

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2714

September Term, 2014

IN RE: ADOPTION/GUARDIANSHIP
OF DEVON C., JR.; DAVION C.;
AND MADISON C.

Wright,
Graeff,
Kehoe,

JJ.

Opinion by Wright, J.

Filed: August 7, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

Appellant, Devon C. (“Father”),¹ appeals an order of the Circuit Court for Baltimore City, sitting as a juvenile court, terminating his parental rights to his children, appellees, Devon C., Davion C., and Madison C., and granting guardianship to appellee, Baltimore City Department of Social Services (“Department”), with the right to consent to adoption or long-term care short of adoption.²

Father presents two questions for our review:

1. Did the court err by finding that exceptional circumstances warranted terminating the father’s parental rights in his sons Devon and Davion?
2. Did the court err by denying the father’s request to mediate a Post-Adoption Contact agreement with respect to Madison?

We answer “no” to both questions and affirm the judgment of the circuit court.

Facts

Devon was born in June 2010 to Father and Katie S. (“Mother”),³ who, herself, was in foster care at the time. Devon left the hospital in Mother’s custody. Davion was born in June 2011 to Father and Mother, while Mother was still in foster care. Davion,

¹ Appellant and the oldest child have the same first name and last initial. For clarity, we shall refer to appellant as “Father” and the son as “Devon” throughout.

² The children’s best interest attorney did not file a separate brief but adopted the Department’s brief.

³ Although Mother initially filed an objection to the proceedings, she failed to contact her attorney for months before the hearing and failed to appear at the termination hearing. Her objection was withdrawn on February 11, 2015, and her rights were terminated on February 24, 2015. Mother did not note an appeal, nor did she participate in this appeal.

too, left the hospital in Mother’s custody. At the time, neither child was under Father’s care, although he had frequent contact with the children.⁴

I. CINA⁵ Proceedings

A. First Adjudicatory Proceeding

On December 16, 2011, the Department received a report from child protective services (“CPS”) of neglect by Mother and, subsequently, petitioned for shelter care of the boys.⁶ On December 19, 2011, the juvenile court held a shelter care hearing and determined that the boys could remain with Mother under an order controlling conduct. Pursuant to that order, Mother was to ensure that the boys’ medical needs were met; permit the Department to make announced and unannounced visits to her home; and cooperate with her foster care placement. Mother failed to remain in compliance with her

⁴ It is unclear from the record why the boys were exclusively in Mother’s care at the time, but a note from the Department reveals that the Department told Mother, on November 3, 2011, that “her children are not to go to Father’s home unless approved by the [Department]. It is alleged that Father is a drug dealer and a member of a gang.”

⁵ A CINA is “a child who requires court intervention because: (1) [t]he child has been abused, neglected, has a developmental disability, or has a mental disorder; and (2) [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.” Md. Code (1974, 2013 Repl. Vol.), § 3-801(f) – (g) of the Courts & Judicial Proceedings Article.

⁶ It is also unclear from the record what exactly caused the report, but we can discern that it was related to Mother leaving the boys in Father’s care without the Department’s permission. A note from 2:55 p.m. on December 16, 2011, stated that when Mother’s foster mother asked where the boys were that day, Mother stated that “the boys are with their father.” A subsequent note at 2:57 p.m. the same day stated that Mother was “leaving her children in a place that was not approved by the [Department]” and referenced, specifically, that Mother was leaving the children at Father’s home without the Department’s approval.

mental health treatment and failed to ensure that the boys “were up to date in their medical care.” As a result, on April 11, 2012, following an adjudicatory hearing, the boys were placed in Father’s custody.

B. Second Adjudicatory Proceeding

Less than two weeks after Father was awarded custody, Father was arrested and detained on April 23, 2012, on an outstanding warrant.⁷ He was released on bond on May 1, 2012. As a result of Father’s incarceration, the Department sought shelter care for the boys. On May 8, 2012, the juvenile court denied the Department’s request and returned the boys to Father’s custody. Additionally, the court scheduled an adjudicatory hearing for the boys for August 23, 2012.

Father failed to appear for the August 23, 2012 hearing. The juvenile court noted that Father “ha[d] an outstanding warrant in Baltimore City” at that time.⁸ At the

⁷ Father had an outstanding warrant in Case 2B02171353 in the District Court for Baltimore City, in which Father was charged with failure to obey a reasonable and lawful order of a law enforcement officer (Md. Code (2002, 2012 Repl. Vol.), § 10-201(c)(3) of the Criminal Law Article (“CL”)); second-degree assault (CL § 3-203); resisting or interfering with arrest (CL § 9-408(b)); possession of a controlled dangerous substance — marijuana (CL § 5-601(a)(1)); concealment of a dangerous weapon (CL § 4-101(c)(1)); and the sale of a switchblade knife or shooting knife (CL § 4-105(a)(1)-(2)). Father was initially arrested for this warrant on April 23, 2012. Father was released from commitment for that warrant on April 28, 2012.

Father was then arrested on April 29, 2012, for an outstanding warrant in the District Court for Anne Arundel County in Case 5A00233805, in which Father was charged with fourth-degree burglary (CL § 6-205(a)); trespassing on posted property (CL § 6-402); and malicious destruction of property valued (CL § 6-301). He was released from commitment for that warrant on May 1, 2012, on bond.

⁸ Father had an outstanding warrant for Case 0B02175278 in the District Court for Baltimore City, in which Father was charged with possession of a (continued...)

conclusion of the August 23, 2012 hearing, the Department was ordered “to investigate father’s home” and the case was “reset for father to be present and to produce the children.”

Father was arrested on August 24, 2012, and failed to appear at the hearing that day.⁹ At the conclusion of the hearing, the juvenile court ordered that the boys be placed in shelter care with Father’s mother, Larissa L., due to Father’s incarceration.¹⁰

By mid-September, Father had been released from this period of incarceration and was living with his mother and the boys. At times, Mother was also present in the home and not at her foster home placement. When Father’s case worker visited him on September 21, 2012, she reported that there were no beds for the boys at his home, and that Father stated that the beds were “at his cousins [sic] home.”

Madison was born in mid-September 2012. She was placed with her current foster mother immediately upon her discharge from the hospital. During her pregnancy with Madison, Mother abused drugs, including oxycodone and Percocet, and did not receive prenatal care.

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controlled dangerous substance — marijuana (CL § 5-601(a)(1)) and possessing an open container (CL § 10-125(a)).

Additionally, Father had an outstanding warrant in the Anne Arundel County case, Case 5A00233805, at the time of the hearing.

⁹ It is unclear from the record which warrant caused Father’s arrest.

¹⁰ It is unclear from the record why Father failed to appear, but we assume it was because he was incarcerated.

An adjudicatory hearing for the boys was scheduled for October 4, 2012. Father failed to appear, and the matter was reset for November 7, 2012.

In October 2012, Father, Larissa L., and the boys moved to a home on Oldham Street, which the Department had assisted Father in acquiring by obtaining a Section 8 U.S. Housing & Urban Development voucher for him.

On October 17, 2012, Father's case worker, Kelly Walker, attempted to visit the home. After she received no response to her knocking, she approached a neighbor. The neighbor informed Walker:

that he needed to speak with [her]. [The neighbor] stated that about three weeks ago [Larissa L.] came to his home and informed him that her son [Father] was slumped over in the bathroom. He went to the home and saw [Father] in the tub slumped over so he proceeded to give him mouth to mouth. Afterwards [Larissa L.] informed him that [Father] overdosed on heroin. The paramedics were called and the[y] gave him a shot which revived him. Then about two weeks ago the paramedics w[ere] at the home again. [The neighbor] asked the paramedic "Another overdose" and they replied yes. [The neighbor] saw [Larissa L.] being carried out of the home on a stretcher. [The neighbor] believes that [Father] is prostituting out [Mother] for money as well.

In response to the report by the neighbor, Walker completed a request for funds to complete drug testing on Father and Larissa L. to confirm the neighbor's story. After Walker returned to her office, she received a message from Larissa L. that "she was no[t] at home when this worker visited the home. But [Father] was home and she does not know why [Father] [was] not allowing this worker into the home."

Walker returned to the home on October 24, 2012. At that time, the boys were dressed in t-shirts and diapers. When the worker told Father that she "attempted to visit the boys numerous times this month without success[,]” Father responded that “he’s

normally not home so he's not sure whose not answering the door[.]” Walker advised Father and Larissa L. about the report that she received regarding drug use and advised them that she would return next week to take them for drug testing. At the conclusion of the meeting, Father informed Walker that he would go on “10/25/12 to apply” for medical assistance for the boys and would “have a receipt for this worker as proof that he applied.”

On October 31, 2012, Walker went to the home to give Father and Larissa L. a letter that stated that she would be there to pick them up on November 1, 2012, to transport them to the drug screening. Larissa L. refused to allow Walker into the home on that day. When Walker went to pick up Father and Larissa L., she found “a note on the door, saying they had to leave because of a family emergency and one of them would call the office to reschedule their visit.” Walker returned on November 5, 2012, to visit the home and asked Larissa L. if she was willing to go for drug testing that day, but Larissa L. declined, and she said that she “would like the court to order her to have a drug test.”

At the November 7, 2012 adjudicatory hearing, Father had “a pending hearing for violation of probation and CDS-Possession/Marijuana.” That day, the juvenile court ordered that Father continue custody of the boys, but that he “shall allow announced and unannounced visits” by the Department, “take a drug assessment and follow all recommendations[.]” and “ensure that [the boys] attend all medical appointments.” After the hearing, the Department was unable to gain access to the home for the rest of the

month. On November 13, 2012, Father failed to appear for a scheduled visit with Madison.

Father and Larissa L. were finally evaluated by the Juvenile Court Early Intervention Project for drug use and submitted to drug testing on November 21, 2012. When the results returned on December 5, 2012, Larissa L. tested positive for benzodiazepines and was referred for treatment.

Walker was able to conduct a scheduled home visit on December 7, 2012. At the visit, Father said that “Davion is in need of medication due to his ear infection[,]” but that the boys did not have medical assistance at the time. Father admitted that he had a positive urinalysis for marijuana as a result of drug testing on November 21, 2012, but said that “[h]e does not understand why it was positive because he stated that he smoke[d] 3 weeks ago and he’s been drinking a lot of water.” Father advised Walker that he was waiting for a referral for treatment and would provide proof of his attendance. Father later called Walker to tell her that he was referred to a drug treatment program and his intake appointment would be on December 20, 2012.

During a home visit on January 8, 2013, Father said that he did not attend the intake appointment at the drug treatment program because “his insurance was not active.” When Walker asked him about whether he had been keeping his scheduled visits with Madison, Father became upset “because [he] feel[s] that Madison is purposely being kept from [him].” When Walker explained that Father needed to keep his scheduled visits, it was noted that “since [he] do[es] not get along with her[,]” he does not keep his visits, or call to inform Walker that he would not be attending.

On January 10, 2013, the juvenile court held a disposition hearing for all three children. The court found that each child was a CINA and ordered that Madison be committed to the Department and that the boys remain with Father under an order of protective supervision.

At a home visit on February 15, 2013, Walker noted that the “boys were dressed in shirts and diapers[,]” and that she “ha[d] never seen the boys dressed in clothing.” Walker also talked with Father about getting physicals for the boys. Father claimed that “he received Davion’s insurance card in the mail but he’s still having issues with Devon[,]” but later stated that “he has not applied for them yet[.]”¹¹

Walker visited the home again on February 28, 2013, following a report that Larissa L. took “Davion to the hospital under the influence.” Father said that Davion put a toy up his nose, and that Larissa L. was not under the influence of any drugs despite a report that “his mother was drooling and hard to wake up.” As to the toy, Father said that “a family friend bought the boys toys out of their age range. So Davion put a piece of the toy up his nose.” Father reported that the hospital “discovered . . . that something was up his nose so it was removed.” Walker noted that, when she saw Davion, his nostrils were “very small” and that there was “no bruising near his nose.”

Father called the Department on April 11, 2013, to cancel his visitation appointment “because he was at the court with [Mother] and his boys at North Avenue.” Father allegedly overdosed later that day. When Walker visited his home on April 12,

¹¹ It is unclear from the record whether Father ever obtained health insurance for the boys.

2013, regarding the overdose, she “noticed blood on the front door of the home . . . blood to[o] on the left wall as you enter the home.” When asked about the blood, Father said that, because he had kicked his mother out of the house, Larissa L. “sent someone to beat him out. The intruder entered the home through the kitchen window which was broke [sic] and he got into an altercation.” Father claimed that he “was stabbed in the upper arm area” as a result. Father told Walker that “he tried to bandage his bottom arm but the cut was actually on the top half. So he began drinking because he was stressed and after a few minutes he passed out due to the blood lost, so a friend in the home called the ambulance and he was admitted.” Walker asked about the whereabouts of the boys, and Father said that he gave the boys to Mother on April 11, 2013, who in turn gave them to her biological mother at some point, but that Father “could not provide workers with a contact number or room number” for Mother or her biological mother.¹² Father said that the boys were “safe in their maternal grandmother’s care despite [Mother] being in foster care.”

¹² Although Father claimed to have given Mother the boys that day, Father also claimed that Mother was in District Court for Baltimore City at the North Avenue location that day. When we searched the Maryland Judiciary Case Search, we could not find a record of Mother appearing before that court on April 11, 2013, nor did we find a record of any charges against Mother that were pending at that time.

We did, however, find that Mother appeared before the Anne Arundel County Circuit Court on April 12, 2013, and she was committed that day on charges of neglect of a minor related to her passing out while Devon and Davion were in her care. Mother remained incarcerated until May 9, 2013.

Even though Father gave the boys to Mother on April 11, 2013, she was not to have the boys in her care. When Mother took the children to the hotel, she passed out.¹³ Davion was found “nude out in the traffic along Ritchie Highway” on or about April 11, 2013. The Department reported that the “[p]olice intervened. Traffic was stopped.” The police observed that Devon had “scratches on his face and a possible burn on his lower left leg.”

As a result of the events on or about April 11, 2013, the Department moved for removal of the boys from Father’s care. After a hearing on April 15, 2013, the Department was granted custody of the boys. Shortly thereafter, Madison was also declared a CINA.¹⁴ After the boys were removed from Father’s care, the juvenile court referred Father and Mother to the Family Recovery Program (“Program”) on April 29, 2013.¹⁵

¹³ It is not clear where Mother’s biological mother was at the time of the events on or about April 11, 2013.

¹⁴ Father initially filed exceptions to the findings, but he would later withdraw them at the exception hearing on April 29, 2013.

¹⁵ Baltimore City describes the Program as:

a family drug court designed to serve families involved with child welfare due to parental substance use. The program provides comprehensive case management and immediate, intensive substance abuse services for parents involved in [CINA] proceedings The goal of [the Program] is to encourage sobriety and improve quality of life for parents in order to increase the likelihood of reunification for families and decrease the length of stay in foster care for children.

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Father failed to appear for a review hearing on August 2, 2013. The juvenile court found that “Father has enrolled in [the Program]. Father is in poor compliance. Mother and Father have sporadic visits with the [children].” The court determined that continued commitment of the children was necessary and appropriate and continued the permanency plan of reunification.

During a visit on August 28, 2014, with Devon and Davion, a case worker observed Father “nodding” and with “slurred speech.” The case worker believed that Father was under the influence of drugs.

Another review hearing was held on February 6, 2014. Father failed to appear. The juvenile court continued to find that “Father is in poor compliance [with the Program]. Mother and Father have sporadic visits with the [children].” At the conclusion of the hearing, the court ordered that the protective supervision order of

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Baltimore City (Md.) Family Recovery Program, NAT’L INST. OF JUSTICE, <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=224> (last visited August 3, 2015). The Program “is administered through the Maryland Juvenile Court” and “participants are enrolled in the program for 1 year[.]” *Id.* Through the Program, “[p]arents are required to undergo random and scheduled drug testing throughout the program term [and] . . . maintain safe, substance-free environments for their children.” *Id.* Parents are provided with “immediate access to the substance abuse treatment they need within 24 hours of assessment[,] . . . includ[ing] individual and group counseling, relapse prevention, self-help groups, preventative and primary medical care, general health and nutrition education, parenting skills, and domestic violence education.” *Id.* The Program also provides parents with “other support services, such as mental health care, transportation, housing assistance, and case management support.” *Id.*

We discuss Father’s extensive history with the Program in Discussion, Section I, *infra*.

January 10, 2013, be rescinded, and that limited guardianship of the children be granted to the Department.

At a permanency planning review hearing on June 26, 2014, Father appeared. The juvenile court found that Father’s “status was recently upgraded [with the Program] to ‘good compliance.’ He is enrolled in parenting through ‘Celebrating Families’ and is in a methadone maintenance program.” The court continued the permanency plan for the boys but changed Madison’s status to contested.

The Department filed the instant petition to terminate Father’s parental rights as to each child on August 7, 2014. Father filed his objection to the proceedings on August 22, 2014. The juvenile court set a hearing on the petition for January 28, 2015.

II. Father’s Involvement with the Program

After the children were declared CINA, Father enrolled in the Program, and he continued his involvement through the start of the termination of parental rights proceedings in the juvenile court. Although he was ordered to appear before the Program’s court on May 3, 2013, Father failed to appear and did not follow through on his referral until his initial assessment on May 21, 2013, nearly one month after his referral. At the time of his assessment, he said that he had last used on May 20, 2013, that he was unemployed, and that he was seeking work. He also reported that he was “participating in the Methadone Maintenance (MMT) program at Eastern Avenue Health Solutions, where he had been for one day.” His urinalysis that day tested positive for opiates and marijuana.

Although Father signed a service agreement on May 23, 2013, agreeing to “live a drug free lifestyle,” Father’s involvement with the Program was inconsistent. He would comply, then fail to comply, then comply, then fail to comply again for various reasons, including failure to appear for urinalysis and hearings, testing positive for substances that were not prescribed to him, and being incarcerated.

Father was discharged from the Program at least two times with his final discharge occurring on December 19, 2014. Even though he was advised multiple times by the Department to go to in-patient treatment, Father declined an offer from the juvenile court to enter an in-patient treatment program at the time of his discharge.

III. Devon and Davion

Devon and Davion have been in foster care for 45 percent and 56 percent, respectively, of their lives. Currently, they are in the care of Debra J., who is a licensed therapeutic foster mother.¹⁶ Debra J. has been a foster parent for 25 years and has taken care of over 30 children during that time. Because Debra J.’s home is a therapeutic placement, Debra J. receives 20 hours of additional training each year in therapeutic placements. Debra J. is retired from the Division of Corrections and currently works at the Board of Education at an elementary school “with children in the cafeteria.” Debra J. is willing to adopt both boys.

¹⁶ Prior to the boys’ placement with Debra J. in January 2014, they had two other placements. One placement was with Jonetta R., Madison’s foster mother. The boys had “a hard time adjusting to their new home” with her and the subsequent foster parents because they “w[ere] trying to put them on a set schedule and they were not used to being on that.”

Under Debra J.'s care, the boys are well-adjusted and have bonded with Debra J. The boys refer to Debra J. as "Mommy" and refer to Debra J.'s adopted daughter, Michaela, as their "sister." The boys also interact with Debra J.'s brother and his grandchildren and act like a "family." At Debra J.'s home, the boys share a room but they have separate beds, dressers, and closet space. Debra J. enrolled the boys in Head Start in March 2014. She also takes them to church, and they have attended summer camp and vacation bible school. Debra J. keeps the boys up-to-date with their medical and dental appointments and transports them to all of their appointments. The boys do not take any medication.

Part of the reason the boys were placed in a therapeutic foster home was because the boys were "having temper tantrums" and "refusing to sleep alone[.]" To help with these issues, Devon has been in play therapy for at least six months. At first, Devon went biweekly but he currently goes once a month.

Davion has an Individualized Education Program through his school regarding his behavior. In particular, Davion was "not listening to teachers and kind of wandering off to play with toys or just kind of being independent when they're having group time." Davion had been referred to a therapeutic program, but he has to wait until he is four to be eligible for services. Davion also receives speech therapy.

There have been no referrals to CPS or concerns about the boys' safety while in Debra J.'s care. In sum, there are no placement concerns, their needs have been met, and the placement is safe and healthy.

As to their relationship with Father, it is undisputed that the boys were bonded with their Father. Still, Father had not provided the boys with gifts, cards, or letters. Father has had no contact with Debra J.

IV. Madison

Madison has been in the care of her foster mother, Jonetta R., since she was three days old (or 99.7 percent of her life). Madison is well-adjusted and has bonded with Jonetta R., who has been a licensed foster parent for 16 years. Jonetta R. is a retired stay-at-home mom, who currently cares for two six-year-olds and another two-year-old in addition to Madison. Jonetta R. has a six-bedroom house where Madison has her own room, which is decorated with Mickey Mouse and has a table, a tea set, and a twin bed. Jonetta R. reports that Madison is happy, loveable, “spoiled rotten,” and has bonded with Jonetta R.’s family. Madison refers to Jonetta R. as “Mommy,” and Jonetta R. is willing to adopt Madison. There have been no concerns with regard to Jonetta R.’s care of Madison.

As to Madison’s physical health, Jonetta R. keeps Madison up-to-date with her medical and dental needs and transports Madison to all of her appointments. Madison had been receiving physical therapy through Kennedy Krieger once a week for about eight months, but she no longer receives that service. Madison also has an inhaler that she uses as needed.

Father’s relationship with Madison was strained. Madison “doesn’t really know her biological parents” and has “received no supports, gifts, car[d]s, letters, or clothes from her biological parents.” Jonetta R. has not had any contact with Father, either.

V. Visitation

Father had visitation rights with his children one time per week on Thursdays. During that time, Father saw all of the children simultaneously. Although the Department would notify Father of the time of the visits by phone and letters, Father's attendance at visits had been inconsistent with Father appearing for only 25 percent of his scheduled visits. Father would appear at visits, then not appear for three-to-five week periods, before he would reappear. Father failed to explain why he missed his visits and, at some point, he ceased contacting the Department. Father has not seen the children since sometime before December 24, 2014. However, Father did appear at visitation unannounced sometime in January 2015 with some toys that he claimed were Christmas presents for the children — but, because it was unannounced, the children were not present. The Department scheduled Father to appear the following Thursday to visit with the children, but Father did not appear. Father has not since made arrangements for another visit.

The boys engaged with Father during visitation, but their visits were seen as play time, where Father and the boys would “roughhouse[.]” Although the visits were playful, there was “no sit down time” during the visits between Father and the boys. Both Father and the Department reported that the boys would throw tantrums at the end of visitation with Father. Debra J. reported that, after visits with Father, the boys would return with a “different attitude” — they would be mean, crying, and acting out.

The tenor of Father's visits with Madison were disputed. When Madison first went to visitation with Father, she screamed and did not want to go to Father.

Eventually, she would warm up and allowed him to hold her. The Department submitted testimony that Madison did not engage with Father, and that Father did not interact with Madison, but Father submitted photos to show that he attempted to interact with Madison.

The Department noted that Father struggled to comply with instructions when he did appear for visitation. According to the boys' clinical case manager, Ebony Mitchell, Father would consistently ignore her requests to limit the boys' liquid intake while he visited with them because she was concerned about them needing to use the bathroom during their transport. On one occasion, after Mitchell asked Father to limit the boys' liquid intake, Father "used profanity with" her. As a result, Mitchell told Father that he would "no longer be allowed to walk the boys out to [her] car; that they will say their goodbye's at the door in the presence of [the Department] and security[.]" In response to Mitchell's statement, Father "put his foot under [her] tire so that [she] could not pull off." After Mitchell repeatedly asked Father to move his foot, she had to ask security to assist her in moving Father.

Additionally, the Department noted that they believed Father was under the influence during some visits. According to the Department, during visitation, Father "is usually sluggish. Usually, he gets very sweaty. He gets very itchy. He can then turn and become very hyper with the children; can't really seem to sit still. But, when he does sit still, it's — he's just — he's got a very sluggish look to him."

VI. Termination of Parental Rights (“TPR”) Proceedings

At the hearing on January 28, 2015, Father made a preliminary motion to continue the hearing because he was in the hospital at Johns Hopkins Bayview. Counsel expected that he would be released on January 30, 2015. The juvenile court granted the motion, reset the hearing to February 11, 2015, and commented that had the case been heard that day, it “would have been very interested in learning what if any in-patient drug treatment has been accomplished by either parent since there was last made a record of that by orders and facts found in the CINA and [the Program’s] case.”

On February 6, 2015, Father moved to postpone the February 11th hearing. The juvenile court heard the motion on February 9, 2015. Father argued that the hearing should be postponed because he was attempting to enroll in an in-patient treatment program at the time. Father claimed that, because his methadone level was so high, he could not find an in-patient treatment program that would admit him, but that he was working with a therapist to find a program. Father argued that the therapist needed “a couple of weeks, at least” to find such a program and, accordingly, he needed a postponement. After looking at Father’s motion “through the best interest eyes of the children and the need for permanency and the requirements of the law with regard to time[,]” the juvenile court found that “the too little, too late that [Father] advance[d] in support of a postponement with regard to meaningful drug treatment [was] not . . . a reason to delay the trial.”

At the start of the termination hearing on February 11, 2015, Father again moved for a postponement. Father’s counsel claimed that Father entered in-patient treatment

that day and would “be on a black out period” for 30 days. As a result of the black-out period, Father’s counsel claimed that Father was unavailable for the hearing that day. Father requested a “45-day extension” so that he could “participate in the trial.” The juvenile court denied Father’s motion.

At the conclusion of the hearing on February 11, 2015, the juvenile court granted Father’s counsel a continuance for an opportunity for him to produce the three witnesses that he had subpoenaed.¹⁷ When the hearing resumed on February 24, 2015, Father appeared. Father first called Ken Foster, clinical supervisor for Valley Bridge in-patient treatment program, to testify. Foster testified that he was Father’s primary counselor. Foster stated that he “guesstimate[d]” that Father called the program the “first week of February” about possible admittance and was admitted on February 11, 2015. Foster testified that the program is a “three-to-six-month . . . adult residential program for adult men.” Foster stated that people admitted to the program are “placed on a 90-day restriction period . . . [which] means that they have to have an escort wherever they go.” Foster testified that Father’s treatment plan was to “[s]tabilize on Methadone” and

¹⁷ Initially, the juvenile court scheduled the hearing to resume on February 12, 2015. On February 12, 2015, Father’s counsel appeared (without Father present) and requested a continuance due to a “family emergency this morning involving [her] daughter.” Father’s counsel also said that she needed time “before [Father] testifies to review what happened yesterday, because [Father] wasn’t here to hear it[.]” Additionally, Father’s counsel admitted that she “wasn’t able to get any of” the three witnesses she subpoenaed the day before, but she also admitted that “it was after working hours[.]” so she did not make efforts to contact them. Father’s counsel again stated that Father was unavailable for the hearing because he is “not supposed to” leave the in-patient treatment program premises for 30 days. The court granted Father’s request for a continuance based on unavailability of counsel and reset the hearing to February 24, 2015.

“[r]emain free from illicit drugs.” Foster stated that, while Father was enrolled in the program, the program would facilitate visitation with Father by either bringing the children to the treatment facility or by “allow[ing] him to go wherever the Courts would set up for him to meet with his kids.” Foster testified that the program is voluntary, and that Father could walk out of the program if he so chose.

Father testified on his behalf. He stated that he was the boys’ primary caretaker in that he “[c]hanged [Devon’s] diapers, fed him . . . made sure he got his appointments, shots, bathed him; basically everything,” and that he did the same for Davion. Father stated that he began using drugs on “September 12, 2012” because “that was the day that Madison was took from the hospital . . . That’s when I started getting high; that day.” Father claimed that he received the first extension from the Program because he “was at an appointment and missed a day, which was a urine day, so I had to go into an extension contract because I got put off because missing is a dirty, even though I wasn’t using.” Father stated that he “messed [the second extension] up” by making a “mistake” and that, when he was discharged, “Judge Kershaw . . . told me to get into an in[-]patient program.” Father testified that he has been with Johns Hopkins Bayview’s addiction treatment services since “the end of June, beginning of July, 2014.” Father testified that he has “been going to [Narcotic’s Anonymous] for the last three years . . . [n]ot because no one told [him] to; because [he] want[s] to.”

As to visitation, Father said that he has “missed a few times — not — not even a significant number. It’s not even nothing like that.” Father said that oftentimes his “children weren’t brought” to scheduled visitation. Father claimed that, after New Years,

he “came with a bunch of toys and presents and stuff that were wrapped up” for the kids, but was told that “the kids wasn’t coming . . . and [he] had to take the toys back.” Father said that when he visited with the boys, they were “ecstatic, elated” and “run to [him], hug [him]” and that he “always like to bring them something” at the visits. As to Madison, Father said that she “will cry when she first gets to the visit . . . But, then, when [he] grab[s] her, she’ll stop crying.” Father said that at the end of visits, the boys “basically shut down and they get real sad[.]” With regard to the boys’ behavior problems, Father testified that he’s “never seen him act that way” and that “when [he] had [Davion] at home, [Davion] never acted like that.”

On cross-examination, with respect to the Program granting him a second extension, Father said he “didn’t fail to comply . . . [he] got reports saying that [he] was in good compliance.” Father said that he has done everything that was asked of him at the Johns Hopkins Bayview’s program but, upon further examination, said that he had not. With respect to employment, Father said he could not work because he was “on blackout.” Father testified that prior testimony about his missing visits was incorrect, and that he never failed a housing inspection because “[t]he landlord failed the inspection. [He] was fine.”

At the conclusion of the hearing, the juvenile court ruled from the bench:

The procedural history of this case begins several years ago. The two older children came into care or into notice of the Department back in, at least, December of 2011 — December 18th and 19th of 2011, May 7th through the 8th of 2012, August 24th of 2012 to November — to November the 6th of 2012; and from April the 15th of 2013 to now the children have been out of the father’s care.

I believe that the Department gave estimates with regard to their respective ages; that Dev[o]n has been out of care 45 percent of his — of the father's — out of home placement, 45 percent of his life. For Davion, who is younger, it's 56 percent of his life.

And, for Madison, it's almost non-existent that she's been in home placement; 99.7 percent of her life. These children were found children in need of assistance — I think I have it correctly — on or about April 29, 2013. That, previously, the children — the boys, at least, have been placed with the father for non-CINA findings with either orders controlling conduct or protective supervision prior to April 29, 2013.^[18]

Again, Madison has never been in her father's care. If I have it correctly, the respondents respectively were committed to the Department of Social Services on or about July 25, 2013. They haven't lived with their father since April of 2013.

These proceedings began on or about February 10th or February 11th of 2015. That is approximately 20 months of their respective young lives that they haven't been with their father. And, considering the fact it's for — a petition for what's call a limited guardianship or termination of parental rights, the Court must consider that which is in the Family Law Article; specifically under 5-323.

It must consider the health and safety of the respondents. In the efforts that the Department of Social Services used to reunify the respondents with their father, any services prior to placement, any case plan compliant pursuant to any services agreements that may be had with the parents.

The parents' progress in those reunification efforts. The child's emotional ties and the child's emotional adjustments. Looking at the child's best interest, which is paramount in these cases, Davion — Dev[o]n, Davion, and Madison, in their current placements — which they have been in for a very long time in their young lives, the Court is satisfied that they are in safe environments and that they are in healthy environments.

As to young Madison, her caretaker is [Jonetta R.]; a licensed foster care parent for 15-plus years, or so. She is the mother of two, six-year-old adopted children, if I recall her testimony correctly. She cares for another

¹⁸ The children were declared CINA on January 10, 2013, but the boys were not removed from Father's custody until April 15, 2013.

two year-old boy; and she has taken care of Madison from, at least, Madison's age of three days to five days old.

She says they all live in a big, six-bedroom home. All children have their own bedroom. Madison has a typical girl's room, adorned with Mickey Mouse, a table, tea set, twin beds, and the like. [Jonetta R.] testifie[d] before this Court that she is retired. She appears to be a stay-at-home mom.

She's home with, quote, end-quote, her kids — my kids, she says; and she describes a typical day of play, songs, television, getting the six year-olds to school, food prep — preparation, rather. Madison will do some coloring. She is not yet napping, and she describes the food that Madison liked to eat; that Madison refers to [Jonetta R.] as mommy.

And, in the case, according to [Jonetta R.], she doesn't really know her biological parents. [Jonetta R.] has testified that Madison has received no support, gifts, cares, letters, or clothes from her biological parents.

She reports that Madison's medical and dental care is current, that she has her shots and immunizations current.

[Father]: Huh.

THE COURT: That she uses an inhaler — have — sir, if you'll have a seat, please?

[Father]: No.

DEPUTY: Have a seat, please?

[Father]: I'm listening.

THE COURT: You can listen while seated, sir. You have to be seated in the courtroom.

[Father]: Okay.

THE COURT: Thank you.

That she uses an inhaler when needed. That she attends the Kennedy Krieger Institute, I think, one time per week for eight months to a year and she had not formally been discharged from Kennedy Krieger.

She is described as happy, loveable, and quote, unquote, spoiled rotten by [Jonetta R.]. That Madison visits with her brothers one time per week at the [Department]. That she relates very well with the other children in her home and that she has bonded with [Jonetta R.] and her family.

[Jonetta R.] has testified that she held herself up as an adoptive resource. She's testified, [Jonetta R.], that Madison's visits with her father have not gone well, that father has gifted her a few times with a teddy bear; but she describes young Madison as screaming when she visits with her father.

As to Dev[o]n and Davion, they are in the care of a Ms. Debra [J.], a licensed foster parent for 25 years, as counsel has noted; that she is a therapeutic foster parent, that she receives 20 hours of training yearly with regard to her foster therapeutic training; that she's taken care of at least 30-plus children in her years as a foster parent.

As counsel has pointed out, she's adopted one of them who is now a 17 year-old who is at home with she — [Debra J.] being she — Dev[o]n and Davion. She has had the boys in her care since 20 — strike that; since January of 2014. That she's retired from the Division of Corrections and works in the cafeteria of an elementary school.

She indicates that her day begins with the boys at 6:00 a.m. when they are awakened, they dress themselves. Davion goes to a quote, unquote, babysitter. Dev[o]n goes to school — I believe it's Head Start. That they eat everything, quote, end quote, at home and at restaurants. That weekends are for play.

That the boys interact with [Debra J.]'s — [Debra J.]'s brother and his grandchildren as a family unit. The boys reside with [Debra J.]. They share a room with twin beds. They are taken to their doctor's appointments. There are no known dental concerns. Neither child is on medication.

They attend church on Sunday. They have had the occasion to attend a summer camp at Dickeyville Day Camp and Vacation Bible School. That Dev[o]n attends play therapy and that Davion was to begin his therapy on or about February 13, 2015.

That when the boys argue they are separated until they work their way back to each other. That the foster mother transports the children to their doctor appointments and to their dental appointments.

If I did not mention, I believe the testimony was that, in Madison's case, she is transported back and forth to her appointments by [Jonetta R.]. Getting back to the boys, Davion and Dev[o]n, the foster mother has testified that neither child is on a medication; that there has been no contribution financially[,] cards, letters, or gifts from the parents of the children; the biological parents of the children.

And, as for the visitation with the father, the children, Dev[o]n and Davion, returning to her with a different attitude; acting mean, crying and acting out, end quote. That the boys call [Debra J.], who is the foster mother, mom.

Now, although the Court may not give significant weight to the lack of contribution to the foster parent from the father, it is noted. Now, the children appear to have made an adjustment in their environment.

For all these respondents, they have made an appropriate adjustment to their foster homes. They have bonded with their foster mothers and other persons in the respective homes. They boys have, quote, unquote, quote, clung to each other; and the girls have visited with their brother — the girls — and Madison has visited with her brothers.

They all appear to have established appropriate, proper, and sufficient emotional ties to their caregivers; and, as important, have made proper adjustments to home, school where appropriate; and community and other persons who may affect their interest.

Now, mother has not taken a part in this process, at all, with regard to any reunification efforts. Father has had visitation. Now, what's the parent's progress? Father's visits have been, pursuant to the testimony — and, even his testimony — inconsistent.

Neither parent has had contact with the foster parent. And, it appears that we are past the 18-month period — well, I believe it's still 18 months; am I correct, counsel?

[Department's Counsel]: Yes, sir.

THE COURT: And on through the 22-month period, wherein—

[Department's Counsel]: 15. 15 out of 22.

THE COURT: 15 out of 22-month period; that's correct, wherein additional services would likely result in reunification of the family unit. The Court pauses in that regard.

Father's said to have had housing; and indicates that his house remains on Oldham Street in Baltimore City. But, the testimony that I heard on the first day of the proceedings was that he had not supplied the Department with any documentation that he had successfully completed drug treatment, that he has been discharged from the Family Recovery Program at least two times, that he had declined an offer of the Court to enter a program three months ago.

[Father]: Yeah? Really?

[Father's Counsel]: Listen to —

[Father]: No, I'm not, because all this is a lie. I don't understand. I don't understand that, man.

[Father's Counsel]: Do you want to go outside?

[Father]: Yeah, I do.

[Father's Counsel]: Okay, well, then —

[Father]: Can I?

[Father's Counsel]: Yes, you may do that.

[Father]: Am I allowed to do that?

[Father's Counsel]: Yes.

THE COURT: You listen to your counsel, sir.

[Father's Counsel]: You may be excused.

(Whereupon, [Father] exited the courtroom while uttering phrases inaudible to this transcriptionist.)

THE COURT: Ms. Zoll, for the record, your client has absented himself from these proceedings; and you have indicated to him that he may absent himself from these proceedings; is that correct?

[Father's Counsel]: Yes, that's correct.

THE COURT: Thank you.

That he did not engage in the parenting program as referred by the Department of Social Services. That he did not follow through on the Family Recovery Program; that that he has not submitted any documentation to the Department of Social Services evidencing successful completion of drug treatment.

At — he has not provided any documentation to the Department of Social Services evidencing successful completion of any parenting program. He has not provided documentation to the Department of Social Services evidencing successful completion of the Family Recovery Program.

It is noted that father admitted himself for inpatient drug treatment on February 11, 2015; the day that this hearing first began for the termination of parental rights and the Court's consideration of the Department's petition.

I believe I've already indicated that the evidence fairly shows, clearly, that neither parent has had any regular contact with any of the foster parents. Now, the Department of Social Services [has] referred father to various services in order to facilitate reunification.

Yet, as indicated by Ms. Goodman [phonetic], the Permanency Supervisor for the Department of Social Services, quote: He never follows through. Again, there are no documents that father has completed Family Recovery. He's been discharged twice.

That he has completed drug treatment; no documentation. No follow-through on the Department of Social Services referral to the Family Tree Parenting Program.

(Whereupon, [Father] entered the courtroom, obtained his coat, and exited the courtroom after uttering brief inaudible phrases outside the courtroom which were inaudible to this transcriptionist.)

THE COURT: For the record, the father has re-entered the courtroom and is exiting himself from the courtroom.

[Father's Counsel]: To retrieve his jacket.

THE COURT: He re-entered to retrieve his jacket and he re-entered — and he has exited the courtroom.

Now, the Department would facilitate visits between father and the respondent[s]. These visits were scheduled on time per week on Thursdays. Father, according to the Department, would be notified by phone calls and letters.

Initially, father would comply and then not appear for up to three-to-five-week periods of time. Then he would comply and not appear, according to the testimony up to three-to-five-week periods of time, which would indicate an inconsistent scenario with regard to visitation.

When father did not appear, according to the testimony, for his visitation, there would be no explanation as to the missed visits. And, then, he ceased even contacting the Department of Social Services.

There have been family referrals, and there have been notification by the Department that the father was unsuccessfully discharged from Family Recovery; at least two times.

The Court will note its review of the Department's Exhibits 141, 143, 160, 163 to 168, and 170 with regard to the contacts and that the service agreement, I believe, was — or contact was signed pursuant to the Department's Exhibit NO. 184.

Now, getting back to the children adjusting in their home, this is part of the adjustment. In their respective homes where they reside with their respective — strike that — foster parents, there have been no Child Protective Services referrals from these homes.

There have been no removals from the homes, taking into account the two previous placements that the children, the boys, have had prior to their current placement with [Debra J.] since January of 2014. That the Department reports no removals from the homes that the child reside in — with regard to their foster care.

That the Department reports no safety concerns with regard to the homes and with the children find themselves. That the Department reports no placement concerns with regard to the homes in which the children find themselves.

That their placement needs have been met; and that each placement, as testified to, has been an adoptive resource for the respective children. The Department has made efforts to reunify the children with their father; and the exhibits show the timely efforts made by the Department of Social Services.

Now, when the Department of Social Services assisted the father's acquisition of the home, the father has indicated, pursuant to the testimony, that he lost same, as it failed inspection with some Section 8 inspectors.

Father disputes that. Father — but, that's the testimony from the Department of Social Services.

[Father's Counsel]: Um, can I — okay. Okay.

THE COURT: Father disputes that and said it was the landlord's fault. At that point, he returned to the mother's home and, apparently, his present home has passed an inspection, according to the testimony that I recall from February 11th.

Before I return to that issue, I'll return to the issues of visitation with young Maddie. The daughter does not interact with her father. Let's look at, this looks at Father's Exhibits 25; various photos, which would indicate that father's contact, at least during the visits.

And, I — and, I presume this is more than one visit that father took photographs of — that, that which has been described by the Department as playful visits appear to be what they are; visits with children with persons who have been identified as their father that appear to be, at least, good visitation, pursuant to the photographic record that has been supplied by a father through his counsel.

Now, that, kind of, flies in the face of Maddie not interacting with her father. It is described that Maddie, the daughter, does not interact with her father. The father makes the attempt at interaction; but Maddie will not engage with the father.

The boys interact with the father; but to the extent that they play with him. However, there's no sit down time; and I believe father somewhat corroborated that with his testimony today. And, there's no sit down time where there is verbal discussion, you just have what the boys and the father — and, this was observed by Ms. Goodman, a worker in the case. Now, Mr. — are you Mr. Johnson?

MR. JOHNSON: Yes, sir.

THE COURT: Yeah. Mr. Johnny Johnson, who was present in the courtroom, is the gentleman that assumed this case for all the respondents back in October of 2014.

And, he's indicated that [t]he respondents are in school were appropriate, that he does monthly visits with the respondents and the respective caregivers, that the respondents are safe.

He has facilitated through the Department weekly visits with the father and respondents. He indicates that the respondents — strike that — that the parents kept about 25 percent of the scheduled visits; and that mother has not visited with the respondent since October of 2014.

That the — according to Mr. Johnson, that the father last visited with the respondents sometime prior to December 24, 2014. Now, December 25, 2014 and January 1, 2015 are both dates which fell on Thursdays, where it is the presumption that the Department of Social Services was closed on those holidays.

So, their visits weren't had on those days. But, he further testifies that there's been no financial support from either parent, no clothes from either parent, no daycare assistance from either parent; and there's been one visit from the father in January of 2015.

He reports that the father appeared as to the missed visits as to the missed visits around Christmas of 2014. Father appeared at the Department of Social Services unannounced with some toys; yet, there was no visit with respondents, as the respondents were not present for the visit, because it was unannounced; and that there had been no arrangement made for the respondent's appearance, again, because it was unannounced.

And, the unannounced visit was rescheduled for a subsequent Th[ur]sday. Father was not available, according to Mr. Johnson, as he had been hospitalized.

Mr. Johnson further reports that he has no concerns regarding the respondents' respective placement, that he makes monthly visits to each home. The respondents are properly and comfortabl[y] dressed, properly fed, properly sheltered or housed and that their medical, dental — and medical dental needs are updated and their vaccinations have been updated.

The Court took particular note of the Department's Exhibit NO. 138; which, I believe was a service agreement by the Department of Social Services. Same was signed, if I have it correctly, by the father, pursuant; but has not fulfilled same.

Let me have 138, please? This was a service agreement that was entered into, it looks like September 19, 2013. The reason I wanted it is to make sure that, if I had recalled correctly, that the service agreement appeared to go only to one child.

But, that which is good for one child and sometimes may be good for all children, because this was a service agreement. The tasks; father shall obtain a drug assessment evaluation and follow the recommendations. Father shall have stable housing and live a drug-free lifestyle.

Father shall enroll and complete parenting classes. Father shall verify income. Father shall sign a consent form for release of information. And that father shall document and submit all documentation to the Department of Social Services. On the other hand, the worker would refer the father to parenting classes.

The worker would refer the father to drug assessment. And the worker would ensure that the children are brought to the agency for their — for their visitations. As previously indicated, all of these children have been adjudicated CINA.

Father is currently in an inpatient drug treatment program as of about two weeks ago, as reported by his counseling and was supposed — was in a blackout period. That was February 11, 2015 and the matter was continued until today; February 24, 2015.

And, father presented in his side of the case, Mr. Ken Foster; a gentleman who's a Clinical Supervisor for eight-plus years at Valley Ridge — Valley Bridge Health, Incorporated.

He indicates he's the counselor for [Father]; that, pursuant to some phone screened interview that they had the first week of February, he was admitted to the program [on] February 11, 2015.

(Whereupon, the camera view showed that the father had re-joined counsel at the table).

THE COURT: It is a three-to-six-month residential program for substance abuse treatment. They also treat co-occurring folks and that [Father] is now in a 90-day restriction period, or what I would consider their — to be their blackout period.

That the program deals with clinical thinking and more recognition therapy. The Court — and I accepted the testimony from the program. And, the father's encouraged to get involved with the children's lives; and that, prior to entering the program, [Father] was in a Methadone program prior to entering the same.

Mr. Foster said something in his testimony quite early on that is paramount with regard to the central issues, as pointed out by respondent's counsel in opening statement. As to any plan that father may have, it's all up to [Father]. His motivation is up to him. His level of stability will be up to him.

Now, father has be[en] in this program for the last 13 to 14 days; and he's described his Methadone levels as going down from 130 to possible now 105; but prior to that, it had risen from 75 all the way up to 130.

And, he had been on a high level of Methadone and that he was, according to Mr. Foster, double-dosing; which did give them a concern. They have indicated to the program that he was on Heroin and that, prior to the Methadone that he had been talking, he was two-to-three years on Heroin.

That he's not employed as of right now, and he's not employed when he entered the program. Father presents himself to this Court as the primary caretaker, initially, of Davion and Dev[o]n; and that he kept Dev[o]n; that he fed him, he diapered him, took him to his appointments, got him to his shots, bathed him.

And the Court will infer that he housed him, clothed him, things of that nature; and that the father also kept Davion and practically did the same thing; the Court will infer from his testimony.

That he first lived on, I believe he said, Yolanda Road [phonetic], which was by the old stadium; but that he had also lived in his aunt's house; but, at some point, the father, the respondent[s], and the father's mother had lived in the aunt's house.

They saw a person by the name of Dr. Tanner. That he had purchased clothes for his children. That he works; whether he works under the table, whether he works with a paystub that you can show somebody; that he works and he works in construction and that he worked in fast food.

That his home for the last three years, however, had been at 605 Oldham Street; which, someone described, as Section 8. And, that he was candid with the Court. September 21, 2012 was the day he began using drugs; and that is the day that he describes that his daughter was taken from the hospital and he was prevented from getting — going back to get her; and he admitted heroin use.

And, he admitted respondents were removed from his care on or about April of 2013. He admitted that he entered the Family Recovery Program; that he was supposed to be there for a year; that he was not participating; that he got two extensions.

That he admitted that he messed up, quote, unquote, with the strict cause for — track provided by the Family Recovery Program. And, when, upon discharge from the Family Recovery Program, he was advised to get drug treatment, and that he looked for drug treatment in Turk House, Power Recovery; and various other programs.

That he would call; but no one would accept him, according to him, because of his high level of Methadone. That he's been going to Narcotics Anonymous for, at least, the past three years. That the Methadone that he was under makes him tired, itch, scratch, or nod.

Now, if recall correctly — and, I can't remember the young lady's name who testified — I found it rather curious, and not just coincidental that, during sometimes, her observations with the father with his children during visitations, she described exactly the behavior that the father described when he was on Methadone; that he was tired, that he would itch

in places that she did not find to be appropriate, that he would scratch and that he would nod.^{19]}

Now, father says that the children react to him when they — positively to him, when they do their visitations and when they see him for visits. That Madison would be crying; but at some time — and I inferred, during the visitation, that she would stop crying.

He presented pictures of him with his children during the visits; and that, when the visits ended, the children would react negatively. He indicates that he'd want to play and, quote, unquote, do stuff with them. That he described two-thirds of the time Dev[o]n — Davion would have temper tantrums at the end of the visitation.

He indicates: I love my children; quote, end quote. He indicates he feels terrible about this petition before the Court, where possibly his rights could be terminated before the Court. He indicates candidly: I messed up; meaning, father messed up. The children, they didn't mess up, end quote.

He indicates candidly: I feel short; meaning the father fell short, when the children were taken, end quote. He indicates candidly: I did not take the proper steps to fully do everything, end quote, to get them back.

The Department, on cross-examination, points to the Court's orders of non-compliance — or of compliance or of lack thereof with the Family Recovery Program in the Department's Exhibits 190 and 191. That he has previously tested positive for drugs and/or alcohol, pursuant to the Department's Exhibits 19. Or, father would indicate he'll know what he's talking about.

And, then, there was an explanation of the rising of the levels of Methadone from 30 to 130; and, now, it's down to 105. As I previously indicated, Mr. Johnson has no concerns regarding respondent's respective placements. They're comfortable.

¹⁹ Although the juvenile court indicated that the testimony was about visitation at the Department, we can discern that the court was referencing the testimony of Walker, the family preservation worker, who testified that, when she visited Father on home visits, "he would look as if he was under the influence of something His face looked as if his eyes would be closed and then open, he would be scratching a lot in areas you don't want to see, and slurred speech." Walker elaborated on the scratching, explaining that Father was "digging in [his] private area under [his] clothes in front of [her]."

And, the service agreement, as indicated, contacts have indicated show that father has not complied fully with the Department's request and efforts to reunify with his children. The Court doesn't look at perfection. The Court looks at compliance. Now, all these children have been adjudicated CINA.

Again, father is currently in inpatient drug treatment, per his counsel. The Court finds, pursuant to all the testimony that it's had before the Court that it is clear, that it is rather precise that the father has not lived up to his bargain to have the respondents returned to him; that he's failed to maintain the housing; even that housing that was secured by the assistance of the Department of Social Services.

I don't know if father is going to go back to Oldham Street or if father's going to get some house with his current paramour, as he's pending a child's arrival. He now states he lives on Oldham Street.

He's failed to comply with the Family Recovery Program. He's either had poor compliance or suspended status; but I will note — and, where is the exhibit? Department's — strike that.

Department's Exhibit NO. 132, the full packet, as I read through the exhibit, I presume that this is in reference to [Father]. October 31, 2014, good compliance.

And, I read another good compliance in here, also. But I also read in here a failure to comply. So, the compliances have been inconsistent in this regard in an attempt to get these children back to their father. Orders were [that he] had to comply [with the Program] and father failed.

And, the record is replete with poor compliance, good compliance, suspended compliance. But, all that says to the Court is there's inconsistent compliance. You know, he would have good compliance and then he would fall off after July of 2014.

Then, he would have two weeks of compliance and then he would fall off after July 25, 2014. Then, he'd have good compliance and then he would fall off again August 8, 2014. Then, on September 19, 2014, there was poor compliance; and, finally, a discharge from the [Program].

Mr. Hill said something during closing argument in this case that during the pendency of these matters, during the time period where there

was to be work towards a reunification with the children, the father couldn't control himself; that there were further requests to comply and that the father failed.

Standard of proof in these cases is by clear and convincing evidence. That is, is it clear to one's understanding? Is there precision in proof?

The Court is mindful of the presumption, favoring a continuation of parental relationship, that the findings of this Court, quote, show either one of two: An unfitness on the part of the parent to remain in the parental relationship with the child; or it constitutes an exceptional circumstances that would make a continuation of the parental relationship between father and children detrimental to the best interest of the children.

I can't recall which worker that it was; but I believe it was the supervisor who was present in the courtroom today. When the father questioned the Department of Social Services, quote to paraphrase: What do I have to do to get my children returned to me?

Her response was: Stay sober. He has not consistently stayed sober. And, as originally stated to the Court in opening statement by father's counsel — who is this person?

[Father]: My escort.

THE COURT: Oh.

Father's drug issues —

[Department's Counsel]: You have to wait outside.

THE COURT: — (continuing) have not led to the removal of the children from him in this case. His road has been rocky. His road has been extremely difficult.

The Court surmises that his drug addiction, in dealing with the throes of addiction, has led the Department of Social Services not to return the children to his care.

This is not just merely a matter of the father addressing his drug issues. Too little, too late. The possible emotional effect on the boys of custody change to the father, the Court finds, would be deleterious to their health and their safety.

[Father]: Wow. Really?

THE COURT: As described by the foster parent, the boys are now, quote, end quote, on schedule and are receiving their therapies as their previous placements in foster care were not working out, as the schedules appeared not to have been in place.

Again, the children have made their adjustments to their homes, their schools, their therapies, and, as important, the caretakers and the mothers, foster mothers. There has been time that has lapsed since the parent has sought to reclaim the children and the efforts towards reunification have failed.

Each child, in the meantime, has bonded with their foster mothers and respective foster parent families. Now, the father obviously desires to have the children. We wouldn't be here if he did not. This is a contested termination of parental rights hearing.

However, the children's stability and certainty, with regard to any future that they may have in the custody of their father, based on the evidence before the Court, was rather non-existent. The Court sees only instability and uncertainty if the children are returned to the father.

The children's stability and certainty as to their futures with their respective foster mothers, based on the evidence before the Court, appears, at least, firmly established, steady, consisting, lasting, and purposeful. The boys' acting up have decreased. These children have transitioned to their respective homes.

There is a bond with the father when they have visitation with the father, when they have play time with the father one time per week. But, there's no sit down time taken in that one time per week for actual discussion.

The children have not been in father's care since, if I recall correctly, April of 2013. The boys are placed together. They're not — the daughter has never been in father's care, is placed with another — and is placed with another caretaker.

They visit with each other. They appear to have moved on with their young lives. Now, Department of Social Services argues that the father is unfit to continue the parental relationship.

That he's got some history of conviction with regard to possession of controlled dangerous substances that dates back to 2008 and that he has not adjust his circumstances to prepare himself for the reunification of — with his children. There's no employment.

There's no plan for housing. And, it's already been shown to this Court that additional services will not prepare this father to recover his children. It's almost as if: How long is this to go on as we're 22 months-plus down the road?

Now, there's been neglect as a result of the CINA finding. There has been no chronic abuse. And, father's relationship, the Court kind of agrees with the Department of Social Services' argument that visitation is play time.

What would the granting of the petition have on the children? It would provide stability. It would provide consistency. It would continue appropriate behavior. Father has failed at least three times to demonstrate a fitness; and the children have been away from him for quite some time.

There is a lack of certainty of the children and their future if they were returned to the father. Respondent's counsel has indicated that the caretakers have each other's information.

Therefore, the inference from that is that the caretakers of the children would not only keep the caretakers involved; but the children would have contact with each other; and that these children have come — for at least the boys — these children have come into care at least three previous times; and that returning to — the children to their father would be an unstable and unhealthy and unsheltered an unhoued environment.

(Whereupon, [Father] exited the courtroom.)

THE COURT: Therefore, pursuant to the Court's review of the evidence in this case, having gone through the factors under Section 5-323 of the Family Law Article, the children have been away from the father for a lengthy period of time.

They have been with their caretakers for, now, a lengthy period of time. I've discussed the possible emotional effect on the children if custody changed back to the biological father. I've discussed the possible emotional effect on the children if custody is given to the caretakers.

There is no tie or contact between father and caretakers; although there are strong ties and bond between caretakers and respondents. The father's demonstrated a genuine intense desire to have the children returned to him; but their stability and certainty as to their future in this custody gives the Court huge pause.

In fact, the Court doesn't have any confidence that a return to the father would be in the best interest of these children and that their future lives with their current caretakers.

And, having considered the factors enumerated in Section 5-323(d)(e)(f) and (g), the Court finds, by clear and convincing evidence, that it is in — let me have the — excuse me a second. I'm looking for the docket sheet.

That it is in Davion C[.]'s best interest to grant the Department's petition; and, accordingly, the Court hereby issues an order of guardianship to adoption and long-term care in short of adoption; thereby terminating the parent rights of [Father].

And, that's in Case — and that's 812129007. As to Dev[o]n C[.], having considered all the factors enumerated in Sections 5-323(d)(e)(f) and (g), the Court finds by clear and convincing evidence that it is in D[evon] C[.]'s best interest to grant the Department's petition; and accordingly, the Court hereby issues an order of guardianship to adoption or long-term care in short of adoption; thereby terminating — terminating the natural parental rights of [Father].

And, that it is in the best interest of Madison C[.], pursuant to the factors enumerated in Section 5-323(d), (e), (f) and (g), the Court finds by clear and convincing evidence that it is in her best interest to grant the Department's petition; and, accordingly, the Court hereby orders — strike that — issues an order of adoption — order of guardianship to adoption and long-term care in short of adoption, thereby terminating the natural parental rights of Madison — of [Father] in Case Number 812264003

And, the Court finds that — I struggled with the unfitness part, Mr. Hill; but I do not struggle with the exceptional circumstances part; that these are exceptional circumstances in this case.

Part of the case is a result of a little bit too late, a little bit too late. The Court finds exceptional circumstances based on its reading of the

evidence and making of the record that returning the children to the father would pose an unacceptable risk to their future, frankly; and to their destiny; and that is the order of the Court.

[Department’s Counsel]: Thank you. So, the Court, based on Family Law Section 5-323 —

THE COURT: Yes.

[Department’s Counsel]: — (continuing) having reviewed all of the factors, the Court finds that there are exceptional circumstances that exist that would make the continuation of the parental right detrimental to the best interest of the children.

THE COURT: Of the children.

[Department’s Counsel]: Thank you.

THE COURT: And, the Court finds reasonable efforts have been done by the Department of Social Services.

Standard of Review

Md. Code (1984, 2012 Repl. Vol.), § 5-323 of the Family Law Article (“FL”) allows a juvenile court to grant guardianship of a child without the consent of a parent if it “finds by clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interest of the child . . . such that terminating the rights of the parent is in a child’s best interests[.]” FL § 5-323(d) guides the court in determining what is in the child’s best interest by enumerating factors that the court must consider prior to granting guardianship:

. . . [I]n ruling on a petition for guardianship of a child, a 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, including:

- (1)(i) all services offered to the parent before the child's placement, whether offered by a local department, another agency, or a professional;
 - (ii) the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent; and
 - (iii) the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any;
- (2) the results of the parent's effort to adjust the parent's circumstances, condition, or conduct to make it in the child's best interests for the child to be returned to the parent's home, including:
- (i) the extent to which the parent has maintained regular contact with:
 - 1. the child;
 - 2. the local department to which the child is committed; and
 - 3. if feasible, the child's caregiver;
 - (ii) the parent's contribution to a reasonable part of the child's care and support, if the parent is financially able to do so;
 - (iii) the existence of a parental disability that makes the parent consistently unable to care for the child's immediate and ongoing physical or psychological needs for long periods of time; and
 - (iv) whether additional services would be likely to bring about a lasting parental adjustment so that the child could be returned to the parent within an ascertainable time not to exceed 18 months from the date of placement unless the juvenile court makes a specific finding that it is in the child's best interests to extend the time for a specified period;
- (3) whether:
- (i) the parent has abused or neglected the child or a minor and the seriousness of the abuse or neglect;
 - (ii) 1. A. on admission to a hospital for the child's delivery, the mother tested positive for a drug as evidenced by a positive toxicology test; or
 - B. upon the birth of the child, the child tested positive for a drug as evidenced by a positive toxicology test;and
 - 2. the mother refused the level of drug treatment recommended by a qualified addictions specialist, as defined in § 5-1201 of this title, or by a physician or psychologist, as defined in the Health Occupations Article;
 - (iii) the parent subjected the child to:
 - 1. chronic abuse;

2. chronic and life-threatening neglect;
 3. sexual abuse; or
 4. torture;
- (iv) the parent has been convicted, in any state or any court of the United States, of:
1. a crime of violence against:
 - A. a minor offspring of the parent;
 - B. the child; or
 - C. another parent of the child; or
 2. aiding or abetting, conspiring, or soliciting to commit a crime described in item 1 of this item; and
- (v) the parent has involuntarily lost parental rights to a sibling of the child; and

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

Along with the best interests of the child, the circuit court must also consider the fundamental right of a parent to raise her own child, which cannot be taken away unless clearly justified. *In re Adoption/Guardianship No. 95195062/CAD*, 116 Md. App. 443, 454 (1997) (citing *In re Adoption/Guardianship No. 10941*, 335 Md. 99, 112 (1994); *Santosky v. Kramer*, 455 U.S. 745, 759 (1982)). “We have made clear, however, that the controlling factor in adoption and custody cases is not the natural parent’s interest in raising the child, but rather what best serves the interest of the child.” *In re Adoption/Guardianship No. 10941*, 335 Md. at 113 (citations omitted).

“On review, we must ascertain whether the trial court considered the statutory criteria, whether its factual determinations were clearly erroneous, whether the court properly applied the law, and whether it abused its discretion in making its determination.” *In re Adoption/Guardianship No. 94339058/CAD*, 120 Md. App. 88, 101 (1998) (citing *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 311 (1997)); *see also In re Shirley B.*, 419 Md. 1, 18 (2011); *In re Ta’Niya C.*, 417 Md. 90, 100 (2010).

Discussion

With respect to the boys, Father argues that the juvenile court erred in determining that “it was in the boys’ best interests to have parental rights terminated” and points to alleged erroneous factual findings — that additional services could bring lasting parental adjustment and “that the children had been in foster care for a long time” — in support of his argument. As to Madison, Father avers that it was error for the court “to refuse to consider post-adoption contact” between Father and Madison.

The State responds that the “juvenile court’s finding is amply supported by the evidence” because the termination of his rights “provided the children with the required stability and certain necessary to meet their health and safety needs — the primary statutory consideration for the court.” In support of its argument, the State stresses Father’s “long-standing failure to successfully address his drug addictions, especially heroin, despite numerous opportunities, his inability to provide the children with any structure, certainty or stability, his failure to consistently visit the children, his lack of relationship with Madison, and his superficial relationship with the boys.” With respect to Madison, the State argues that, because “[t]here is no statutory requirement that the

juvenile court consider a parent’s access to mediation as a part of its TPR determination[.]” it was not error to “refuse to order a non-party to consider a post-adoption visitation agreement . . . in light of [Jonetta] R.’s unwillingness to enter into such an agreement[.]”

I. Termination of Father’s Rights to Devon and Davion

Father contends that (1) “it was [not] in the boys’ best interests to have parental rights terminated, especially given their distress after visits with their dad ended, and their behavioral problems after being place in foster care[;]” (2) it erred in finding “that the children had been in foster care for a long time[;]” and (3) it erred “by declining to find that this was a case where additional services would bring a lasting parental adjustment.” In other words, Father contends that the juvenile court made two clearly erroneous factual decisions and abused its discretion in terminating his parental rights.

The State answers that Father “had more than sufficient time and services to make a parental [adjustment to] allow his children to be placed in his custody,” and that he has “failed to show that there was an error in the juvenile court’s factual findings, which rest upon ample evidence in the record, or that the court abused its discretion in the ultimate decision to terminate parental rights.”

We address Father’s factual contentions first. Father avers that the juvenile court erred because it “found that the children had been in foster care for a long time.” In support, Father offers “two reasons”: (1) that “the length of time that they were out of father’s care cannot be the sole factor for determining that termination of a parent’s rights

is in the children’s best interests[,]” and (2) “the boys were in three placements since being removed from their father.”

We note that, although length of time is not an enumerated consideration under FL § 5-323(d), a juvenile court may nonetheless consider it because the considerations listed under (d) are not exclusive. Father, though, does not point to any error with the factual finding regarding the length of time the children were in foster care. Instead, based on his reasoning, he argues that the legal conclusion that it was in the best interests of the children to terminate his parental rights cannot be based solely on that finding.

Father is correct that the boys have had three placements. The Department testified as to the previous placements and Father’s Exhibits 9 and 14 reflect that the boys had been removed from foster care placements: first, because the home had “too many children under the age of six (6) years old;” and second, “because of the children’s behavior.” We, therefore, decline to reject that factual finding about the length of time for his asserted reason and will address his argument about the detrimental nature of these placements in terminating his parental rights with his other contention addressing an abuse of discretion, *infra*.

Father’s other factual contention is that, under FL § 5-323(d)(2)(iv), additional services beyond those provided in the 18 months from the boys’ date of placement would have bought about a lasting parental adjustment. In particular, Father argues:

Here, the father admittedly failed at the [Program]. But, he never gave up on his sons. This is not a situation where the father did “too little too late.” Rather, it is a situation where the first type of service failed and he readily moved on to another plan. This plan of inpatient treatment

should have been attempted before the court broke the strong bond between father and sons.

The State replies that Father “has failed to meet [his] burden” because “multiple opportunities and support systems to assist him in overcoming his addiction” have been offered, yet Father “failed to take advantage of these opportunities, repeatedly reverting back to his use of heroin.”

Under FL § 5-323(d)(2), the juvenile court must consider:

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 . . . 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[.]

Father’s characterization of himself as a person of action, who “readily moved on to another plan” after the first service failed, is disingenuous. Father had a number of services provided to him, including housing, parenting classes, and drug treatment referrals. The Department helped Father secure housing, although it is currently unclear if he has adequate housing to return to following his release from the in-patient treatment program. Father failed to pursue parenting classes, but Father did attempt some form of drug treatment by engaging with the Program. We list Father’s multiple encounters with the Program below:²⁰

²⁰ The data in this table was compiled from the documents in trial Exhibits 132 and 133.

Date	Compliance Level ²¹	Comments
5/3/2013	No compliance	Failed to appear
5/17/2013	No compliance	Failed to appear
5/21/2013		Completed Program assessment; positive urinalysis for opiates and tetrahydrocannabinol (“THC”)
5/23/2013		Positive urinalysis for opiates and THC
5/28/2013		No show for urinalysis - unexcused
6/4/2013		No show for urinalysis – unexcused
6/6/2013		Positive urinalysis for cocaine and opiates
6/7/2013	No compliance	First appearance
6/11/2013		Failed to test for urinalysis
6/13/2013		No show for urinalysis – unexcused
6/18/2013		Positive urinalysis for cocaine and heroin
6/21/2013	Poor	
6/21/2013		Positive urinalysis for opiates
6/24/2013		Failed to test “after several attempts”
6/28/2013	Poor	
6/28/2013		No show for urinalysis – unexcused
6/29/2013		Discontinued MMT program at Eastern Avenue Health Solutions
7/1/2013		No show for urinalysis – unexcused
7/3/2013		Positive urinalysis for opiates
7/9/2013		No show for urinalysis - unexcused
7/12/2013	Poor	Failed to appear
7/12/2013		No show for urinalysis - unexcused
7/15/2013		Completed new referral for suboxone and intensive outpatient treatment; positive urinalysis for alcohol and heroin
7/19/2013		No show for urinalysis - unexcused
7/20/2013		Arrested
7/22/2013		No show for urinalysis - unexcused
7/25/2013		No show for urinalysis - excused
7/26/2013	Poor	Failed to appear

²¹ Compliance level is indicated only for hearing dates when a finding of compliance was made.

7/29/2013		Missed intake with suboxone maintenance and intensive outpatient treatment; no show for urinalysis – excused
8/9/2013	No compliance	Placed on suspended status pending release from Baltimore City Detention Center (“BCDC”)
8/30/2013	No compliance	Suspended status
9/19/2013		Released from BCDC
9/23/2013		No show for appointment for new Recovery Services Plan; negative urinalysis
9/27/2013	Poor	Disclosed “that he took Xanax”
9/27/2013		Failed to submit urinalysis
10/1/2013		No show for urinalysis - unexcused
10/4/2013	Poor	Failed to appear
10/4/2013		No show for urinalysis - unexcused
10/8/2013		No show for urinalysis - unexcused
10/11/2013		No show for urinalysis - unexcused
10/14/2013		Positive urinalysis for benzodiazepines, heroin, and cocaine
10/15/2013		Positive urinalysis for benzodiazepines, heroin, and cocaine
10/17/2013		No show for urinalysis - unexcused
10/18/2013	Poor	Failed to appear
10/21/2013		No show for urinalysis - unexcused
10/25/2013		No show for urinalysis - unexcused
10/28/2013		Failed to attend intake for suboxone maintenance and intensive outpatient treatment
10/29/2013		No show for urinalysis - unexcused
10/30/2013		Transferred for further outreach efforts
10/31/2013		No show for urinalysis – unexcused
11/1/2013	Poor	Failed to appear
11/4/2013		No show for urinalysis - unexcused
11/12/2013		No show for urinalysis - unexcused
11/15/2013		No show for urinalysis - unexcused
11/19/2013		No show for urinalysis - unexcused
11/21/2013		No show for urinalysis - unexcused
11/22/2013	Poor	Failed to appear
11/22/2013		No show for urinalysis - unexcused
11/25/2013		No show for urinalysis - unexcused
11/26/2013		No show for urinalysis - unexcused
12/2/2013		No show for urinalysis - unexcused
12/6/2013		No show for urinalysis - unexcused

12/11/2013		No show for urinalysis - unexcused
12/12/2013		No show for urinalysis - unexcused
12/17/2013		No show for urinalysis - unexcused
12/18/2013		Failed to attend appointment with case manager (self-scheduled on 12/17)
12/20/2013	Poor	Failed to appear
12/20/2013		No show for urinalysis - unexcused
12/23/2013		No show for urinalysis - unexcused
12/26/2013		No show for urinalysis - unexcused
12/27/2013		Positive urinalysis for benzodiazepines
12/27/2013		Re-engaged with Program; given referral for suboxone maintenance and intensive outpatient treatment at Powell
12/30/2013		No show for urinalysis - unexcused
12/31/2013		Attended intake at Powell (but attended no further sessions); positive urinalysis for benzodiazepines
1/2/2014		No show for urinalysis – unexcused
1/7/2014		No show for urinalysis – unexcused
1/9/2014		No show for urinalysis – unexcused
1/10/2014	Poor	
1/10/2014		Negative urinalysis
1/13/2014		Decided that he did not want to attend intensive outpatient treatment; no show for urinalysis – unexcused
1/14/2014		Began parenting classes; urinalysis – no results provided
1/15/2014		Intake for Turning Point methadone maintenance
1/17/2014	Poor	Failed to appear - excused due to child visit
1/17/2014		No show for urinalysis – unexcused
1/22/2014		No show for urinalysis – unexcused
1/24/2014	Poor	Failed to appear
1/24/2014		No show for urinalysis – unexcused
1/28/2014		Positive urinalysis for methadone (consistent with medication)
1/31/2014		Positive urinalysis for methadone (consistent with medication)
2/4/2014		Positive urinalysis for methadone (consistent with medication)
2/6/2014		Urinalysis – no results
2/7/2014		No show for urinalysis – unexcused
2/10/2014		Positive urinalysis for methadone (consistent with medication)

2/11/2014		Positive breathalyzer
2/12/2014		Positive urinalysis for methadone (consistent with medication)
2/18/2014		No show for urinalysis – excused
2/19/2014		No show for urinalysis – excused
2/21/2014		No show for urinalysis – unexcused
2/28/2014		Negative urinalysis
2/28/2014	Poor	
3/4/2014		Positive for cocaine and methadone (consistent with medication)
3/7/2014	Poor	
3/11/2014		Negative urinalysis
3/21/2014	No compliance	Failed to appear
3/21/2014		No show for urinalysis – unexcused
3/24/2014		No show for urinalysis – unexcused
3/28/2014		No show for urinalysis – unexcused
4/1/2014		No show for urinalysis – unexcused
4/3/2014		Transferred for further outreach efforts
4/4/2014	Poor	Failed to appear
4/7/2014		No show for urinalysis – unexcused
4/9/2014		No show for urinalysis – unexcused
4/15/2014		No show for urinalysis – unexcused
4/18/2014	Poor	Failed to appear
4/22/2014		No show for urinalysis – unexcused
4/24/2014		No show for urinalysis – unexcused
4/28/2014		No show for urinalysis – unexcused
4/30/2014		Failed to attend meeting for updated plan (self-scheduled on 4/29)
5/2/2014	Poor	Failed to appear
5/6/2014		No show for urinalysis – unexcused
5/13/2014		No show for urinalysis – unexcused
5/14/2014		Referred for further outreach efforts
5/16/2014	Poor	Failed to appear
5/20/2014		Call from Mercy Medical Center that Father entered 3-day opiate detox
5/21/2014		No show for urinalysis – excused
5/23/2014		Negative urinalysis
5/23/2014		Discharge from opiate detox
5/27/2014		No show for urinalysis – unexcused
5/29/2014		No show for urinalysis – unexcused
6/2/2014		No show for urinalysis – unexcused

6/6/2014	Poor	
6/6/2014		Positive urinalysis for marijuana, heroin, and methadone (consistent with medication)
6/9/2014		No show for urinalysis – unexcused
6/13/2014	Poor	Failed to appear
6/16/2014		No show for urinalysis – unexcused
6/18/2014		No show for urinalysis – unexcused
6/24/2014		Completed extension contract; positive urinalysis for opiates and methadone (consistent with medication)
6/27/2014		Positive urinalysis for methadone (consistent with medication)
6/27/2014	Poor	
7/1/2014		Positive urinalysis for methadone (consistent with medication)
7/3/2014		Positive urinalysis for methadone (consistent with medication)
7/7/2014		Positive urinalysis for heroin (later retested; could not confirm if heroin was present, but codeine was confirmed)
7/11/2014	Poor	
7/11/2014		Positive urinalysis for methadone (consistent with medication)
7/14/2014		Positive urinalysis for methadone (consistent with medication)
7/15/2014		Negative breathalyzer
7/17/2014		Positive urinalysis for methadone (consistent with medication)
7/22/2014		Negative urinalysis
7/25/2014	Good	
7/25/2014		Negative urinalysis
7/29/2014		Positive urinalysis for methadone (consistent with medication)
8/1/2014		Positive urinalysis for methadone (consistent with medication)
8/5/2014		Negative urinalysis
8/8/2014	Good	
8/8/2014		Negative urinalysis
8/11/2014		Positive urinalysis for methadone (consistent with medication)
8/14/2014		Positive urinalysis for methadone (consistent with medication)

8/19/2014		Positive urinalysis for methadone (consistent with medication)
8/22/2014		Positive urinalysis for methadone (consistent with medication)
8/26/2014		Positive urinalysis for methadone (consistent with medication)
8/28/2014		Failed to attend meeting with Program
8/29/2014	Good	
8/29/2014		Negative urinalysis
9/2/2014		Positive urinalysis for methadone (consistent with medication)
9/5/2014		Urinalysis – no results
9/8/2014		Positive urinalysis for methadone (consistent with medication)
9/15/2014		Positive urinalysis for methadone (consistent with medication), opiates, and THC
9/19/2014	Poor	Discharged from Program
9/23/2014		Negative urinalysis
9/26/2014		Urinalysis – no results
9/29/2014		Negative urinalysis
10/1/2014		Negative urinalysis
10/3/2014	No compliance	Granted readmission into Program
10/3/2014		Signed extension contract; declined case manager recommendation for in-patient treatment
10/3/2014		Negative urinalysis
10/8/2014		Urinalysis – no results
10/10/2014	Good	
10/10/2014		Positive urinalysis for methadone (consistent with medication)
10/14/2014		No show for urinalysis — unexcused
10/16/2014		Negative urinalysis
10/17/2014	Good	
10/17/2014		Negative urinalysis
10/21/2014		Positive urinalysis for methadone (consistent with medication)
10/22/2014		Positive urinalysis for methadone (consistent with medication)
10/24/2014		Negative urinalysis
10/28/2014		Urinalysis – no results
10/30/2014		Negative urinalysis
10/31/2014	Good	

11/5/2014		Negative urinalysis
11/12/2014		Positive urinalysis for methadone (consistent with medication)
11/14/2014		Urinalysis – no results
11/19/2014		Negative urinalysis
11/21/2014	Good	
11/21/2014		Positive urinalysis for methadone (consistent with medication)
11/25/2014		Positive urinalysis for methadone (consistent with medication)
12/2/2014		Positive urinalysis for methadone (consistent with medication)
12/5/2014		Negative urinalysis
12/8/2014		Positive urinalysis for methadone (consistent with medication)
12/11/2014		Positive urinalysis for alcohol
12/15/2014		Positive urinalysis for heroin
12/17/2014		Urinalysis – no results
12/19/2014	Poor	Discharged from Program due to non-compliance. Advised to go to in-patient treatment program, refused.
1/14/2015		Positive urinalysis for opiates
1/22/2015		Advised to go to in-patient treatment program; refused.

Additionally, the Department submitted testimony about Father’s involvement with the Program. Kelly Gucwa, the permanency supervisor, testified that she had “met several times at the [Department]” with Father to “talk[] about his [Program] issues, . . . about whether or not he wanted to go to inpatient, . . . about the pros and cons of going inpatient versus getting outpatient treatment, . . . and, just recently, on January 22nd, we had the same conversation about going inpatient.” Gucwa testified that she has been “very specific” in telling Father that he has “to get sober” and “maintain sobriety” to regain custody of his children. Gucwa testified that she had the conversation with Father about in-patient treatment “three to four times,” and that her “old unit manager, Emily

Tarbutton [phonetic] has had that conversation” with Father, too. Gucwa reported that Father has never given the Department “documentation of completed drug treatment” or of “completing a parenting program.” Gucwa testified that, along with drug use, Father’s criminal record prevented him from having custody of the children.

In sum, even though Father had extended his contract twice over the nearly year and a half he was in the Program, he was discharged from the Program twice. Father refused intensive out-patient treatment three times and refused in-patient treatment three times. Out of 43 Program hearings, Father was in poor compliance or no compliance 35 times and failed to appear (without leave of court) 16 times. Father had unexcused absences from his random urinalyses 63 times out of 147 scheduled tests. Of the times that Father did appear, he tested positive for substances that were not prescribed to him 28 times. Father did not “readily” move on to another plan when he failed to comply with the Program — indeed, he tried to continue with the Program twice when he “failed” the Program before he “moved on.”

Moreover, the Program was not the first service offered to Father. When Father first took custody of the boys in 2012, he failed to adhere to the agreement with the Department and, eventually, the children were removed from his care as a result. When Father was given a plan to reunify with his children, he failed to comply as well — he did not attend parenting classes; he did not “live a drug-free lifestyle[;]” and he did not attend visitation. Father’s so-called attempt to “move[] on to another plan” by entering the Program (which was based on the referral of someone other than him), also failed, yet he did not “move[] on to another plan” until the day of the scheduled TPR hearing, after he

had failed to obtain a continuance. Because we find no error in the juvenile court's factual findings, we proceed to Father's contention that the court abused its discretion in terminating his parental rights.

Father's contention that the juvenile court erred in concluding that "it was in the boys' best interests to have parental rights terminated, especially given their distress after visits with their dad ended, and their behavioral problems after being placed in foster care" does not persuade us.

In *B.G. v. M.R.*, we noted that one of the "factors that courts should consider in determining whether parental custody will be detrimental to the child" is "the stability and certainty as to the child's future[.]" *B.G. v. M.R.*, 165 Md. App. 532, 546-47 (2005) (quoting *McDermott v. Dougherty*, 385 Md. 320, 419 (2005)). We underscored the importance of stability in a child's life by noting that we will also consider "the stability of the child's current home environment[.]" *Id.* at 547 (quoting *Sider v. Sider*, 334 Md. 512, 532 (1994)).

Father's argument that the boys' difficulties following visits and the several foster care placements is self-defeating. Looking forward, it is not uncharacteristic for children to struggle to adapt to a new environment, especially when children value stability and certainty, but the boys "have transitioned to their" new home. As the juvenile court noted, the boys "have made their adjustments to their homes, their schools, their therapies, and, as important, the caretakers and the mothers, foster mothers." And, the boys are now on a consistent schedule which has reduced their "acting out." Returning the boys to Father's care would only decrease their stability and certainty, and could

exacerbate their now decreased behavior issues. Decreasing their stability and certainty would be in anything but the boys' best interest, particularly when the court noted that it "sees only instability and uncertainty if the children are returned to the father." We, accordingly, fail to find an abuse of discretion by the juvenile court.

II. Father's Request for a Post-Adoption Contact Agreement for Madison

Father posits that, because he "readily admitted that his relationship with [Madison] was distinct[,] . . . [h]owever, he visited regularly with her[.]" the juvenile court erred in "refus[ing] to consider post-adoption contact" because "the court never found the father to be unfit[.]" The State replies that, because "two parties must agree on the terms" of "any contract" and Jonetta R. was "unwilling[]" to enter into such an agreement[.]" the court correctly "refused to order a non-party to consider a post-adoption visitation agreement" for Madison.

At the time of the termination of Father's rights, he requested that the court "allow the father and the caregiver of Madison to have a mediation and discuss a post-adoption contact agreement with respect to Madison." Madison's best interest attorney and the Department stated that Jonetta R. was "not interested in doing that." The juvenile court ruled:

. . . The Court has considered your request with regard to a possible mediation agreement regarding father and Madison and the caretaker for Madison as to a post-adoption agreement; which the Court hasn't even ruled on the guardianship, yet.

But, the — for the purposes of mediation, that's father's request. I will note, the petition in this case was filed approximately six months and four days ago and the time frame for mediation could have been had prior to six months and four days ago; and a time frame for mediation could have

been had prior to the date that we started these proceedings, which was either February the 10th or the 11th; I cannot recall.

And, having considered your request, and now having heard that neither caretaker wishes to be involved in that possible kind of mediation, your request is denied at this time, Ms. Zoll.

Father did not renew his motion.

A post-adoption agreement is a “written agreement with the adoptive parents for future contact[.]” Md. Form 9-102.3. If adoptive parents sign a post-adoption agreement with a birth parent and do not do what they agreed to do, a judge can order “mediation, order the adoptive parents to do what they agreed to do, or change the agreement if the judge decides that it is in the child’s best interest.” *Id.*

First, adoption was not at issue in the instant case. This case concerned the termination of Father’s rights and the guardianship of Madison by the Department — it was not an adoption matter. As the juvenile court noted, because Father still had parental rights of Madison at the time of the motion, it was not yet ripe for consideration. Moreover, as the State notes, without Jonetta R.’s willingness to sign such an agreement, the court did not err in refusing Father’s request. *See In re Adoption of Cadence B.*, 417 Md. 146, 154 (2010) (noting that a post-adoption agreement is “appropriate” when the caretaker is “willing to facilitate the continued relationship with the parents[.]”).

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