain in a parental relationship with the child or to constitute an exceptional circumstance that would make a continuation of the parental relationship detrimental to the best interest of the child, and, if so, how. If the court does that—*articulates its conclusion as to the best interest of the child in that manner*—the parental rights we have recognized and the statutory basis for terminating those rights are in proper and harmonious balance.

In re Adoption/Guardianship of Rashawn H., 402 Md. at 501 (emphasis in original). Importantly, the inapplicability of certain factors does not, as a rule, preclude the termination of parental rights if the trier of fact is persuaded that, based on the remaining factors, termination is necessary to insure 'the best interests of the child.'" *In re Adoption No. 2428 in Circuit Court for Washington Cty.*, 81 Md. App. 133, 139 n.1 (1989).

Here, the circuit court concluded that, based on the statutory factors, Mother and Father were unfit to remain in a parental relationship with M.W. or D.W.J. The court pointed out that SDSS "made extensive efforts to reunite the children with the parents but received little or no cooperation from the parents." The parents failed to sign seven of eight service agreements and did not fulfill any of the conditions set forth in the signed service agreement, which included undergoing psychological evaluations and providing stable housing. Mother's and Father's unstable housing situation persisted despite SDSS offering "any services" it could to improve the parents' home situation, including rent assistance, and the parents provided "no evidence of any financial contribution . . . to the care of the children." Importantly, the court found "no evidence that additional services could be offered by [SDSS that] would facilitate a return of the children to the parents within any reasonable time."

Mother and Father did not maintain "regular contact with the children . . . with no visitation since March of 2015 with [M.W.] and since April of 2015 with [D.W.J.]," or SDSS, and they "failed to show up for seventy percent of the scheduled visits" while M.W. and D.W.J. were in foster care. The juvenile court found that while M.W. and

D.W.J. were in their parents care and custody, they were "not sent to school, they were not home schooled, [and] they were in poor physical condition." For example, D.W.J. was found to have a calcified cockroach in his ear. In contrast, M.W. was "now doing well in school and apparently is thriving in the community," and D.W.J. "is now doing better." In addition, both M.W. and D.W.J. had indicated a preference "not [to] be returned to their [parents]," and D.W.J. did not seek out phone contact with Mother and Father, although he was permitted to initiate phone calls. Ultimately, the court found that terminating the parent child relationship between Mother and Father and M.W. and D.W.J. would not have a detrimental effect on the children. We agree.

Based on the evidence produced at trial, the court's oral opinion, and the orders for guardianship, we are not persuaded that the juvenile court erred or abused its discretion in terminating Mother's and Father's parental rights in this case. The court clearly considered all of the relevant statutory factors, and although the court might have included more detail with regards to certain factors, there was more than sufficient evidence to support its conclusion that "a continuation of the parental relationship [would be] detrimental to the best interest of the child." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. at 501.

JUDGMENT OF THE CIRCUIT COURT FOR SOMERSET COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.