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RECENT DEVELOPMENT

IN RE ADOPTION/GUARDIANSHIP OF RASHAWN H.: WHEN TERMINATING PARENTAL RIGHTS COURTS MUST MAKE SPECIFIC EVIDENTIARY FINDINGS REGARDING EACH STATUTORY FACTOR AND EXPLAIN CLEARLY HOW THOSE FINDINGS REBUT THE PRESUMPTION OF MAINTAINING THE PARENTAL RELATIONSHIP.

By: Matthew Hartman

The Court of Appeals of Maryland held that in order to rebut the presumption favoring a continuation of the parental relationship, courts must carefully explain why their findings with respect to the relevant statutory factors sufficiently do so. *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 937 A.2d 177 (2007). The Court now requires trial courts to produce more detailed decisions regarding the termination of parental rights ("TPR"). *Id.* at 505 n.12, 937 A.2d at 194 n.12.

Ms. F. is the mother of Rashawn and Tyrese, the children who were the subject of the petition at issue. Ms. F. and Richard, the father, were living with Ms. F.'s mother in 2001, but were evicted because Ms. F.'s mother had been selling drugs out of their apartment. In the three years after that eviction, the family moved eleven times. The family eventually stayed with a friend of Richard until Richard was incarcerated in May 2004, when they were forced to move. Ms. F. then took the children to the local Department of Social Services ("DSS") office, and the children were placed in emergency shelter care. In June 2004, a juvenile court declared Rashawn and Tyrese as children in need of assistance ("CINA"). A DSS psychological evaluation found Ms. F. "cognitively challenged," showing little parenting ability and lacking in job skills. Eventually, Ms. F. found a job with Wal-Mart and demonstrated improvement, as well as compliance with the majority of the court's orders. She was, however, unable to find public housing despite DSS assistance because of her prior drug related eviction. In November 2005, the juvenile court directed DSS to file a petition to terminate parental rights because of the length of time the children had been in foster care, Ms. F.'s inability to find adequate housing, and a lack of suitable relatives to provide long-term care.

The Frederick County DSS filed a petition to terminate Ms. F.'s parental rights with respect to Rashawn and Tyrese in December 2005. The Circuit Court for Frederick County found by clear and convincing evidence that it was in the best interest of the children to grant the petition, and entered judgments severing Ms. F.'s parental rights to Rashawn and Tyrese. The trial court found that DSS could meet the children's health and safety needs if it was granted guardianship. The trial court also found that despite DSS's efforts to provide Ms. F. with services, her situation was not "working," and that Ms. F.'s mother's history of drug abuse made her an unacceptable candidate for housing. Ms. F. noted an appeal to the Court of Special Appeals of Maryland, where she argued that the trial court's findings were either unsupported by the facts or erroneous. She also contended that DSS failed to adjust its services to fit her unique situation. The Court of Special Appeals of Maryland found that the trial court's findings were supported by the record and affirmed the trial court's ruling. Ms. F. petitioned for, and received, certiorari from the Court of Appeals of Maryland.

The Court of Appeals of Maryland vacated the trial court's judgments and remanded for further proceedings. *In re Rashawn H.*, 402 Md. at 505, 937 A.2d at 194. The Court was concerned with the trial court's presentation of its findings and the explanation of how those findings overcame the presumption in favor of continuing Ms. F.'s parental rights. *Id.* at 504, 937 A.2d at 193. The Court instructed the trial court to make "clear and specific findings" with respect to each factor within section 5-323 of the Family Law Article of the Maryland Annotated Code ("section 5-323"), and to clearly explain "how and why" those findings lead to a conclusion that Ms. F. is "unfit" or that "exceptional circumstances" exist that are sufficient to terminate her parental rights. *In re Rashawn H.*, 402 Md. at 505, 937 A.2d at 194.

The Court first explained the standard for TPR. *Id.* at 494, 937 A.2d at 187. A TPR hearing is grounded in a legal preference in favor of the parental relationship. *Id.* at 495, 937 A.2d at 188. The right to maintain a parental relationship is a fundamental, constitutionally based right. *Id.* at 495, 937 A.2d at 188. The Court has harmonized this preference with the "best interest of the child standard," presuming both in law and in fact that it is in the best interest of the child to remain in the care of his parents. *Id.* at 495, 937 A.2d at 188. Despite this presumption, the best interest of the children will be the deciding factor when the rights of parents heavily contradict the State's interest in protecting children from abuse and neglect. *Id.* at 496, 937 A.2d at 189.

The Court described three elements that serve to protect the parental relationship in TPR cases. *Id.* at 498, 937 A.2d at 190. The first and most important element is the legal presumption in favor of continuing the parental relationship. *Id.* at 498, 937 A.2d at 190. Only a showing of unfitness or exceptional circumstances that make the parental relationship detrimental to the child's best interests can rebut this presumption. *Id.* at 498, 937 A.2d at 190. This presumption is not statutory, but is implied by the statutory scheme. *Id.* at 498, 937 A.2d at 190. In a TPR case, the Court stated, the proper focus is whether the unfitness or exceptional circumstances render a continued parental relationship detrimental to the child. *Id.* at 498, 937 A.2d at 190. The focus on the continuation of the relationship, rather than parental custody, is significant because a TPR judgment cannot readily be undone. *Id.* at 498, 937 A.2d at 190.

The second factor protecting the parental relationship is the requirement that the State establish, by clear and convincing evidence, a parent's unfitness or other exceptional circumstances. *Id.* at 498, 937 A.2d at 190. The third factor protecting the relationship is that the Legislature, through section 5-323, limited the court's discretion in severing the parental relations by stating specific criteria by which "TPR" should be reviewed. *In re Rashawn H.*, 402 Md. at 498, 937 A.2d at 190. The legislature has stated the criteria to be reviewed in section 5-323 of the Family Law Article. *In re Rashawn H.*, 402 Md. at 498, 937 A.2d at 190.

The Court determined that the trial court failed to make clear that its ruling was based on clear and convincing evidence, and not just a mere preponderance of evidence. *Id.* at 504-05, 937 A.2d at 194. Regarding the health and safety factor of the statute, the trial court noted that the children had "special needs," but did not identify those needs or explain how DSS would be able to better meet those needs than it would if Ms. F. retained her parental rights. *Id.* at 504, 937 A.2d at 193. The Court also noted that the "feelings toward and emotional ties with the [children's] natural parents" were factors to be considered. *Id.* at 504, 937 A.2d at 193. The trial court said it was "not sure" whether the children retained much attachment. *Id.* at 504, 937 A.2d at 193. The Court rejected the notion that "not sure" could suffice under the requirement for clear and convincing evidence. *Id.* at 504, 937 A.2d at 194. Additionally, the trial court discussed Ms. F.'s efforts to maintain contact with her children, but did not state any findings regarding the adequacy of her efforts. *Id.* at 504, 937 A.2d at

194. The Court ordered the trial court to, on remand, be much more specific regarding its findings and to clearly tie those findings to the factors necessary to terminate parental rights. *Id.* at 504-05, 937 A.2d at 194.

The Court is not changing the law in *In re Rashawn H.*, but is changing how the law should be approached and addressed. The Court explained that, because of the importance of protecting the parent-child relationship, each statutory factor in TPR proceedings must be clearly and specifically addressed and related to parental unfitness or exceptional circumstances. Practitioners will be able to use this heightened review of TPR judgments to force trial courts to clearly and convincingly address issues that may otherwise evade scrutiny. It is no surprise that the Court, after questioning the articulation of the findings, suggested that the parties involved be allowed to offer new evidence on the situation between Ms. F. and her children.