UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2251

September Term, 2014

IN RE: ADOPTION/GUARDIANSHIP OF SHYREESE J.

Eyler, Deborah S.,
Hotten,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: June 10, 2015

Jeffrey J., appellant, the father of Shyreese J., appeals from a judgment of the Circuit Court for Harford County, sitting as the juvenile court, terminating his parental rights and granting guardianship of Shyreese to the Harford County Department of Social Services ("DSS"), appellee, with the right to consent to her adoption. Appellant presents one question for our review:

> "Did the court err in terminating parental rights, where the court failed to make a finding about parental unfitness or exceptional circumstances prior to determining what was in the child's best interests?"

Because the court failed, as required by the statute, to make an express finding as to parental unfitness or an exceptional circumstance that would make continuation of the parental relationship detrimental to the best interest of the child, we shall reverse.

I.

Shyreese J., appellee, was born on December 21, 2007. Appellant is Shyreese's father and Bernadette D. is her mother.[1] On March 24, 2011, the juvenile court declared Shyreese to be a Child in Need of Assistance ("CINA"), and committed her to the custody of DSS, placing her in foster care.[2] On June 28, 2012, DSS filed a petition to terminate appellant and

[1]Bernadette D. did not object to the termination of her parental rights and is not a party to this appeal.

[2]A "Child in Need of Assistance" means a child who requires court intervention because the child "has been abused, has been neglected, has a developmental disability, or has a mental disorder [and] [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Maryland

(continued...)

Bernadette D.'s parental rights, which, after a hearing, the court granted on December 17, 2014.

The following evidence was presented at the termination of parental rights ("TPR") hearing. On December 21, 2007, Shyreese was born drug-exposed and premature. She entered foster care immediately, where she remained until November 16, 2010, at which time appellant took custody of her. In December 2010, Shyreese developed a severe rash that had spread over her body in the course of five days. Appellant took her to Upper Chesapeake Medical Center where she was admitted for an infection. During Shyreese's initial stay, hospital staff encountered problems with appellant and Bernadette, including the fact that they had left Shyreese alone, despite her young age, that appellant failed to help change and feed Shyreese, and Bernadette had left Shyreese's fifteen-year-old sister, Shyra, alone in the room with Shyreese, which was against hospital policy. Barbara Mitchell, an investigator with DSS, received a referral to investigate allegations of medical neglect of Shyreese. On December 17, 2010, the hospital discharged Shyreese to her parents' custody.

On February 6, 2011, Mercy Medical Hospital contacted the Harford County Sheriff's Office to investigate a suspected case of medical neglect. Shyreese's rash had resurfaced and appellant had sent her and Shyra on a bus, alone, to the hospital. Detective Vazquez arrived at the hospital and observed that the rash had covered parts of Shyreese's body and there was a strong body odor permeating her hospital room. Bernadette was in the room and told the

[2](...continued)
Code (2006, Repl. Vol. 2013) § 3-801(f) of the Courts and Judicial Proceedings Article.

officer that Shyreese's rash never cleared up since her previous hospital visit and that she had not been bathed because of the rash. In February 2011, DSS requested authority to place Shyreese in foster care, which the juvenile court granted.

Renee Little, a foster care worker, placed Shyreese with foster parent, Kelly S. During the four months that Ms. Little was Shyreese's foster care worker, appellant visited Shyreese only once. On that visit, Shyreese was excited initially to see appellant, but soon became frightened. Appellant stated that Shyreese became defensive and refused to engage with him because the social workers were involved. At an adjudication hearing on March 9, 2011, Ms. Little encouraged appellant to contact her to schedule additional visits, but he failed to do so without explanation.

On April 15, 2011, appellant attended a psychological evaluation with Dr. Nelson G. Bentley, which DSS provided. Dr. Bentley determined that appellant was unable to follow through with necessary tasks and that he had difficulty taking care of himself. He concluded, however, that although there were a number of concerns with appellant's ability to parent Shyreese, reunification was a possibility if appellant cooperated with DSS and followed recommendations. One of the recommendations was to participate in an anger management program, which appellant never completed.

From June 2011 to May 2012, Katelyn Salmon was Shyreese's foster care manager. She offered reunification services to appellant, including supervised visits with Shyreese. Ms. Salmon noted that appellant visited Shyreese inconsistently and that he would cancel and

miss visits on several occasions. Ms. Salmon observed that appellant spent a lot of time during a visit on his phone and would interact minimally with Shyreese. Appellant also liked the fact that Shyreese's foster mother was present at the visits so that she could take Shyreese to the bathroom when necessary.

From July 2012 to March 2014, appellant visited Shyreese on four occasions, even though DSS offered twenty monthly visits. On September 3, 2013, appellant visited Shyreese at a Chik-Fil-A restaurant where he brought Bernadette and three of Shyreese's siblings. A DSS social worker testified that appellant and Bernadette were very "hostile and argumentative" during the visit, which made Shyreese upset to the point where she was clinging to the worker's legs and hiding behind her. On another occasion at a DSS playroom, there was minimal contact between Shyreese and appellant. The social worker testified that Shyreese "appears to know who he is, but they don't really have a lot of interaction." Appellant never inquired about Shyreese in between the sporadic visits.

In addition to the supervised visits, DSS offered appellant several additional services notwithstanding the fact that he never asked for special services or classes. DSS provided transportation services, an anger management program, parenting classes, a substance abuse evaluation and financial assistance. Appellant, at times, refused to use the taxi provided, never completed the anger management program and tested positive for alcohol. As indicated, appellant attended a psychological evaluation with Dr. Bentley and he completed parenting classes.

On June 28, 2012, DSS filed a petition for guardianship seeking to terminate appellant and Bernadette D.'s parental rights to Shyreese. On July 30, 2012, appellant filed a written objection to the termination of his parental rights. Bernadette D. did not object. On September 19, 2012, Shyreese, through her counsel, filed a response supporting DSS's petition that "it is in her best interest . . . for the Department of Social Services to obtain guardianship with the right to consent to adoption and/or long-term foster care."

On December 17, 2014, after a three day hearing, the juvenile court issued an order granting DSS's petition for guardianship seeking to terminate appellant's parental rights to Shyreese. Accompanying its order, the court issued a seventeen-page memorandum opinion addressing thoroughly all of the factors required by Maryland Code (1984, Repl. Vol. 2012) § 5-323(d) of the Family Law Article.[3] The court concluded, in pertinent part, as follows:

> "Having given consideration to all of the factors set forth in Family Law Article Section 5-323(d), this Court finds by clear and convincing evidence that terminating the parental rights of [appellant] is in the bests interest of [Shyreese]. Upon presentation, an Order to that effect shall be signed."

The court did not address whether appellant was unfit to continue in a parental relationship with Shyreese or whether there were exceptional circumstances making the continuation of a parental relationship with appellant detrimental to Shyreese's best interest.

This timely appeal followed.

[3]Unless otherwise indicated, all subsequent statutory references herein shall be to the Family Law Article.

II.

Before this Court, appellant argues that the juvenile court erred by terminating his parental rights. He asserts that the State failed to demonstrate by clear and convincing evidence, and the court did not make a finding, that he was unfit to parent Shyreese or that exceptional circumstances existed that would make a continued parental relationship detrimental to the best interest of the child. Appellant argues that the juvenile court is required to make an express determination as to parental unfitness or the existence of a special circumstance to terminate his parental rights. Because the court failed to explain the connection between its findings pursuant to the factors delineated by § 5-323(d) with whether he was unfit to remain Shyreese's parent or that exceptional circumstances existed to terminate the relationship, appellant concludes, the court's order terminating his parental rights should be vacated.

Appellees, DSS and Shyreese, disagree as to the disposition of the case *sub judice*. DSS agrees with appellant that the juvenile court erred by not making the required statutory finding of parental unfitness, but contends, contrary to appellant, that the evidence was sufficient for the court to make such a finding and hence, the matter should be "remanded for further proceedings to determine Shyreese's current circumstances and best interest" and whether, in light of those circumstances, appellant is unfit to remain in a parental relationship and/or exceptional circumstances exist such that terminating his parental rights is in Shryeese's best interest. Shyreese contends that the juvenile court considered properly and

extensively the required statutory factors in § 5-323(d). She argues that the evidence supports a conclusion that it is in her best interest that appellant's parental rights are terminated and that an express recitation of parental unfitness or exceptional circumstances is not required. Accordingly, while DSS concludes that we should remand the matter for further proceedings, Shyreese contends that the juvenile court's order terminating appellant's parental rights should be upheld.

III.

Appellant contends that the juvenile court erred by terminating his parental rights because it did not make an explicit finding of parental unfitness nor did it determine whether exceptional circumstances existed to demonstrate that the continuation of a parental relationship with appellant was detrimental to Shyreese's best interest. We agree with appellant and DSS that the court erred by failing to make an explicit finding of parental unfitness or exceptional circumstances to terminate his parental rights.

In reviewing the decision of a circuit court, sitting as the juvenile court, the appellate court applies three different levels of review. *In re Shirley B.*, 419 Md. 1, 18 (2011). First, when reviewing the circuit court's factual findings, we apply the clearly erroneous standard. *Id*. Second, if the circuit court erred as a matter of law, further proceedings will be necessary unless we determine that the error is harmless. *Id.* Finally, we review the circuit court's

ultimate conclusion "founded upon sound legal principles and based upon factual findings that are not clearly erroneous" for an abuse of discretion. *Id.*

In a TPR proceeding, the juvenile court must balance a parent's right to custody of his or her children "against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect." *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 709 (2011). There is a presumption that it is in the best interest of the child to remain in the care and custody of parents. *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 495 (2007). The presumption can be rebutted "upon a showing either that the parent is 'unfit' or that 'exceptional circumstances' exist which would make continued custody with the parent detrimental to the best interest of the child." *Id*. That is, the State must establish by clear and convincing evidence that a parent is unfit to have a continued parental relationship with the child or that exceptional circumstances exist that would make a continued parental relationship detrimental to the best interest of the child. *Id*. at 499.

The General Assembly enacted § 5-323(d) "to guide and limit the court in determining the child's best interest" in TPR cases. *In re Adoption/Guardianship of Amber R.*, 417 Md. at 709. Pursuant to the statute, the juvenile court "shall give primary consideration to the health and safety of the child and consideration to all other factors needed to determine whether terminating a parent's rights is in the child's best interests . . . ." Section 5-323(d).

Section 5-323(d) enumerates specific factors that the juvenile court must consider before making a determination on the termination of parental rights. *Id*.

In *In re Adoption/Guardianship of Rashawn H.*, the Court of Appeals considered the interplay between the factors delineated by § 5-323(d), the presumption that it is in the best interest of the child to remain in the care and custody of his or her parents and the role of the juvenile court. *In re Adoption/Guardianship of Rashawn H*., 402 Md. at 501. The Court explained as follows:

> "The court's role in TPR cases is to give the most careful consideration to the relevant statutory factors, to make specific findings based on the evidence with respect to each of them, and, mindful of the presumption favoring a continuation of the parental relationship, determine expressly whether those findings suffice either to show an unfitness on the part of the parent to remain in a parental relationship with the child or to constitute an exceptional circumstance that would make a continuation of the parental relationship detrimental to the best interest of the child, and, if so, how. If the court does that—*articulates its conclusion as to the best interest of the child in that manner*—the parental rights we have recognized and the statutory basis for terminating those rights are in proper and harmonious balance."

Id. (emphasis in original). Although the juvenile court in *In re Adoption/Guardianship of Rashawn H.* considered all of the statutory factors in concluding that termination of parental rights was appropriate, it did not make an express connection between its findings of fact and the health and safety of the children involved. *Id*. at 492-93. In holding that the juvenile court failed to apply the appropriate standard for terminating parental rights, the Court stated as follows:

> "the [juvenile] court . . . *did not relate the findings it made with respect to the statutory factors to the presumption favoring continuation of the parental relationship or to any exceptional circumstance that would suffice to rebut that presumption. That needs to be done*. On remand, the court will have to make clear and specific findings with respect to each of the relevant statutory factors and, to the extent that any amalgam of those findings leads to a conclusion that exceptional circumstances exist sufficient to rebut the presumption favoring the parental relationship, explain clearly how and why that is so."

Id. at 504-05 (emphasis added). The Court of Appeals vacated the judgments of the juvenile court and remanded the case to that court for further proceedings consistent with the Court's opinion. *Id*. at 505.

In the case *sub judice*, it is undisputed that the juvenile court considered extensively the factors pursuant to § 5-323(d) and their application to the underlying circumstances. The court failed, however, to relate its findings with respect to the statutory factors to the presumption favoring continuation of the parental relationship or to any exceptional circumstance sufficient to rebut that presumption. Rather, after consideration of all the factors, the court found "by clear and convincing evidence that terminating the parental rights of [appellant] is in the best interest of Shyreese J." As DSS concedes, the court failed to state expressly whether its findings were sufficient to show that appellant was unfit to remain in a parental relationship with Shyreese or whether exceptional circumstances existed that would make continuation of the parental relationship detrimental to the best interest of the child, and, if so, how. In failing to articulate its conclusion in that manner, the court did not

articulate the statutory basis for terminating those rights and hence, erred as a matter of law. *See In re Adoption/Guardianship of Rashawn H.*, 402 Md. at 502.

As in *In re Adoption/Guardianship of Rashawn H.*, we hold that remand is appropriate in the instant matter. Although the juvenile court did not articulate its ultimate conclusion properly in light of the appropriate standard for terminating parental rights, it is apparent from the record developed after a three-day hearing that sufficient circumstances exist to make a proper determination. Moreover, on remand, the court may consider Shyreese's current circumstances and best interest and then determine whether, in light of the court's analysis of the statutory factors and Shyreese's current circumstances, appellant is unfit to remain in a parental relationship with Shyreese or if exceptional circumstances exist such that terminating his parental rights is in her best interest. *See id*. at 505.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY VACATED. CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.