UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2740

September Term, 2014

IN RE: ADOPTION/GUARDIANSHIP OF DANIEL B., KIAYA B., AND NATHANIEL B.

Woodward,
Kehoe,
Arthur,

JJ.

Opinion by Kehoe, J.

Filed: September 8, 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.

On January 23, 2015, the Circuit Court for St. Mary's County, sitting as a juvenile court, granted the petition of the St. Mary's County Department of Social Services ("the Department") for guardianship with the right to consent to the adoption of three minor children, Daniel B., Kiaya B. and Nathaniel B., thus terminating the parental rights of their parents, Kay B. and Daniel B., Sr. The parents have appealed from this judgment and present one question for our review, which we have reworded:

> Did the trial court err by finding that the parents were both unfit and that exceptional circumstances existed which warranted terminating their parental rights?

The Department asserts that there was no error on the part of the juvenile court. The children, through their counsel, ask us to affirm the judgment.

We have carefully reviewed the record, the parties' briefs and the oral and written opinions of the juvenile court. We conclude, as did the juvenile court, that exceptional circumstances existed that justified terminating appellants' parental rights.[1]

The Department removed the children from appellants' care and custody in May,

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[1]This opinion, like all of the opinions of this Court, will be posted on the Judiciary's website. We have limited our discussion of the evidence to protect the privacy of the parties.

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2011 because conditions in the household threatened the physical and psychological health and safety of the children. At the conclusion of the termination hearing, the juvenile court fully and carefully addressed each of the factors set out in Family Law Article ("FL") § 5-323(d). Except as noted below, appellants do not challenge the court's findings.

The juvenile court concluded that, in the forty-four months between the time the children were removed from their parents' household and the date of the termination of parental rights hearing, appellants had been unable to effectively address the problems that had caused the children's removal. Additionally, the court placed weight on the fact that the children have flourished in their foster home; that their foster parents are willing to adopt them; and that the children themselves have bonded to their foster parents. The juvenile court also found that the Department had provided reasonable, appropriate and timely services to appellants in order to achieve the goal of family reunification.

Appellants present two contentions to us. First, they assert that the juvenile court failed to take into account the possible harm to the children that might result if appellants' parental rights are terminated. Second, appellants argue that the court erred by placing undue emphasis on the length of time that the children were in foster care.

(1)

Appellants suggest that the juvenile court failed to consider the impact that terminating the appellants' parental rights would have on the children, as required by FL § 5-323(d)(4)(iv). This contention is unpersuasive because the court made a specific

finding in its written opinion that there was no indication that the termination of parental rights would harm the children in any way. The court noted that the children had been in the same foster home for forty-four months, had strong ties with the foster parents, had no contact with Mr. B. and only limited contact with Ms. B, that the children had expressed a desire to be adopted by their foster parents, and that the children, through their legal counsel, had consented to the termination of their parents' rights.

(2)

Appellants argue that the court erred by placing undue emphasis on the length of time the children had been in foster care. Appellants submit that "the fact that the children had been in out-of-home care for 44 months was not enough to justify a finding of exceptional circumstances," and "there was no evidence to show that the children would be harmed if they remained in foster care . . . . so they could be placed with their paternal grandparents with a goal of reunification."

Appellants' contention is unpersuasive for several reasons. First, it inaccurately characterizes the juvenile court's reasoning. It is clear that the court based its finding of exceptional circumstances not only on the length of time in foster care, but also upon four other important factors: that the children had not seen Mr. B. for a year and a half, that they had only limited contact with Ms. B. in the same period, and that they had bonded with their foster parents (whom the court understood wished to adopt the children).

Additionally, as we noted previously, the juvenile court's conclusion was also based upon its finding that appellants had not successfully addressed the problems that caused the children to be removed from the household, even though forty-four months had passed. These are all appropriate matters for the court to consider. As the Court noted in *In re Jayden G.*, 433 Md. 50 (2013):

> [T]he best interests of the child do not permit the juvenile court to ignore the reality of a child's life. The court is not required to disregard the existing attachment and emotional ties . . . . Rather, the court is to assess the reality of the children's circumstances and make findings accordingly.

Id. at 102 (quotation marks and citations omitted).

Second, appellants' argument overlooks the fact that there was evidence before the juvenile court that the Department had contacted the grandparents and concluded that they were not an appropriate placement for the children. The court was entitled to give weight to that evidence.

Finally, the juvenile court was not required to maintain the children in foster care against the possibility that, at some undetermined point in the future, the appellants would be able to care for them safely and appropriately. In *Jayden G.*, the Court explained why a prolonged foster care arrangement seldom works to a child's best interest:

> "The status of a foster child, particularly *for* the foster child, is a strange one. He's part of no-man's land. . . . The child

> knows instinctively that there is nothing permanent about the setup, and he is, so to speak, on loan to the family he is residing with. If it doesn't work out, he can be swooped up and put in another home. It's pretty hard to ask a child or foster parent to make a large emotional commitment under these conditions. . . ."

433 Md. at 83-84.[2] Yet, as the *Jayden* Court noted, "it is this 'emotional commitment' and sense of permanency that are absolutely necessary to ensure a child's healthy psychological and physical development." *Id.* at 84.

We conclude that the juvenile court's finding that exceptional circumstances existed which warranted the termination of appellants' parental rights was supported by clear and convincing evidence, and that the juvenile court did not abuse its discretion in reaching the ultimate conclusion that termination of Mr. B.'s and Ms. B.'s parental rights was in the best

[2] Quoting Joseph Goldstein, *Finding the Least Detrimental Alternative: The Problem for the Law of Child Placement,* in PARENTS OF CHILDREN IN PLACEMENT; PERSPECTIVES AND PROGRAMS 188, n. 9 (Paula A. Sinanoglu & Anthony N. Maluccio eds., 1981) (emphasis added in *Jayden G.*).

interests of the children.[3]

All termination of parental rights cases are distressing, but this one is particularly so. Mr. B. is a "wounded warrior." The events that caused the Department to remove the children from appellants' household appear to have stemmed largely from a condition resulting from Mr. B.'s military service in multiple deployments. Our society owes him much but this obligation does not extend to disregarding the best interests of his children.

THE JUDGMENT OF THE CIRCUIT COURT FOR ST. MARY'S

[3] Our conclusion that the juvenile court did not err in finding that there were exceptional circumstances makes it unnecessary for us to address whether Mr. B. and Ms. B. were "unfit parents" within the meaning of FL § 5-323(b).

COUNTY IS AFFIRMED. APPELLANTS TO PAY COSTS.