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RECENT DEVELOPMENT

IN RE ADOPTION/GUARDIANSHIP OF C.E.: JUVENILE COURT ABUSED ITS DISCRETION WHEN IT FAILED TO TERMINATE PARENTAL RIGHTS, OVEREMPHASIZED THE PARENT-CHILD RELATIONSHIP, AND FAILED TO CONSIDER THE UNFITNESS OF THE PARENT.

By: Anna W. T. DeLeon

The Court of Appeals of Maryland held that the juvenile court abused its discretion when it failed to terminate a father’s parental rights in the face of exceptional circumstances and overstressed the weight of the parent-child relationship in making that determination. *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 210 A.3d 850 (2019). The Court of Appeals of Maryland further held the rights of both parents must be terminated to grant guardianship. *Id.* at 46, A.3d at 861. Additionally, it was an error of law by the juvenile court to change a child in need of assistance (hereinafter “CINA”) permanency plan during a Termination of Parental Rights (hereinafter “TPR”) hearing in a single order. *Id.* As a result, the judgment of the juvenile court was vacated and remanded for further proceedings. *Id.* at 33, A.3d at 854.

In May 2014, C.D. (hereinafter “Mother”) gave birth to a two-month premature baby boy, C.E. (hereinafter “C.E.” or “the child”). Immediately after the child’s birth, the Baltimore City Department of Social Services (hereinafter “the Department”) was called to assess C.E. The investigation found that Mother had five prior children removed from the home and a long history of mental illness. The Department determined that Mother would not be able to care for the child safely. Additionally, C.E.’s father (hereinafter “Father”) was unable to have custody of C.E. because his senior-living complex did not allow children to stay for extended periods. Subsequent meetings between the Department and the parents revealed occasional outbursts by the child toward Mother and sometimes positive interactions with Father. In June 2015, the Circuit Court for Baltimore City (hereinafter “juvenile court”) gave custody of C.E. to the Department for continued placement with Mr. and Ms. B, Mother’s cousins. As a result, the Department motioned to waive its requirement to make reasonable efforts to reunify Mother with C.E., which was granted by the juvenile court. The Department then filed a Petition for Guardianship with the Right to Consent to Adoption or Long-Term Care Short of Adoption and began the TPR process.

In 2017, the TPR hearing took place, during which experts testified that the child’s need for consistent care would be too stressful for Father, as he

lacked the necessary energy. Father testified that he had a sincere desire to be reunited with the child. However, he did not believe that Mother suffered from any mental illness and stated that he would not separate C.E. from Mother.

Regarding the child's current living arrangement, Mr. and Ms. B. testified that they wished to adopt C.E. They also stated that they were currently having C.E. treated for epilepsy, developmental delays, and undergoing testing for Autism Spectrum Disorder.

After hearing the testimony, the juvenile court determined it was in the best interest of C.E. to be placed in a guardianship with Mr. and Ms. B., but denied terminating the parental rights of Mother or Father. After appealing to the Court of Special Appeals, the Department filed for writ of certiorari, which the Court of Appeals of Maryland granted in February 2018.

The court began by stating that Maryland's current statute requires that, before granting guardianship, the parental rights of both the mother and father must be terminated. *In re Adoption/Guardianship of C.E.*, 464 Md. at 46, 210 A.3d at 861. Next, in making its determination, the court discussed the issues over guardianship and the adoption of children in need of assistance, which in Maryland is governed by Title 5 subtitle 3 of the Family Law Article. *Id.* at 48, 210 A.3d at 863. Under the Family Law Article, a juvenile court has the authority to terminate parental rights when clear and convincing evidence shows (1) that the parent is not fit to remain in a parent-child relationship, or (2) exceptional circumstances exist that make a continued relationship with the child harmful to the child's welfare. *Id.*

Due to the importance of parental rights at stake, the court has articulated three elements of heightened protection for parents in a TPR proceeding. *In re Adoption/Guardianship of C.E.*, 464 Md. 26 at 51, 210 A.3d at 864. First, the court presumes that upholding the parental relationship is in the child's best interest. *Id.* This presumption can only be refuted by showing that a parent is either unfit or that there are exceptional circumstances which make the relationship detrimental to the child's best interest. *Id.* Second, in order to overcome the presumption in favor of the parents, the opposing party must establish clear and convincing evidence of parental unfitness or exceptional circumstances. *Id.* Third, factors have been provided by the General Assembly that the juvenile court must expressly consider in determining if terminating the parental rights is in the child's best interest. *Id.* While additional factors can be considered, these essential factors are to be used by the court to determine whether the parent is or will be, within a reasonable time frame, able to care for the child's safety and welfare. *Id.*

The Court of Appeals of Maryland found it challenging to discern from the juvenile court's order which factors were found by clear and convincing evidence or by a preponderance of the evidence regarding the Father. *In re*

Adoption/Guardianship of C.E., 464 Md. 26 at 54, 210 A.3d at 866. The juvenile court also never thoroughly considered the exceptional circumstances prong as a separate legal conclusion from the unfitness prong. *Id.* Instead, the juvenile court used the exceptional circumstances prong in concurrence with the unfitness prong to examine specific factors. *Id.* Because of this, the juvenile court gave too much credit to the exceptional circumstance of the parental bond. *Id.* at 55, 210 A.3d at 867. Each prong should be considered as a separate legal conclusion. *Id.* at 54, 210 A.3d at 866. If a juvenile court deems a parent fit, then the juvenile court must examine whether there are any exceptional circumstances that would make the continuation of the parent-child relationship detrimental to the child's best interests. *Id.*

The trial court further abused its discretion when it declined to terminate Father's parental rights in consideration of the unfitness prong. *In re Adoption/Guardianship of C.E.*, 464 Md. 26 at 59, 210 A.3d at 869. Father lacks sufficient energy to care for C.E. and has so far failed to secure housing in which C.E. would be able to maintain a permanent residence. *Id.* at 57, 210 A.3d at 868. Considering the additional medical needs that C.E. will require, the record of the juvenile court overwhelmingly maintains that the continuation of the relationship between Father and the child would be detrimental to C.E. *Id.*

The Court of Appeals stated that when the juvenile court combined the fitness and exceptional circumstances analysis, the juvenile court did not thoroughly examine the exceptional circumstance prong. *In re Adoption/Guardianship of C.E.*, 464 Md. 26 at 60, 210 A.3d at 869. In consideration of the exceptional circumstance prong, the court considered the continued relationship between Mother and Father as detrimental to C.E. *Id.* at 60, 210 A.3d at 870. Father refused to sever his relationship with Mother and stated he would place the child in her sole care, despite the Department's findings. *Id.* Additionally, Father did not acknowledge Mother's mental illness and history with the Department, thus endangering the welfare and safety of C.E. *Id.*

The juvenile court also failed to issue separate orders when changing C.E.'s CINA permanency plan during the TPR hearing. *In re Adoption/Guardianship of C.E.*, 464 Md. 26 at 63, 210 A.3d at 871. It is hard to determine from the juvenile court's order whether the decisions regarding TPR and the change in permanency plan were afforded enough independent consideration because the analysis appears muddled. *Id.* at 63, 210 A.3d at 872. TPR and CINA proceedings consider different factors and have different evidentiary burdens, and separating these two proceedings would have helped to remedy many of the concerns. *Id.* at 64, 210 A.3d at 872.

In *In re Adoption/Guardianship of C.E.*, the Court of Appeals of Maryland held that the juvenile court abused its discretion when it failed to terminate Father's parental rights based on his bond with the child. The court also found it was an error of law by the juvenile court to change C.E.'s CINA permanency plan during the TPR hearing in a single order. This case warns the juvenile court not to allow the parent-child relationship to become an overwhelming factor in TPR hearings. Going forward, practitioners should be wary of overemphasizing the importance of the bond between a child and parent during TPR cases. In this case, the Court of Appeals of Maryland is reiterating the importance of children's welfare and protecting the goal of creating and maintaining permanent safe places for children. For the court, this is taking precedence over any parent-child relationship.