Circuit Court for Charles County
Case No. Z-15-19

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1845

September Term, 2016

IN RE: ADOPTION/GUARDIANSHIP OF N.A.

Wright,
Arthur,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: September 26, 2017

N.A. (hereinafter "Child") was born, prematurely, in Alexandria, Virginia on May 11, 2011. The Child's parents are T.J. (hereinafter "Mother") and appellant, K.A. (hereinafter "appellant" or "Father"). On May 13, 2013, the Charles County Department of Social Services ("the Department") filed a petition for shelter care of the Child, who had just turned two years old. In its petition, the Department also asked for shelter care of the Child's two older half-brothers. Shortly thereafter, the Circuit Court for Charles County, sitting as a juvenile court, granted shelter care for the three children. On May 31, 2013, the juvenile court found the Child to be a child in need of assistance ("CINA"),[1] and made the same finding in regard to her two half-brothers, S.A. and M.A.

The Department filed a petition to terminate the parental rights of both Mother and Father on October 13, 2015. Mother consented to the termination of her parental rights to the Child on the condition that the Child be adopted by L.A. (hereinafter Ms. A.), who was the Child's foster mother.

Father opposed the Department's petition to terminate his parental rights ("TPR"). A hearing was held in the circuit court on February 5, March 4, March 11, April 11, and April 12, 2016 to consider whether Father's parental rights should be terminated. Counsel for the Child favored termination of Father's parental rights.

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[1] "Child in need of assistance" means a child who requires court intervention because:

(1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and
(2) 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.

Md. Code, Courts and Judicial Proceedings Article § 3-801(f) (1973, 2013 Repl. Vol.).

At the TPR hearing, the court heard the testimony of 19 witnesses and considered scores of exhibits. Counsel for Father, the Department, and the Child filed written closing arguments after the evidentiary stage of the trial had concluded. On September 29, 2016, the court filed an order in which it terminated Father's parental rights to the Child. In a written opinion, the court gave a detailed explanation as to why, in the court's view, termination of Father's parental rights was justified.

Father filed a timely appeal to this Court in which he asserts that the juvenile court erred by terminating his parental rights. In support of that assertion, Father contends: 1) that there was insufficient evidence regarding the Child's "circumstances and her progress in foster care," and 2) that the evidence was insufficient to support the trial judge's conclusion that Father "was unfit to maintain a parental relationship with his [Child]."[2] For the reasons set forth below, we reject both contentions and affirm the judgment entered by the Circuit Court for Charles County, sitting as a juvenile court.

I.

A. Preliminary Matters

Before setting forth the facts relevant to this matter, it is important to note that this case only concerns the termination of Father's parental rights to the Child – not his parental rights to his sons, S.A. and M.A. Nevertheless, one of the main reasons that the court found

[2] Father also argues in his brief that, contrary to the trial judge's finding, the evidence was insufficient to show that "exceptional circumstances existed that made continued parental relationship detrimental to the [C]hild's best interest." That alternative contention, however, is moot in light of our holding that the trial court did not err in finding that Father was unfit to maintain a parental relationship with the Child.

that Father was an unfit parent was based on Father's mistreatment of S.A. and M.A. The juvenile court held that in light of Father's past mistreatment of S.A. and M.A. along with other evidence presented to the court, it was impossible to make a finding that if the Child were returned to Father's care, there would be no likelihood of abuse or neglect. *See* Md. Code, Family Law ("FL") § 9-101(b) (1984, 2012 Repl. Vol.). Therefore, evidence regarding Father's treatment of his two sons is included in the summary set forth below.

B. Background Facts[3]

1. Evidence Concerning Events Prior to May 10, 2013

Father was born in Lagos, Nigeria in 1978. He immigrated to the United States in 2002, and now owns a delivery business. While in the United States, he married O.O. (hereafter "Ms. O."). Two sons were born of that marriage, *viz*., S.A. (born January 2004) and M.A. (born June 2006). Father and Ms. O. divorced in May 2012, at which time the court awarded Father sole physical custody of his two sons.

Meanwhile, while Father was separated from Ms. O., he met Mother in 2010 and, as mentioned earlier, Father and Mother became parents of the Child on May 11, 2011.

On June 19, 2011, when the Child was a little over one-month old, the Prince George's County Police received a report from Mother that Father had assaulted her by throwing her to the ground and threatening to hit her with the leg of a chair that he had previously broken. Father fled the home, but Mother and bystanders directed the police to

[3] The summary, set forth in Part I.B., although lengthy, is not comprehensive due to the number of witnesses who testified and the exhibits received. Our summary focuses on the evidence most relevant to a resolution of the issues presented.

his location. He was then arrested. According to a statement of probable cause filed by the police, which was admitted into evidence at the TPR hearing as Petitioner's Exhibit 12, this was the third time the police had responded to Father and Mother's home due to reports of domestic violence. The resulting assault charges against Father were placed on the stet docket in October 2011 on the condition that Father complete an anger management program within seven months. From October 19, 2011 to December 30, 2011, Father participated in six anger management sessions conducted by Dr. Phillip Thorn, a licensed clinical counselor. Additionally, he participated in couple's counseling sessions with Mother at the Pinnacle Center where Dr. Thorn worked.

In December 2011, the Prince George's County Department of Social Services received a report that Father and Mother were abusing and neglecting S.A and M.A. When the boys were interviewed, it was reported that Father had beaten the boys. Ms. O. (S.A. and M.A.'s mother) told a Prince George's County social worker that her sons had been injured by the beatings, which occurred while the boys were in Father's custody. A photograph was provided to the social worker that showed bruising to S.A.'s torso, but when the social worker examined S.A., no current injuries, other than scratch marks, could be seen.

During the investigation by the Prince George's County Department of Social Services, Ms. O. reported that she had discovered S.A. sucking M.A.'s penis. M.A. told the social worker that once his older brother, S.A., had put his (M.A.'s) penis in his (S.A.'s) mouth. S.A. later admitted to an investigator that he had done so.

A Prince George's County social worker discussed with Father the concern raised by S.A.'s inappropriate sexual behavior and advised that she wanted S.A. to be evaluated by Herman Tolbert, Ph.D., a psychologist at Children's National Medical Center Adolescent Offenders Program ("CNMCAOP"). M.A. was sent for therapeutic services to a group called "All That's Therapeutic, Inc." Father was referred to an organization known as "Inner Agency Family Preservation" and to a second organization called "Strengthening Families Coping Resources Group." After making these referrals, the Prince George's County Department of Social Services closed its investigation.

S.A. first saw Dr. Tolbert at CNMCAOP in early 2012. Dr. Tolbert suspected that several diagnoses might be appropriate for S.A., including Oppositional Defiant Disorder, Attention Deficit Hyperactivity Disorder and post-traumatic stress disorder. Dr. Tolbert recommended a neuropsychological evaluation to clarify those diagnoses. S.A. continued to see Dr. Tolbert until February 2013, when Father, Mother, the Child, S.A. and M.A. moved to Charles County. S.A. did not continue to see Dr. Tolbert after Father left Prince George's County because of the distance involved and because it was difficult to get an appointment that would fit in with Father's work schedule.

C. The May 2013 Beatings of S.A.[4]

After transferring to a new school in Charles County, nine-year-old S.A. entered the second grade. His teacher used a color system when reporting to parents the daily behavior

[4] The summarization in Part I.C. concerns what occurred immediately before and after S.A. was beaten, and is based primarily on what S.A. and M.A. told medical care providers and Mary Jane Cupples, an investigator for the Charles County Department of Social Services, immediately after the May 9, 2013 beating.

of students: green indicated good behavior; yellow indicated some behavioral problems; and red was the lowest (or worst) level. On May 8, 2013, S.A. came home from school with a red-level behavioral report. Mother punished S.A. by hitting him three times on the back of his neck with a doubled-over belt. The next morning, Father advised S.A. that he had gotten "a break" and warned him that he better not come home with a red-level report again. Despite the warning, on May 9, 2013, S.A. received another red-level behavioral report. When Father came home from work that evening, he told S.A. to go upstairs and get undressed. S.A. did so. Father then made S.A. take a shower with him. While showering, Father told S.A. "to close his eyes and look down." Father then washed S.A.'s body with a sponge. This made S.A. uncomfortable especially when Father washed his genital area. After the shower, Father instructed S.A. to hold the following position: one foot and arm on the ground, and the other foot and arm in the air. While in that position, Father then repeatedly struck his son with a belt. According to S.A.'s later report to a social worker, Father struck him with the belt at least twenty-five times until he fell to the floor. While he was being beaten, S.A. begged his Father to stop saying "Daddy, Daddy, I can't do this." While beating him, Father told S.A.: "[D]on't judge me." Immediately after the beating, Father gave S.A. "children's Motrin" for his pain. The next morning, Father put Vaseline on S.A.'s wounds.

On May 10, 2013, S.A. stayed home from school because he was in pain. His six-year-old brother, M.A., however, went to school that day. M.A. told his teacher that he was afraid for his brother because the night before he heard "a lot of boom," which meant that he heard his brother being struck with a belt. A report of the abuse was made to the

Charles County Department of Social Services. The Department assigned Mary Jane Cupples to investigate the matter. She commenced her investigation on May 10, 2013, which was the day after S.A. was injured by Father.

At the TPR hearing, Ms. Cupples was accepted by the court as an expert in child-protective services. After observing S.A.'s injuries, Ms. Cupples sent S.A. to Civista Medical Center in La Plata, Maryland for a medical examination. The medical center's May 10, 2013 report detailed the nature and extent of S.A.'s injuries. The nurse, who prepared the report wrote:

> The following were noted on exam but injuries are not limited to areas written. The victim has large areas of redness that were not able to be measured and extended across neck/back/thighs/arms/legs. The buttock was extremely tender and swollen but injuries are jointed together and difficult to measure with a ruler.
>
> On further exam, the following was noted:
>
> - Mobile hematoma to top of scalp. Tender on palpitation.
> - Old scars on left cheek.
> - Lateral left side of neck swelling. Tender to palpitation.
> - 2.5 cm x 4 cm bruise to left side back of neck.
> - 2 cm x 2 cm bruise to left side back of neck.
> - Redness noted around the above bruising and extending into left shoulder area.
> - 2 cm welt noted to left side to left back side of neck.
> - Right side of neck tender on palpitation.
> - Victim held neck to left side and stated it hurt to keep head upright or to turn neck to the right side.
> - Left scapular swelling and contusion/bruising. Tender to touch scapular area.
> - 4 cm abrasion over mid left scapular area.
> - Old bruise noted to left side of left scapular area.
> - 10 cm area on the right scapula with redness and bruising.
> - 4 cm x 2 cm welt below right scapula.
> - Large contusion noted to lower right side of back.

- Old bruise in a different healing stage to lateral lower right back area.
- Coccyx area swelling and tenderness noted.
- Bilateral buttock swelling with the right buttock being more swollen than the left. Very tender to touch.
- Right buttock swelling with redness that extends into right hip.
- Large hematoma to right hip.
- Abrasion to left buttock cheek.
- Right arm – medial to elbow bend a 15 cm in length bruise. Its width measured between 4 cm x 2 cm.
- Right upper medial arm 1 cm abrasion.
- 3 cm x 2 cm bruise to medial right wrist.
- Right antecubital area 1 cm scratch.
- 4 cm x 2 cm abrasion below left breast area.
- 8 cm x 6.5 cm contusion to right upper thigh.
- 4 cm x 3 cm bruise to right upper inner thigh near groin area.
- Left upper thigh large area of redness extending to lateral side of thigh.
- Several linear bruising to left upper thigh all >10 cm length with redness in same area.
- 5 cm x 5 cm bruise left upper thigh.

(Emphasis added.)

Ms. Cupples conducted a joint investigation of S.A.'s abuse with a detective from the Charles County Sheriff's Office. The detective and Ms. Cupples interviewed M.A. who told them that Father and Mother hit all three of the children, i.e., himself, S.A., and the Child[5]. M.A. also reported that Father and Mother often left the children alone and that he was afraid of Father.

While S.A. was still at the hospital, he was interviewed by Ms. Cupples. S.A. described the beating and confirmed his brother's report that Father and Mother often left M.A. and the Child alone at home with him in charge. While being interviewed, Ms.

[5] M.A. told a therapist that the children were required to say "Thank You" after they were beaten.

Cupples observed that S.A. was scared. Both S.A. and M.A. told Ms. Cupples that they did not feel safe returning to their home and were comfortable with the prospect of entering foster care.

Ms. Cupples, who had investigated between 2,000 and 2,500 child abuse cases during her 23 years as a child abuse investigator, testified at the TPR hearing that the abuse to S.A., compared to other child abuse cases she had investigated, was "one of the worst that I've seen."

D. Father's Testimony Concerning the May 9, 2013 Beating

Despite the medical reports that delineated S.A's injuries, Father testified at the TPR hearing (on February 5, 2016) when called as an adverse witness by the Department, that S.A. had exaggerated his injuries in order to get attention.[6] He further testified that the reason for the beating was that he was frustrated about S.A.'s misbehavior at school.

[6] Father was cross-examined by his own counsel, on March 4, 2016, about his testimony on direct that S.A. had exaggerated his injuries. Apparently recognizing the likelihood that no one would believe that S.A. had exaggerated his injuries, Father's counsel asked her client a series of leading questions. The pertinent colloquy was as follows:

> [Father's Attorney]: Okay . . . um . . . did you mean to . . . did you mean to answer yes to the fact that [S.A.] exaggerated the incident, or the injuries.
>
> [Father]: The incident.
>
> [Father's Attorney]: Okay . . . um . . . you are not disputing that the injuries are what they are?
>
> [Father]: Yes, ma'am.

(continued . . .)

Father admitted that on May 9, 2013 he hit S.A. with a belt "a couple of times," which he later said meant "eight to ten" times. He denied that during the beating S.A. ever asked him to stop. He admitted that one of the ways he disciplined his children was making them stand with one foot and one hand on the floor while holding one arm and one leg in the air. He denied, however, that he made S.A. assume that position on the date of the beating. He acknowledged that prior to the beating, he made S.A. take a shower with him. He explained this by saying that immediately prior to the beating, he thought that his son smelled bad and thus needed a shower. Father added that he habitually took showers with his sons so that they would learn to properly wash themselves. He denied that he kept S.A. out of school on May 10, 2012 because S.A. was in pain. Instead, Father testified that he kept S.A. out of school so he would have time to reflect on his misbehavior at school.

(. . . continued)

> [Father's Attorney]: Okay, you are not, so there is a record, there is an independent verification that, and you're not . . . there is a medical report. You're not saying that the report is incorrect?
>
> [Father]: Yes, Ma'am.
>
> [Father's Attorney]: You're not saying that, right?
>
> [Father]: Yes, ma'am.
>
> [Father's Attorney]: Okay. Okay, so what you are saying is that the facts surrounding what happened is what he was exaggerating?
>
> [Father]: Yes, ma'am.

E. May 10, 2013 to March 2016

Ms. Cupples removed all three children from their home on the date it was discovered that S.A. had been beaten. All three of the children were placed in foster care that day. Ms. Cupples did this because she believed that Father posed a danger to the children; an additional reason was based on her concern that the children had been left at home with a nine-year-old in charge.

The juvenile court, three days later, authorized continued foster care placement for the three children. Approximately one month later, on June 14, 2013, the Child, and her two half-brothers were determined to be CINA.

The Department placed S.A. and M.A. in foster care with their maternal aunt and uncle, Angela O. and John O, who ultimately became the legal guardians of the two boys. As of the time of the TPR hearing, S.A. and M.A. were still in their care.

The Child was placed in a separate foster home, and, starting in July of 2013, Lolita Gleaton became the Department's case manager for M.A., S.A., and the Child. At the TPR hearing, she was recognized by the court as an expert in child abuse and neglect and in social work. She remained as the case worker for all three of Father's children from July, 2013 until the TPR hearing was concluded. In that capacity, she closely scrutinized Father's relationship with Mother and the children during this period. As will be seen, her opinions as to Father's fitness as a parent were not favorable to him.

When the Child was first placed in foster care, Mother had lengthy daily visits with the Child, under the supervision of Mother's step-father, who temporarily relocated from Ohio in order to take on this responsibility. On August 2, 2013, the Child was relocated to

a second foster home; her new foster parents were Charles and Sarah L. At the second foster home, Mother had visitation privileges with the Child twice per week.

Shortly before the Child entered her second foster care home, Father met with Julia Hughes, a doctorial clinical psychology intern, who studied under the supervision of James Ballard, Ph.D., a licensed psychologist. Ms. Hughes conducted a psychological examination of Father and concluded that Father should attend parenting classes, and should receive psychotherapy along with counseling to increase his coping skills and ability to regulate his emotions. Testing conducted by Ms. Hughes showed, *inter alia*, that Father had a low frustration tolerance level and was "at risk for recurring episodes of overt anxiety, tension, nervousness and irritability," and was potentially "prone to impulse outbursts of unwanted effect or ill-advised actions." In a report prepared by Ms. Hughes and signed by both Ms. Hughes and Dr. Ballard, dated July 22, 2013, it was said, based on the Minnesota Multiphasic Personality Inventory-2-RF, that Father's response patterns indicated that he "may experience conflictual interpersonal relationships, engage in acting-out behavior, and have difficulties with individuals in position of authority."

In August 2013, Father, M.A., and S.A. were seen by Patricia Jenkins, Ph.D. so that she could perform bonding assessments. On September 2, 2013 and September 5, 2013, Dr. Jenkins signed bonding assessment reports based on her interviews with Father, S.A. and M.A. No bonding assessment was made as to the Child because she was too young to be interviewed. According to the report, Father demonstrated "a bit of annoyance" about the differences in parenting conduct permissible in his native county of Nigeria, as opposed to parenting customs in the United States. He also showed annoyance about the fact that

he had to participate in the various programs recommended by the Department and the juvenile court. He nevertheless said that he was "committed to following through with everything the Court requests." Dr. Jenkins opined that Father "lacks insight and awareness that his disciplinary practices are not favorable for the [children] and are in fact harmful physically and mentally." During the bonding assessment, Father admitted to using physical discipline only on his sons, but M.A. reported to Dr. Jenkins that Father beat him, S.A., and the Child, with a belt. In M.A.'s words: "all of us get beatings with a belt." S.A. told Dr. Jenkins that Father "beat him all the time" and that he feared that the same thing would happen again if he were to live with Father. In the bonding assessment, S.A. made it clear that he did not want to live with Father.

As a result of the May 9, 2013 beating of S.A., Father was charged in the Circuit Court for Charles County with, *inter alia*, second-degree assault. He pled guilty to that charge and, on January 29, 2014, was sentenced to 364 days incarceration, with all but 180 days suspended in favor of five years of supervised probation.

On February 26, 2014, while the Child was in the care of Mr. and Mrs. L, Mother advised Ms. Gleaton that she and Father had separated. A short time thereafter she admitted to her therapist that she and Father had inflicted abuse on all three children (M.A., S.A., and the Child) and expressed remorse that she had not intervened to protect the children. On March 24, 2014, the juvenile court passed an order allowing Mother to have unsupervised visits with the Child—three times per week.

On May 23, 2014, the Department placed the Child in Mother's Waldorf, Maryland home for a trial home visit based on Mother's representation that she and Father were no

longer in a relationship. Ms. Gleaton explained to Mother that she was to supervise Father's visits, which should be for only one or two hours in duration and should not be overnight. In July 2014, Mother told Ms. Gleaton that Father had turned off her cable television service and had been "calling her consistently" and was "threatening" that he was going to come to her house. Because of these threats, Mother told Ms. Gleaton that she was "terrified" of Father and asked the Department for permission to move to Ohio.

At a permanency plan hearing held on August 21, 2014, the juvenile court changed the permanency plan from reunification of the Child with both parents to reunification with Mother. In its order, the court said:

> In the [C]hild's best interest her permanency plan is Reunification with [Mother] which is being achieved. It has been represented to the Court that [Mother] and [Father] are no longer in a relationship, which is why the court's plan is reunification with [Mother]. The Court cannot make the Family Law § 9-101 findings were Respondent's father to have custody or unsupervised visitation.

The court then awarded custody of the Child to Mother, pursuant to an order of protective supervision by the Department.

A few days after the August 21, 2014 hearing, Father, Mother, and the Child, along with Mother's father and her grandmother, spent the afternoon and late evening hours in Colonial Beach, Virginia. When they returned home to Mother's Waldorf address, Father stayed overnight at Mother's home.

Shortly thereafter, Father told Ms. Gleaton that he planned to move to Laurel, Prince George's County, Maryland, to stay in a townhouse owned by his uncle. On September 2, 2014, Mother called Ms. Gleaton to report that she had moved to Laurel,

Maryland with the Child and was going to have a "roommate" at her new address. Mother refused to name the "roommate." Mother also reported that the townhouse into which she had moved was owned by Father's aunt and uncle. At that point, Mother denied that Father lived in the townhouse with her. Nevertheless, that phone call aroused Ms. Gleaton's suspicions, because Father had previously told her that he intended to move to Laurel to live in a house owned by his uncle.

On September 3, 2014, Ms. Gleaton conducted a safety inspection of the Laurel townhouse where Mother and the Child were then living. Ms. Gleaton found a bag of clothing, "underwear and T-shirts/undershirts" near a bedroom on the second floor of the Laurel townhouse. Mother informed Ms. Gleaton that those belongings were Father's, and that he stopped by the house to shower when she and the Child were not there. Both Father and Mother later admitted to Ms. Gleaton that Father regularly showered at Mother's house when Mother and the Child lived in Waldorf.

In addition to the clothing, Ms. Gleaton also found that Father kept his fish tanks in Mother's townhouse. After her inspection of the Laurel townhouse, Ms. Gleaton called Father and told him that she had concluded that he (Father) was residing in the townhouse with Mother and the Child. Father replied: "[A]fter this conversation, I don't live here anymore," and he also said that he would "sleep in his truck." Ms. Gleaton interpreted that last statement to mean that Father had agreed to move out of the Laurel home.

Ms. Gleaton removed the Child from the Laurel townhouse on September 3, 2014 because of her conclusion that Mother and Father had resumed cohabitation, which she

believed put the child in danger. That day the Child was then placed in foster care with Charles and Sarah L.

On September 4 and 5, 2014, the juvenile court held a shelter care hearing and approved the removal of the Child from the custody of Mother. Later, in November 2014, the juvenile court found that Mother did not recognize the harm that Father could inflict on the child and that, while Father and Mother could "articulate appropriate responses" to the court, the Department, and their providers, "their actions and choices remain deceitful and contrary to their statements . . . ." At that point, the juvenile court found that neither parent was "making child-focused decisions," and the court ordered that all visits for both parents be supervised.

In his testimony at the TPR hearing, Father admitted that on one occasion he stayed overnight at the home of Mother in Waldorf. The date of that overnight stay was in late August 2014, and it occurred after he had taken Mother, the Child, and Mother's relatives to Colonial Beach, Virginia for a day, which they spent fishing. When he returned from the trip, and because he was tired, he went to sleep in Mother's townhouse. In his testimony at the TPR hearing, he denied that, except for that one occasion, he had ever stayed in the same house as Mother and the Child prior to the date that Ms. Gleaton removed the Child. The juvenile court judge who conducted the TPR hearing, did not find Father's testimony in this regard to be credible. In any event, starting on September 3, 2014 and up to the present, according to Father's testimony, he and Mother have continuously lived together at the Laurel townhouse.

The Child's return to foster care after September 3, 2014 was stressful for her. The Child would spontaneously cry and say, "Mommy, I'm sorry." The foster parents would rock the Child and try to comfort her. Because the Child appeared to be under so much stress, the Department reduced visits between the Child and her parents to once every other week. The Department also referred the Child to the "Child Find" program and she received speech and language services at home and at daycare.

At a permanency plan review hearing on November 6, 2014, the court found that the Child had been "harmed by the selfish decision of her parents to put their personal wants and needs before their child." The court opined that Mother had "engaged in deception" which called into question her ability to put her child's needs and safety over her relationship with Father. The court acknowledged that while the Child had been in foster care, Father had regularly participated in parenting classes, individual therapy, and an anger management program, but concluded that his actions did not reflect a changed person.

After the Child spent an extended visit with her maternal grandparents in Ohio, which took place during the Christmas holiday in 2014, the Child returned to Maryland in January 2015 and was placed in a new foster home. Visits with the parents remained supervised every other week but, after a hearing on January 22, 2015, the court agreed that the visits were to be increased to three times per month once the Child became emotionally stable. Phone calls with the Child were permitted twice a week. The court found, however, that the parents "continue to live together and demonstrate little understanding of the Department and the [c]ourt's concern for [the Child's] safety and well-being."

On January 29, 2015, Father was involved in a motor vehicle accident while driving his delivery truck. According to another motorist, Father's truck struck the driver's side of a vehicle but Father did not stop until he reached an intersection. According to a police report that was admitted into evidence, the other driver approached Father (when his truck stopped at the intersection) to tell him that he had struck his vehicle but Father reacted by attempting to strike the other driver with his truck. To avoid being struck, the other driver grabbed for the truck's driver's side mirror and hung on; Father proceeded up a street at a high rate of speed and then drove ten feet off the road, through a parking lot, and aimed the side of his truck at a telephone pole in an attempt to knock the other driver off his vehicle. The other driver jumped to the ground to avoid being struck by the pole and suffered injuries to his hands and knees. Father then fled the scene according to the police report. Father was later arrested and charged with reckless and negligent driving, failure to stop a vehicle at the scene of an accident and to remain at the scene, and other charges. Father did not inform the Department about the charges nor did he tell Dr. Thorn, his anger management therapist, about the charges until almost a year later. Ultimately, the charges were entered *nolle prosequi* by the State.

At the TPR hearing, Father testified that as far as he knew, he never struck another vehicle on January 29, 2015. He admitted that while stopped in traffic on January 29, 2015, another motorist aggressively tried to get into the cab of his truck and attack his [Father's] cousin, who was a passenger. To avoid a confrontation, Father drove away without incident. He admitted that he was arrested after the other motorist reported the incident to

the police. Although he did not report his arrest to the Department, he did report it to his probation agent.[7]

Meanwhile, once Father and Mother started living together again in September of 2014, all visitation with the Child was supervised. Father exercised his rights on a fairly regular basis up until November 2015. But, from November 2015 to March 3, 2016, his visits were erratic. In that time period he was allowed weekly visits but out of 13 possible visits, he missed eight.[8] According to Kelly Hutter, who supervised the visits, the Child did not seem to be disappointed when Father missed the visits; moreover, when Father did

[7] In regard to the January 29, 2015 incident, the Department's Permanency Planning Review Hearing Report dated October 30, 2015 stated:

- [Father] shared with the Department that he did not see why he needed to inform the Department of his recent criminal infractions as they were "minor." Therefore, he does not appear to understand the severity of his actions or how they impact the Department's view of his progress toward his anger management or how this impacts the Department's stance on his reunification with his daughter.
- [Mother] shared with the Department that she did not know exactly what [Father's] criminal infractions were and that they "didn't really talk about it." She went on to share that she did not inform the Department because to her his criminal infractions "did not appear that serious."

[8] In her decision, the trial judge said "[Father's] visits, since November, 2015, were inconsistent, as he missed eight out of thirteen visits. [Father] was self-employed and had more flexibility in arranging his schedule. [Father] did not ask the Department to arrange visitations at a different time." (emphasis added).

Appellant points out that what the judge said in the portion of the excerpt that we have emphasized, is wrong. The evidence was uncontradicted that appellant asked Ms. Gleaton to allow visits with the Child "to take place in the evening," and that appellant was told that this was not possible.

This minor mistake, in the course of a lengthy opinion, had no impact on the outcome of the case.

visit, Father was often disengaged and did not pay attention to the Child, according to Ms. Hutter.

In December 2015, the Child was placed in a home of another foster parent, Ms. A. The Child has adjusted "remarkably well" to this placement, calling Ms. A. "mom." The Child also has a close relationship with Ms. A.'s mother, father, and sister. Since being placed in Ms. A.'s home, the Child's anxiety has been reduced and she is the happiest she has been since she entered foster care, according to Ms. Gleaton. The Child's teacher testified at the TPR hearing that the Child has shown great improvement since she has been in the care of her pre-adoptive foster mother. Her teacher further testified that the Child has improved in her pre-K class, and is above average in reading and average in math.

The court heard the testimony of the caretakers of S.A. and M.A. who have continuously had those children under their care and supervision since shortly after the children were declared to be CINA. In the TPR case, they were referred to as Aunt O. and Uncle O. Aunt O. testified that since S.A. and M.A. came under the care of her and her husband, the boys had been doing extremely well both in school and out of school. Aunt O. described the way the two boys were performing in school as "[g]reat, excellent, wonderful[,] "we can't beam enough about them." She added that S.A. and M.A. are both on the honor roll.

Aunt O. further testified that at the beginning she regularly supervised Father's visits with S.A. and M. A. Later, she gave up supervising the visits because Father made her "uncomfortable." For instance, during one of the first visits, Father took the boys to a park. When they came back, S.A. was crying. Aunt O. took S.A. aside to console him,

whereupon Father came over and said, somewhat aggressively, "nothing's wrong with him." Aunt O. said "No, something has happened here. Let's find out." Father then became "argumentative" and "somewhat intimidating." S.A. was in "tears," and M.A. was "scared to tell [her] what had happened at the park." Once the boys told Aunt O. what Father had said, Aunt O. announced that "[t]his meeting is over" but Father disagreed and was "physical" with the children and was "pulling" them and saying "[t]hey're my kids." In Aunt O.'s view, whenever she did something or said something that was contrary to what Father wanted to do, he became "very aggressive" toward her.

At another visit, Father would take the boys aside and speak to them in his native language of Yoruba, a language that Aunt O. could not understand. He would do the same thing in his phone calls to the boys, even though Aunt O. told him that she needed to understand what was being said to the children. After the phone calls in which Father spoke in a foreign language, S.A. would cry and demonstrate "angry behavior."

Once, when Father, Aunt O., and the two boys went to Costco for Christmas shopping, Father and Aunt O. had a disagreement and he put his hands on Aunt O. "in a forceful way." At another time, in the courthouse, when Aunt O. announced that it was time to leave because the children had to do their homework, Father said "I want them to stay here" and started pulling at the children and "getting louder and a little aggressive." The attorney for the Children intervened, saying "That's enough. Take the kids and go." Father then stepped back. Because Father had physically touched her by pulling her arm, Aunt O. decided that she personally would not supervise visitations anymore.

Aunt O. also testified that during some of the visits, Father would kiss S.A. on the lips which would make S.A. feel uncomfortable. This behavior caused Aunt O. and her husband to draw "physical boundaries" as to what Father could do with the children.

Besides the instances of inappropriate behavior just summarized, there were other such instances, according to Aunt O., but she could not remember them all. In any event, Aunt O. told Ms. Gleaton that Father's aggressive behavior made her so uncomfortable that she did not want to supervise visitations anymore. As a consequence, Uncle O., or Uncle O.'s mother took over the responsibility for supervision of the visits.

Uncle O. testified that when the children first came into his household, he sometimes supervised the visits between Father, S.A. and M.A. In the beginning, when Father visited, S.A.'s "disposition wasn't all that great based on the recent events." At first, S.A. showed "a little apprehension" in regard to Father. But later, both children seemed to be joyful when Father visited them. Uncle O. further testified that more recently he has not supervised Father's visits because of his (Uncle O.'s) work schedule. Presently, Father sees the boys when they visit their therapist, whose name is Daniel Furbey.

Uncle O. expressed the view that at present, Father's visits should not be unsupervised because the boys are "stable" and he doesn't want anything to "ruffle" that stability. On cross-examination, he said that he was never that close to Father. In his words, it was never a "buddy-buddy, chummy-chummy" relationship. He opined that Father was a "good father" although "[h]is methodologies may be unorthodox," which might be because of his "culture." He also said that Father was "making some changes" that in his opinion, were "positive."

F. Opinion of Markita Dixon

One of the expert witnesses who testified for the Department, was Markita Dixon. The juvenile judge, in her September 29, 2016 opinion, accurately summarized Ms. Dixon's testimony as follows:

> Markita Dixon, Clinical Social Worker, is the Administrator of the Out-of-Home Services Unit at the Department. She recommends termination of parental rights, because, despite numerous services to address concerns, [Father] has not demonstrated internalization of appropriate parenting and the ability to apply what he has, presumably, been taught. [The Child] would not be safe in his care. [Father] does not value children's autonomy. He demands strict obedience from them. [Father] continues to have anger issues, which place this vulnerable child at risk of his intense anger outbursts when provoked. [Ms. Dixon] is concerned that he would likely beat [the Child], due to his history, noting that past behavior is the best indicator of future behavior.

G. Testimony of Ms. Gleaton

From July 2013 up until the conclusion of the TPR hearing, Ms. Gleaton, an experienced social worker with expertise in foster care, monitored Father's actions. She testified that although Father had attended numerous parenting classes and classes concerning anger management, he did not seem, to have benefitted. She provided some examples. In January 2014, Ms. Gleaton supervised a visitation between Father and his children. He demonstrated no respect for Ms. Gleaton's supervisory role and did not attend to the children's cues or follow the rules of the visit. He began the visit by picking up the 10-year-old S.A. and carrying him on his hip; additionally, he tried to kiss both boys on the lips even though they tried to pull away; he tried to sit S.A. on his lap; and whispered to the boys. Additionally, she observed him trying to pull the boys, especially S.A., between his legs. Ms. Gleaton instructed him to cease such activities but Father would not

listen. Once, when Gleaton attempted to end the visit at the designated time, Father walked over to her and "firmly hit the top of [her] back, and then leaned forward" into her face and said "[w]ell, you don't have anywhere to go. You're just going home to see your husband. You can . . . let us stay a little longer." These actions made Ms. Gleaton feel unsafe.[9] Also, in January of 2015, when the Child was in the foster home of Ms. H., Ms. Gleaton witnessed Father trying to intimidate Ms. H. and was "very aggressive" toward her.

During her testimony, Ms. Gleaton was asked to explain why she thought that Father's parental rights should be severed. The following exchange occurred:

> [DEPARTMENT'S ATTORNEY]: Ms. Gleaton, in your expert opinion, based on your education, your experience, your interactions with all of the parties that we've talked about, reading all of the reports, speaking to all the providers and the foster parents . . . um . . . is it in [the Child's] best interest to have [Father's] parental rights permanently severed?
>
> LOLITA GLEATON: Yes.
>
> [DEPARTMENT'S ATTORNEY]: Um . . . and can you tell the Court, just briefly, all the things that you've already said are obviously heard by the Court, but why do you think that?
>
> LOLITA GLEATON: He . . . he has not benefitted from the services that he has participated in. He has not exhibited . . . um . . . an ability to benefit from those services. He's had anger management, you know, domestic violence, couples therapy, individual . . . I mean, individual therapy has been going on for a very long time . . . um . . . and he still is exhibiting the same behaviors today.
>
> [DEPARTMENT'S ATTORNEY]: Okay . . . um . . . and do those behaviors, do they place [the Child] in unacceptable . . . um . . . harm?
>
> LOLITA GLEATON: Yes.

[9] Police reports and pictures show that Father is a physically imposing person; he is 6' 2" and weighs at least 200 lbs.

H. Testimony of Jacquelyn Burson

Father called Jacquelyn Burson, a clinical therapist, as an expert witness. Ms. Burson, at all times here relevant, was an employee of the Charles County Health Department.

In July of 2013, she did a psychosocial assessment of Father. She diagnosed Father as having an "adjustment disorder with mixed anxiety and depressive symptoms." She then devised a treatment plan. The goal of the treatment plan was to address "[acculturation] issues that he appeared to be having," and to also address "anger issues," and to elevate his "self-esteem and help him improve his functioning and ability" so that he could "handle all kinds of different stressors." Since July 2013, Father has regularly been treated by her, usually "every other week." During the numerous sessions she observed that Father was "engaged" and "candid." Additionally, Father "offers his own feelings and thoughts [during the various sessions] as appropriate and [as a result] we have a pretty lively engagement[,] which is very helpful."

Ms. Burson testified that during her treatment, Father has come to realize he has an anger problem and now embraces "American norms," leaving behind more Nigerian norms. In her opinion, since she began treatment with Father, he now "is calmer" and not as "aggressive."

At the commencement of therapy, Father "did not understand that he did something wrong" when beating S.A. but after therapy "he has shifted his stance on that considerably and has remorse for what he's done, understands that it was wrong and is trying to learn and change . . . [by learning] different techniques" and by changing "his own behaviors."

During therapy, Ms. Burson talked to Ms. Gleaton eight times concerning Father. Nevertheless, Ms. Burson was unaware that Father hit Ms. Gleaton, when the latter was supervising visitation or that Father had pushed and pulled Aunt O., when Aunt O. was supervising Father's visits with his sons.

Although Ms. Gleaton had testified that Ms. Burson had told her that Father was "just giving her lip service" and that she [Ms. Burson] did not believe him, Ms. Burson testified that she did not recall telling Ms. Gleaton that. Nevertheless, when asked whether Father, in fact, had been untruthful with her, she testified "I guess I wouldn't know."

The trial judge gave little weight to Ms. Burson's testimony because Ms. Burson had limited historical information. She never met the Child or any of the children's caregivers. The court noted that when she was asked whether [Father] had made "significant progress," Ms. Burson characterized his progress as "good."

I. Testimony of Alicia Myers

Dr. Myers, a psychologist, saw Father for a clinical interview on August 18, 2015 and for psychological testing on August 24, 2015. She was hired by counsel for Father to perform the interview, to write a report, and to conduct a parenting capacity evaluation. Dr. Myers testified both at the TPR hearing and at a permanency planning hearing held on October 30, 2015. The court, at the TPR hearing, took judicial notice as to what Dr. Myers had said at the earlier hearing.

Dr. Myers compared the 2015 parenting capacity evaluation test results with the earlier evaluation of 2013. She noted that the 2013 evaluation revealed "some pretty significant difficulties with his thought processes . . . attributed to the stress that he was under" but in 2015, all of those problems "had cleared up[.]" She viewed this as a significant improvement.

Regarding corporal punishment, Father told Dr. Myers that in Nigeria it was not considered abusive but rather the norm. But, as a result of the intervention of CPS (Child Protective Services), parenting classes, therapy, and anger management, he now took responsibility for his actions and realized the detrimental effect of corporal punishment on children. To Dr. Myers, Father expressed remorse for his prior actions, demonstrated a lot of knowledge about healthy parenting practices and now had a strong understanding of normal child growth and development. According to Dr. Myers, he now fully understands alternatives to corporal punishment in the discipline of his children.

Even in light of those favorable test results, Dr. Myers did not recommend immediate reunification of Father and his children. Instead, she recommended a graduated approach to reunification, i.e., moving to increase supervised visitations, then unsupervised visits, then overnight visitation. Readiness for the next step in reunification should be reassessed approximately every ten weeks. She also recommended that the Department remain involved in monitoring for safety, and compliance with the recommendations that she had made. At the TPR hearing, Dr. Myers's report, dated September 16, 2015, was admitted into evidence. In that report, one of her observations was:

> In spite of his cooperative attitude, [Father's] responses on many of the assessments produced invalid or questionably valid profiles. For instance, on the MMPI-2 and the CAPI (two measures with research-based validity scales) [Father's] responses indicated that he tried to present himself in an overly positive, socially acceptable manner, denying even commonly endorsed faults. He presented similarly on the PSI-4, answering questions in a defensive manner. As a consequence, the results from [Father's] testing should be interpreted with caution and are likely an overestimate of his actual level of functioning.

The trial judge, in her written opinion, made the following comments concerning Dr. Myers's testimony:

> Alicia Myers was retained by [Father's] counsel to conduct a parenting capacity evaluation. She was provided information from [Father's] attorney and a psychological evaluation. She did not consult with Ms. Gleaton or anyone else from the Department, as she was not given permission by [Father] to do so. She did not review any court reports or orders containing the extensive findings made in this case. She admitted that, in order to conduct an in-depth evaluation, she would need much more information. Her evaluation was based primarily on [Father's] self-report. Furthermore, his deceptive answers rendered the test results invalid. She concluded that child abuse was something [Father] will have to continually overcome, which is why she recommended gradual reintroduction of his contact with the children. She referred to contact with the children to be "stressors" for [Father]. She noted that [Father] felt threatened by children having independent thoughts.

J. Testimony of Phillip O. Thorn

Dr. Thorn first saw Father in October 2011 because, as mentioned earlier, Mother had filed an assault charge against Father based on her claim that he had thrown her to the ground and threatened to hit her with the leg of a chair.[10]

[10] Dr. Thorn said in his testimony that the reason Father saw him in October 2011 was because [Father] had a "loud argument" with his "wife." He first saw Father for anger management treatment on October 19, 2011 and the treatment continued until December of that same year.

The second round of treatment commenced on May 22, 2013. Thereafter, Father saw Dr. Thorn six times in 2013, seven times in 2014, one time in 2015 and seven times in 2016. Dr. Thorn's testimony was very favorable to Father. He stated that since the anger management treatment began Father had made "phenomenal progress." Now he is a strong advocate for non-violent treatment of children and is steadfastly against all forms of corporal punishment. He testified that tests done by Dr. Myers in August 2015 showed that there was very little likelihood that Father would commit child abuse in the future.

In addition to the anger management sessions with Dr. Thorn, Father attended fourteen sessions of parenting classes that were provided by Dr. Thorn's wife, Dr. Molly Thorn.

When analyzing the potential for future violent acts, Dr. Thorn said that whatever domestic violence there was between Father and his first wife, Ms. O., was irrelevant to him inasmuch as he was looking exclusively at the transformation that had occurred since the May 9, 2013 child abuse incident.

In preparation for his testimony, one of his items that Dr. Thorn reviewed was an evaluation, conducted in August 2015 by Dr. Alicia Myers. Dr. Myers had said in her report that Father had presented a "potential risk" based on the finding that he

> may continue to have difficulties with inhibiting his angry feelings, especially when he is provoked. According to his own self-report data, when provoked, he is at risk of intense anger outbursts that could result in dissociation. Findings indicate that [Father] struggles to maintain coping resources and contends with rather significant emotional turmoil that is chronic in nature.

Dr. Thorn testified that Dr. Myers's analysis did not comport with his "knowledge of the data that he had at that point."

Dr. Thorn, on two occasions, administered to Father the Nova Anger and Provocation Inventory test, which he characterized as the "gold standard" in the field of anger management. The test was administered to Father on November 27, 2013 and approximately two and one-half years later, on March 23, 2016. According to Dr. Thorn, when the test was initially administered, Father, even at that point, was far more likely not to become angry than the average person. The second test, taken shortly before the TPR hearing commenced, showed that out of 100 people, 84 would be more angry and express more anger than would Father.

During his various sessions with Dr. Thorn, Father expressed "tremendous remorse" for having beaten S.A. Father also told Dr. Thorn that he had even asked his son for forgiveness.

In her written opinion, the juvenile court judge expressed her views, as to Dr. Thorn's testimony, as follows:

> The Court does not give Dr. Thorn's testimony much weight, as he did not have outside, collateral information which would have been relevant in forming his opinion. His opinion was based on [Father's] self-reports and those of his anger management classmates. [Father] was not honest with Dr. Thorn in providing historical information. Dr. Thorn has provided anger management services to [Father] and [Mother] since 2011. When he testified previously at a hearing in the CINA cases, Dr. Thorn denied any knowledge of [Father's] domestic violence history. Furthermore, Dr. Thorn minimizes the assault of [S.A.], claiming it was a "misdemeanor," and that the child "triggered" [Father's] reaction. Although recognizing it would have been helpful, he did not seek input from others having extensive contact with [Father], including: Lolita Gleaton (Department of Social Services Caseworker); Seri Wilpone, Esquire ([attorney for the Child]); Markita

> Dixon (Department of Social Services Supervisor); and Phillip Thompson ([Father's] probation agent). Dr. Thorn has never seen [Father] and [Child] together. Dr. Thorn, basing his opinion on [Father's] self-report, was only advised of a "single" incident, the one involving [S.A.] on May 9, 2013. He was not provided any documentation of the extent of the child abuse. He was not aware that the medical records showed old injuries, not just from a "single" incident. Dr. Thorn was unaware of [Father's] history of domestic violence with his female partners. When questioned about prior "incidents" of concern regarding [Father's] violence, Dr. Thorn considered them "irrelevant," as they did not result in "convictions." He stated that he only looks at "convictions."
>
> From January 27, 2016, to March 23, 2016, [Father] re-engaged with Dr. Thorn for seven sessions of anger management in the free relapse prevention program offered. Dr. Thorn acknowledged that [Father] re-engaged in "preparation for litigation." Dr. Thorn dismissed the cultural differences as irrelevant, stating, in his opinion, [Father] has assimilated [into the American culture].

K. Testimony of Molly Thorn

Dr. Molly Thorn, like her husband, Dr. Phillip Thorn, is a licensed clinical counselor. She first met Father in September 2013 at a parenting workshop that she conducted. Even at that point, which was about three months after Father had beaten S.A., her "first impressions" were that Father was "kind and friendly and open[-]minded and open[-]hearted[.]"

From September 2013 until March 9, 2016, she conducted fourteen different parenting classes in which Father was one of her students. According to Dr. Molly Thorn, Father was "sincere" in his remorse at having beaten S.A. and he fully embraced the concept of mutual respect between parent and child.

Additional facts will be added in order to answer the questions presented.

II.

STANDARD OF REVIEW

> [W]hen the appellate court scrutinizes factual findings, the clearly erroneous standard of [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/Guardianship of L.B. and I.L., 229 Md. App. 566, 587 (2016) (quoting *In re: Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 100 (2010)), *cert denied*, 450 Md. 432 (2016).

Rule 8-131(c) provides:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

"[W]hen the appellate court views the ultimate conclusion of the [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [juvenile court's] decision should be disturbed only if there has been a clear abuse of discretion." *In re Yve S.*, 373 Md. 551, 586 (2003) (quoting *Davis v. Davis*, 280 Md. 119, 126 (1977)). "There is an abuse of discretion 'where no reasonable person would take the view adopted by the [trial] court,' or when the court acts 'without reference to any guiding rules or principles.'" *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (quoting *North v. North*, 102 Md. App. 1, 13 (1994) (internal citations omitted)).

To warrant reversal, the trial court's decision must "be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *In re Shirley B.*, 419 Md. 1, 19 (2011) (citation and quotation marks omitted).

III.

ANALYSIS

Pursuant to Md. Code, section 5-323 of the Family Law Article, a juvenile court has the authority to terminate parental rights if, after considering the statutory factors set forth in FL § 5-323(d), the juvenile court finds, by clear and convincing evidence, that it is in the child's best interest to terminate the parental relationship. FL § 5-323(b). The statutory factors set forth in FL § 5-323(d) that the juvenile court must consider are as follows:

> (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

(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.

Maryland's statutory scheme seeks to give foster children timely, permanent placements that protect the children's health and safety and are consistent with their best interests. *In re Adoption/Guardianship of Jayden G.*, 433 Md. 50, 54-56 (2013). It is in a child's best interests to spend as "little time as possible in foster care" and to have a permanent home. *Id*. at 84; *see also* FL § 5-323(d)(2)(iv) (requiring a juvenile court to determine whether a parental adjustment can be attained "within an ascertainable time not to exceed 18 months from the date of placement" to permit the child to return to the

parents); *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 501 (2007) ("[r]ecognizing that children have a right to reasonable stability in their lives and that permanent foster care is generally not a preferred option").

In regard to the statutory factors, the Court of Appeals has said:

> [a juvenile] 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.

Ta'Niya C., 417 Md. at 110 (quoting *Rashawn H.*, 402 Md. at 501).

A. <u>The Judge's Opinion</u>

In its twenty-four page opinion, the juvenile court analyzed each of the statutory factors set forth in FL § 5-323(d).

All of the facts found were supported by clear and convincing evidence.

The court determined that the Department had made "abundant reasonable efforts to prevent placement" of the Child in foster care and that "it would have been contrary to [the Child's] welfare to be returned" to Father's care. The court went on to point out that both the Father and the Mother were ordered to, and did receive, numerous services provided by the Department including "parenting classes; anger management classes; individual therapy; and the NOVO Parenting Program." The court found that despite these reunification services, Father was unfit to remain in a parental relationship with the Child.

The court, in many respects, found Father not to be a credible witness, and based on clear and convincing evidence, concluded that Father "severely beat" S.A. and had inflicted "physical punishment" on the Child. The court also found that Father took no responsibility for his role in the actions that required that his three children be removed from his care, nor did he take responsibility for his actions in general. The court further found that both Father and his witnesses "minimize his propensity for violence and inability to manage his emotions appropriately." The court also found that "[Father] has attempted to deny, minimize, and blame others for his anger and volatile behavior."

B. First Argument Presented

Father asserts that the evidence produced by the Department regarding the Child's circumstances and her progress in foster care were not sufficient. In support of the foregoing assertion, Father argues

> As there was limited evidence presented regarding [the Child] specifically and the evidence which was presented regarding her did not support the conclusion that it would be in [the Child's] best interests to sever the parental relationship, there was insufficient evidence to support the court's conclusion regarding [the Child's] best interests. Consequently, the [c]ourt erred by concluding that it was in [the Child's] best interests to terminate all ties between [the Child] and [Father].

We disagree with appellant's assertion that "there was limited evidence presented regarding [the Child] specifically" and his claim that the evidence did not support the judge's conclusions. There was plenty of evidence produced as to the Child. Moreover, the evidence produced by the Department did support the judge's conclusion. The relevant findings and conclusions were:

- "The abuse [Father] inflicted upon [S.A.] was so outrageous and so severe that this [c]ourt has not been able to, and will likely never be able to, find that there is no likelihood of future abuse of [the Child], were she to be returned to [Father's] care."
- To return the Child to Father's care would present the child with an "unacceptable risk of harm."
- The Child is in need of a permanent home, which can only be achieved by the court's granting the petition because even if the court denied the Department's petition, permanence for the Child would not result because it was unlikely that the court would ever make the finding required by FL § 9-101 (i.e. that abuse would not occur if Father was granted unsupervised visitation or custody). Thus, the Child would languish in "limbo" even though she has already been in foster care for 40 months.
- The Child is in a safe and stable pre-adoptive home, has a close bond with her foster mother and her foster mother's family.
- The Child has adjusted well to her community, is doing well in school and has no behavioral issues.
- Mother supports placement and adoption of the Child by her present foster mother, Ms. A.
- The child loves her natural parents, but she is indifferent when Father does not appear for visits.
- The Child has had a connection with Ms. A. from their first meeting. "Her pre-kindergarten teacher for the 2015-2016 school year, describes [the Child] as a delight in the classroom. [The Child] is doing extremely well in school. She gets along well with her classmates. She performs average to above average in all areas measured." The child refers to Ms. A. as "Mom," and she is safe, healthy and happy in the home and has no "behavioral issues."
- Since the Child has been placed in the foster care of Ms. A., she has "blossomed into an affectionate, confident, less-stressed child."
- The Child enjoys the benefit of Ms. A.'s parents and sister, who live in the home. The Child refers to Ms. A's parents as "Grandma," "Grandpa," and "Auntie."
- The Child has fully integrated into her foster family.
- Kyle Austin, a worker/transportation aide, for the Department, who has interacted with the Child approximately 40-45 times, observed the Child to be "very affectionate" with Ms. A. and her family members.

In a closely related argument, appellant asserts that while

> [t]here was limited testimony regarding [the Child's] relationship with Ms. A., there was ample testimony showing the parents continued relationship

> and bonding with [the Child] and hers with them and [the Child's] desire to be reunited with them. Consequently, there was insufficient evidence to support a conclusion that it was in [the Child's] best interest to be adopted by Ms. A. Accordingly, the [c]ourt erred by concluding that it was in [the Child's] best interests to terminate all ties between her [and her] natural father.

The evidence concerning the Child's relationship with Ms. A., already summarized, cannot be fairly characterized as "limited." Moreover, all the court's findings concerning that relationship were supported by strong evidence. It is true, as appellant points out, that the Child is still bonded with Mother and Father. But, no evidence was presented to show that as of the dates of the TPR hearings that the Child wanted to be reunited with Father and taken out of the care of her foster mother, Ms. A.[11]

Appellant complains that the trial judge's finding that Mother "supports placement with Ms. A. provided that she adopts [the Child] was neither testified to by [Mother] at trial nor was any documentary evidence introduced to support that conclusion." This complaint is misleading. At the beginning of the TPR hearing, on February 5, 2016, the parties agreed to the fact that Mother, on February 4, 2016, had signed a consent to termination of her parental rights. The parties also agreed, as the court found, that her consent was conditional. Given the agreement of the parties on that issue, no other proof was necessary.

Under his first argument, Father also contends that the court's finding that the Child is indifferent when Father does not appear for visitation "is not supported by the

[11] The Child's attorney strongly agreed with the Department's conclusion that TPR was in the Child's best interests.

[s]upervised [v]isitation [n]otes" or the testimony of Chenee Hamilton and is therefore "clearly erroneous."[12] Kelly Hutter, an employee of the Promise Resource Center, supervised visits between the Child and her parents between November 2015 until March of 2016. As mentioned earlier, during that period, Father failed to attend eight of the thirteen visits. She testified that when Father did not attend visits the Child did not show "disappointment." Not showing disappointment when a parent misses a visit, is the functional equivalent of being indifferent to a parent's failure to appear. Thus the trial judge's finding that, when Father missed supervised visits the child was indifferent, was supported by Ms. Hutter's no "disappointment" testimony.

C. Second Argument Presented

Appellant argues that the "evidence did not support the conclusion that [Father] was unfit to maintain a parental relationship with his daughter . . . ." To support that argument, appellant makes many criticisms of the trial judge's written opinion. But before addressing those criticisms, it is important to note that appellant's brief does not discuss at all how badly S.A. was beaten on May 9, 2013. Both the Department and the court were very concerned about the severity of the May 9th beating, but none of the experts called by appellant appeared to know the details of, or the severity of, that beating. The damage

[12] Chenee Hamilton testified at the October 30, 2015 permanency plan review hearing; of which the court took judicial notice. The last visit she supervised was "August 2015." In her testimony, Ms. Hamilton did not say, one way or another, whether the Child was indifferent when Father did not appear for visits. There was a good reason why she was silent in this regard. When she supervised the visits, Father never missed any visits. Moreover, contrary to appellant's implied argument, her notes say nothing about missed visits.

inflicted on S.A. was shown by the nurse's notes, which were made on the day after the May 9, 2013 beating. Those notes prove that S.A. had been beaten, almost literally, from head to toe. Those notes also show that the May 9th beating was not an isolated incident. Moreover, the evidence showed that M.A. had also been beaten with a belt by Father, prior to the time that the Child was declared to be CINA, and that Father had also punished the Child by hitting her with a belt.

The way that Father presented himself to the experts who testified on his behalf such as Dr. Thorn, was that the beating of S.A. resulted from an isolated explosion of anger. But the evidence, at least if taken in the light most favorable to the Department, showed that far more than a fit of anger was involved. The beating was premeditated as shown by the fact that Father took the time to shower with his son prior to hitting him with a belt at least 25 times. This was an act of unusual cruelty, as shown by the testimony of Ms. Cupples who said it was one of the worse cases of child abuse she had ever seen. In evaluating the best interests of the Child, the trial judge inferred, and was justified in doing so, that past actions can be predictive of future ones. The trial judge, as the trier of fact, was not required to, and did not believe, appellant's claims of rehabilitation or remorse.

One of the factors the court was required to consider in making its TPR decision was whether, if the Department's petition were denied, there was any likelihood, in the foreseeable future, that Father could resume custody. If he could not resume custody, then the Child would languish in foster care indefinitely. This was exactly the determination that the trial judge made in her written opinion where she said: "[s]ince the [c]ourt cannot make the Family Law Article, Section 9-101 findings, were [the Child] returned to

[Father's] care, denial of this petition would leave the child in a state of limbo, which is contrary to her welfare." Later in the opinion, the court said, based on strong evidence, that the Child was "in need of a permanent home, which can only be achieved by the [c]ourt's granting the petition."

In support of his argument regarding evidentiary insufficiency, appellant asserts that the Department "failed to assist [Father] to achieve his stated goal of reunification with his family and failed to provide appropriate counseling in terms of couples' counseling, family reunification counseling and/or parent-child interaction therapy." We disagree.

The trial court's finding that the Department "made outstanding and abundant efforts, above and beyond reasonable efforts, to . . . finalize a permanency plan of reunification" was supported by the evidence produced by the Department. The Department obtained psychological evaluations of Mother, M.A., S.A., and Father; bonding assessments of Father and his sons; individual therapy for Father; a parenting assessment and training for Father; anger management counseling for Father; couples counseling; domestic violence counseling; and supervised visitation. Under the circumstances, it is difficult to see how the Department could have done more.

Despite Father's argument to the contrary, the Department did provide Father and Mother with couples counseling. Such counseling was provided by Dr. Veronica Lynch, a contract clinical social worker at an organization called "All That's Therapeutic, Inc." That counseling was provided to Father and Mother between April 23, 2015 and October 16, 2015, even though Father and Mother were never married. That counseling continued until the permanency plan was changed from reunification to TPR and adoption. Appellant

provides no support for his argument that such couples counseling was somehow not "appropriate," or that more was needed.

It is true that the Department did not provide Father with "family reunification counseling and/or parent-child interaction therapy" but in his brief, appellant does not ever argue that he needed such counseling, or that the outcome of the case may have been different if the counseling had been provided.

In his reply brief, Father changes the thrust of his argument (slightly) by contending that while the Department "may have provided [Father] with services as required by the statute, [it refused] to acknowledge any progress which he made and failed to encourage him by increasing his access to [the Child]." There are at least two answers to this belated contention. The Department, during the years the Child was in foster care, did increase Father's access to the Child. By the time of the TPR hearing, he was allowed to visit the child once per week and had the right to maintain telephone contact with the child twice per week. Second, and more important, it was a matter of debate as to how much "progress" Father had actually made. Two expert witnesses who testified for the Department (Ms. Gleaton and Ms. Dixon) did not believe that Father had made significant progress and there was good reason to support that view. While it is true that Father put on witnesses who, if believed, demonstrated that he had made significant progress since the date that the children were found to be CINA, the trial judge made it clear in her opinion that she did not credit that testimony; instead, she credited the testimony of Ms. Gleaton and Ms. Dixon.

Father also criticizes the Department by asserting that it: "actively sought to drive a wedge between [him] and [Mother] and to eliminate him from the picture. They dealt with him as an afterthought and the record reflects that [the Department's] main focus was [on Mother] and [the Child]." This criticism misconstrues the evidence.

Ms. Gleaton, the expert witness who had the most contact with Father, Mother and the Child, was of the opinion that it was too dangerous to allow Father, Mother and the Child to live together under the same roof. The past abuse by Father of his sons, certainly justified that opinion and it was for that reason that the court, at the August 21, 2014 permanency plan review hearing, made it clear that it was allowing Mother to have custody of the Child based on Mother's representation that Father and Mother were no longer in a relationship. The evidence showed that neither Ms. Gleaton nor the Department tried to "drive a wedge" between Mother and Father; they simply would not allow Father, with his history of child abuse, to live in the same house with Mother and the Child. To have permitted such an arrangement, would have been tantamount to allowing Father to have unsupervised visits with the Child. The Department could not legally have allowed this because at several permanency plan review hearings, the juvenile court explicitly said that it could not make the finding, required by FL § 9-101(b), i.e., a finding that if a parent were granted unsupervised visitation or custody of a child there would be no likelihood of child abuse or neglect.[13] Moreover, the Department did not deal with appellant as an

[13] FL § 9-101(b) reads as follows:

(continued…)

"afterthought": rather the record shows that the Department expended significant resources and manpower in an effort to help Father overcome his serious weaknesses as a parent.

Father also criticizes the Department for "negatively concluding that he continues to be a danger to [the Child] without any proof that he was ever a danger to her." There was significant proof that Father was a danger to the Child. For starters, if a father seriously abuses one of his children, it can be rationally inferred that he will abuse that child's sibling. Moreover, there was direct evidence in the record that Father beat the Child prior to the time she was found to be CINA. Evidence introduced at the TPR hearing, without objection, showed that Mother said so, as did M.A. Additionally, there was evidence that when Father and Mother had custody of the Child, they frequently left the Child at home without any adult supervision.

In further support of his argument that the evidence was insufficient to support the court's conclusion that Father was unfit to maintain a parental relationship, Father asserts that the trial judge choose to "disregard" and "discount" all Father's "efforts" and to also disregard and/or discount the "favorable reports" of the various experts that he called as witnesses. The trial judge did not "disregard" the testimony of the experts called by Father; instead, the judge simply did not accord that testimony much weight. Nor did the court

(…continued)

> (b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

disregard appellant's efforts. Instead, the court did not believe appellant when he said, in effect, that he had been rehabilitated. The court, as was its prerogative, relied on the testimony of the Department's experts, who disagreed with the conclusions reached by the experts Father called. The trial court, of course, as the finder of fact, had the duty to weigh the evidence and, in doing so, was not required to believe, or give weight to, the testimony of any witness – including the expert witnesses called by Father.

Appellant also argues that the lower court inappropriately focused on whether Father "was capable of resuming physical custody, rather than on whether he and [the Child] could have a continued parental relationship." We disagree. In finding that Father was unfit, the court, as it was required to do, focused on the TPR factors set forth in FL § 5-323(d).

Next, appellant contends that the court's finding "that the [Child] had . . . suffered injuries" due to Father's actions "was not based on clear and convincing evidence." The only finding that the juvenile court made that is relevant to this last argument is the finding that Father "severely beat [the Child's] brother, and he has used physical punishment on [the Child]." This finding was supported by clear and convincing evidence. Such evidence was produced by Ms. Cupples who stated that when she interviewed M.A. on the day after his brother was beaten, M.A. told her and a detective that Father and Mother hit all three children, i.e., himself, S.A., and the Child. Also, as previously stated, M.A. told Dr. Jenkins that Father hit all three of the children with a belt and Mother told her therapist that both she and Father had beaten all three children. If a parent beats a two-year-old child with a belt, it can be inferred, legitimately, that the Child was "injured" at least temporarily.

The fact that appellant testified that he never beat the Child, does not, as appellant argues, demonstrate that the evidence in this regard was not "clear and convincing."

Father next takes issue with the trial judge's finding that he "minimizes and blames others for his 'anger and volatile behavior,' citing a June, 2011 incident between [Father] and [Mother] totally disregarding [Father's] testimony concerning what happened." To understand this argument, the following part of the trial judge's opinion is relevant:

> [Father] has attempted to deny, minimize, and blame others for his anger and volatile behavior. An incident between [Mother] and [Father] in June, 2011, when the family was living in Oxon Hill, Maryland, involved the police being called due to domestic violence. [Mother] reported [Father] throwing her to the ground and threatening to hit her with the leg of a chair he had broken. His version of the event was that he was working three jobs, and [Mother] was not working. They were behind in the rent. [Mother] asked him to leave the home, and he refused. He claimed [Mother] could not control her emotions. However, he was arrested as a result of this incident. The police report from this incident notes it was the third domestic violence investigation between the couple to which the officer was dispatched. [Father] fled the scene prior to the arrival of the police, as he had done on previous occasions. After this incident of domestic violence, [Father] began anger management services with Philip Thorn, Ph.D.

The court's finding in regard to the June 2011 incident, was fully supported by a police report, which was introduced into evidence without objection. And, as can be seen, the trial judge did not disregard Father's testimony concerning what happened. The trial judge simply did not believe Father's version of events.

Father next contends that the trial judge was "not accurate" when she said that the family had a history (prior to the date that the Child was found to be CINA) of moving before services could be put into place. Once again we disagree. The evidence showed that Father and Mother moved several times within two years prior to the date that the

Child was found to be CINA. The family lived in Virginia; Washington, DC; Prince George's County; and Charles County. S.A. and M.A. had been in four schools in two years. And, as a result of a December 2011 report of abuse to the Prince George's County Department of Social Services, both S.A. and M.A. were sent for treatment. M.A. received, for a time, treatment at "All That's Therapeutic, Inc." but that treatment ceased in February 2013, when Father and his family moved to Charles County. S.A. was sent to treatment with Dr. Herman Tolbert, a psychologist at CNMCAOP. His treatment had to be discontinued in February 2013 because the family moved. Dr. Tolbert recommended that S.A. receive a neuropsychological evaluation, but S.A. and his family moved to Charles County prior to such an evaluation being made. Contrary to appellant's contention, the trial judge did not err when she found that Father and his family "had a history of moving before services could be put in place."

Appellant contends that, contrary to the court's findings, "there was no evidence provided that [Father] had spent even one unsupervised minute with [the Child]. We disagree. There was strong circumstantial evidence that by September 2, 2014, when Ms. Gleaton made her safety inspection of the Laurel townhouse, Father was living full-time with Mother and the Child. That arrangement allowed him, in essence, unsupervised visitation.

The next criticism involves the following excerpt from the court's opinion:

> There were incidents of domestic violence between [Father] and [S.A.] and [M.A.'s] mother, . . . [Ms. O.]. The boys' uncle, [Uncle O.] testified that the fighting between the couple was "barbaric." He described her crying following encounters with [Father]. She filed three petitions for protection from domestic violence against [Father]. In one of the complaints,

> she alleged that he threatened to kill her and the children if he were to be deported. He also threatened to kidnap and take the boys to Nigeria. Although two of the incidents were not pursued beyond the Temporary Protective Order stage, [Father] admitted to domestic violence in that relationship. However, he denied his culpability in the incidents, while admitting there was domestic violence in his relationships. He claims the prior incidents consisted of "false accusations" against him.

Appellant has four criticisms concerning the excerpt at issue. First, according to Father, the court "failed to note" that the third petition for protective order involved allegations that were "all against [Mother]." The third petition, to which appellant refers, did not contain allegations of abuse only against Mother. That petition named Father as the sole defendant and alleged, *inter alia*, that Father was "a criminal." Petitioner added: "I am afraid of (sic) my children living in his residency (sic) [and] the abuse they are receiving from both [Father] and [Mother]."

The second criticism is that the trial judge "failed to note [that] two [of the petitions] were dismissed because, '[p]etitioner could not meet the required burden of proof.'" It is true that the trial judge did not mention why the petitions were dismissed, but we fail to see how this is important inasmuch as the trial judge explicitly noted that two of the petitions were not "pursued beyond the Temporary Protective Order stage."

The third criticism of the portion of the judge's opinion last quoted is that the trial judge "never once consider[ed that] he could have been the victim." As far as we can see, there was no indication in the record that Ms. O., Father's ex-wife, ever committed any act of domestic violence against Father. Under such circumstances, it is impossible to fault the trial judge for not considering that Father might have been a victim of Ms. O.'s domestic violence.

The appellant contends that the court mischaracterized Uncle O.'s testimony when the judge quoted Uncle O. as saying that the fighting between Father and Ms. O. was "barbaric." This is technically true. Although Uncle O. did testify that there was fighting between his sister [Ms. O.] and Father and that the fighting would cause his sister to cry, when he used the adjective "barbaric," he said that he meant that the relationship was barbaric or "crazy" because for a long period of time Father would not marry his sister and he (Uncle O.) could not understand why the couple was still together after all his sister "went through with him." This slight mischaracterization on the part of the court was harmless.[14]

Appellant spends considerable effort in his brief pointing out evidence that the court "failed to mention" in its opinion or, according to appellant, "failed to consider." These criticisms are not valid. It would be almost impossible in a case such as this, with such a voluminous record, for a judge to set forth all the facts that the court considered at trial. Moreover, it is black-letter law that a trial judge is not required "to articulate every fact upon which [it] relies," as long as it sufficiently considers the relevant issues. *See e.g. Cousin v. Cousin*, 97 Md. App. 506, 518 (1993); *see also Flanagan v. Flanagan*, 181 Md. App. 492, 533 (2008)("[u]nder discretionary review, a trial judge's failure to state each and every consideration or factor does not, without demonstration of some improper consideration, constitute an abuse of discretion, so long as the record supports a reasonable

[14] In a civil case, such as this, in order for an appellant to show reversible error, the burden is upon the appellant to not only show that the Court erred but to also show that he or she has been harmed by the error. *Crane v. Dunn*, 382 Md. 83, 91 (2004).

conclusion that appropriate factors were taken into account in the exercise of discretion") (citations and quotation marks omitted). When the court analyzed the FL § 5-323(d) factors, the court clearly took into account the appropriate factors.

Another alleged error in the trial judge's written decision, is that the trial judge, purportedly, found that Mother and Father "never informed [the Department] of the intended move to Laurel, Md." The short answer to that contention is that is not what the trial judge found. The trial judge said, in relevant part,

> [u]nbeknownst to the Department and the [c]ourt, by September 1, 2014, [Mother] moved [the Child] into a home [Father] was renting from his uncle. Father and Mother never informed the Department or the [c]ourt of this move, which was clearly in violation of the court order placing [the Child] with [Mother] and the safety plan, placing [the Child] at risk.

What the trial judge said was true. Prior to the date they moved in together, neither Father nor Mother gave the Department even a hint that they intended to cohabitate. Appellant's contention that the trial judge erred in this regard is frivolous.

Next, appellant argues that the trial judge improperly inferred that "because of [Father's] heavy accent and awkward sentence construction in English, he is lying." There is nothing in the record to even suggest that this allegation is true. In this case, it was important for the trial judge to make an assessment as to Father's credibility. That assessment was not favorable to Father. But that does not support an inference or even a suggestion that the trial judge was somehow prejudiced against Father because he was from another country or spoke with a foreign accent.

Next, appellant contends that the trial judge "drew conclusions" that "were not supported by the testimony." The key word in that argument is "testimony." All of

appellant's argument immediately following that contention ignores the fact that the trial judge, quite properly, relied at times on documentary evidence.

Appellant also faults the court for stating that Father "displays bizarre and unacceptable disciplinary techniques." In this regard, appellant criticizes the trial judge for not identifying what techniques she was talking about. Read in context, it is clear that the trial judge was speaking about what went on immediately before and after S.A. was severely beaten, i.e., Father taking a shower with his nine-year-old son, and making him stand in an awkward position while being struck.

Appellant also complains that the trial judge said in her opinion that "other Nigerians do not treat their children the way he does, including the ritualistic bathing," According to appellant, there was (purportedly) no evidence regarding "ritualistic bathing." There was such evidence, i.e., the evidence concerning Father's showering with his son and washing his genital area before beating him unmercifully. Appellant adds that, in any event, the trial judge should not have considered the "ritualistic bathing" because such bathing was never identified or discussed "in any of the F.I.M.s [family involvement meetings], psychological reports, Orders, or brought to the attention of any of his counselors or therapists." Appellant may be correct as to who was made aware of appellant's practices. But his bizarre and unacceptable disciplinary techniques were brought to the attention of the investigating police officer and Ms. Cupples when they interviewed S.A. on the day following the beating and was therefore known by the Department at the time of the CINA hearing and thereafter. We therefore reject appellant's

implied contention that appellant's "ritualistic bathing" practices were unimportant or irrelevant.

Next, appellant criticizes the trial judge for considering the bonding assessment between Father and his two sons and discussing, in her written decision, the boy's feelings concerning whether they wanted to be under the care of Father. According to appellant, the feelings of the Child's two step-brothers had "no bearing or relevance with respect to [the Child]." We disagree. When two children, both under the age of ten (10), tell a third-party that they are afraid of their father and would rather go into foster care than live with him, those sentiments reveal quite a bit about a father's past behavior as a parent.

In order to understand the next criticism of the judge's decision, the following paragraph from that decision is relevant.

> Throughout his testimony, [Father] justifies, minimizes and blames others for his actions and reactions. His demeanor on the stand is consistent with the Psychological Evaluation of 2013 (Petitioner's Exhibit #3) and Parenting Capacity Evaluation of September, 2015 (Petitioner's Exhibit #4). His version of incidents and events is not credible.

Appellant's criticism of the words just quoted is that the trial judge failed to make "any specific reference to where [the fact that Father justifies, minimizes and blames others] appears in the reports." Significantly, however, appellant does not claim that the court was wrong when it stated that appellant's demeanor on the stand was consistent with what was said in Petitioner's Exhibits 3 and 4.[15]

[15] There is no requirement that a judge point out what part of an exhibit supports his or her finding. In any event, the reports do support what the trial judge said. The part of Petitioner's Exhibit 3, to which the court was apparently inferring read:

(continued…)

Appellant also claims that the trial judge erred when she said, based on Dr. Myers's testimony and report, that appellant had "disturbed or unconventional thinking and

(…continued)

> [Father] presented himself in a very positive light by denying several minor faults and shortcomings that most people acknowledge. This level of self-presentation is often seen in individuals who are facing legal difficulties or come from particularly conservative backgrounds. Given these response patterns, [Father's] results [from the MMPI-2-RF test] were interpreted with caution and may not be fully reflective of his true personality functioning. … He reports unusual thought processes. He is likely to engage in unrealistic thinking and to believe he has unusual sensory-perceptual abilities.

In regard to Petitioner's exhibit 4, the court was apparently referring to the following words in Dr. Myers's report:

> In spite of his cooperative attitude, [Father's] responses on many of the assessments produced invalid or questionably valid profiles. For instance, on the MMPI-2 and the CAPI (two measures with research-based validity scales) [Father's] responses indicated that he tried to present himself in an overly positive, socially acceptable manner, denying even commonly endorsed faults. He presented similarly on the PSI-4, answering questions in a defensive manner. As a consequence, the results from [Father's] testing should be interpreted with caution and are likely an overestimate of his actual level of functioning.

The report (Petitioner's exhibit 4) goes on to say that when Father took another test the results "indicated that he responded in an overly virtuous manner." The testing results also indicated "defensiveness and an unwillingness to acknowledge psychological distress." His responses to the CAPI test indicate "an attempt to present himself in a favorable light, to the extent that he elevated the Lie scale and the Fake Good Index." The report also says that there "are times when [Father] engages in disturbed or unconventional thought processes. Indeed, he may only pay lip service to behaving in conventional ways when he thinks that doing so would be in his best interest." After saying that this may be due to "cultural variables" the report goes on to say that Father "does often feel as though he is being unfairly criticized, misunderstood, and/or persecuted."

delusions of persecution." The trial judge did not err in this regard; that is what Dr. Myers said, in essence, in Petitioner's Exhibit 4. *See* footnote 15.

In the court's decision, the following sentence appears ["Dr. Myers] concluded that child abuse was something [Father] will have to continually overcome, which is why she recommended gradual reintroduction of his contacts with the children." (emphasis added). Appellant states that, in the part of the quote emphasized, the court's summary of Dr. Myers' testimony is erroneous. What the court said in the sentence just quoted was a fair summary of what Dr. Myers said, on cross-examination, by counsel for the Department, at the October 30, 2015 hearing, of which the trial judge took judicial notice.[16]

Appellant criticizes numerous other findings of fact made by the trial judge on the grounds that they (purportedly) were not proven by "clear and convincing evidence." We will not discuss these criticisms individually because they are all based on a false premise, i.e., if a fact was proven by testimony of a witness or by an exhibit that was contradicted by other witnesses or other evidence, the court's finding as to that disputed fact is not based on "clear and convincing evidence." Whether evidence is "clear and convincing" depends, not on the number of witnesses called or number of exhibits introduced, but on the evaluation of that evidence by the trier of fact (in this case the trial judge) who then decides whether in his/her mind the evidence is clear and convincing. *See* Md. Rule 8-131(c). An

[16] The cross-examination brought out the fact that: (1) Father continues to have "anger" problems; (2) Father is still required to have anger management therapy; (3) Father still has an adjustment disorder; (4) Father is still "at risk for aggression;" and (5) because Father still has anger issues, which puts him at risk for aggression, Dr. Myers recommended supervised visitation, rather than unsupervised visits with the children.

appellate court, of course, is not allowed to re-weigh the evidence or determine which part of the evidence the judge should have credited.

CONCLUSION

A trial judge, in many situations, is required to decide whether an individual who has in the past committed a bad act, or series of bad acts, is truly rehabilitated. If not rehabilitated, that individual is likely to re-offend. What frequently makes the decision controversial is that the individual who has offended will profess sorrow for his/her past actions and provide reassurances to the court that the prior bad act(s) will not recur; sometimes, the individual also convinces experts that what he/she says about remorse and rehabilitation is true. This is the situation with which the trial judge in this case was presented. The judge, among other things, made a demeanor-based decision that appellant was deceptive in his testimony and gave little weight to the opinions of appellant's experts. And, based on Father's past cruel behavior, the court concluded that Father presented a danger to the Child. That decision was rationally based on the evidence presented by the Department, and was not clearly erroneous.

Importantly, at the time of the TPR hearing, the Child had been in foster care for more than half of her life. If the court had decided not to terminate appellant's parental rights, the Child would have been in legal limbo – even though it was clearly in her best interest to have permanency, which could be provided by Ms. A.

Throughout the trial judge's opinion, the judge, as required, focused on the question of whether it would be in the best interest of the Child to terminate Father's parental rights. None of the trial judge's factual findings, in regard to the FL § 5-323(d) factors were clearly

erroneous. Under these circumstances, the trial court did not abuse its discretion in deciding that Father's parental rights should be terminated.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.