APPENDIX

EXHIBIT 1

Court of Appeals of Maryland Order by Chief Judge Matthew J. Fader dated November 22, 2022 denying petition for writ of certiorari (Petition Docket No. 167)

EXHIBIT 2

Court of Special Appeals of Maryland Unreported Opinion by Judge Graeff, J dated June 14, 2022 denying appeal from the lower Circuit Court for Harford County (No. 1252)

EXHIBIT 3

Circuit Court for Harford County Order by Judge Kevin J. Mahoney dated October 14, 2021 denying Motion for Reconsideration (Case Number: C-12-JV-18-000076)

EXHIBIT 4

Circuit Court for Harford County Order Granting Guardianship by Judge Kevin J. Mahoney dated September 14, 2021 (Case Number: C-12-JV-18-000076)

EXHIBIT 1

IN THE MATTER OF: W.K.	*	**IN THE**
	*	**COURT OF APPEALS**
	*	**OF MARYLAND**
	*	**Petition Docket No. 167 September Term, 2022**
	*	
	*	**(No. 1252, Sept. Term, 2021 Court of Special Appeals)**
	*	**(No. C-12-JV-18-000076, Circuit Court for Harford County)**

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, the supplement, and the answer filed thereto, in the above-captioned case, it is this 22nd day of November, 2022

ORDERED, by the Court of Appeals of Maryland, that the petition and the supplement are DENIED as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Matthew J. Fader
Chief Judge

*Judge Eaves did not participate in the consideration of this matter.

EXHIBIT 2

Circuit Court for Harford County
Case No. C-12-JV-18-000076

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1252

September Term, 2021

IN RE: W.K.

Graeff,
Ripken,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: June 14, 2022

This appeal arises from an order of the Circuit Court for Harford County terminating the parental rights of J.T., appellant ("Father"), to his daughter, W.K. Father is serving a sentence of 12 to 35 years in a Pennsylvania prison based on convictions of, among other things, robbery, kidnapping, and terroristic threats.

On appeal, Father presents the following questions for this Court's review, which we have rephrased, as follows:

1. Did the circuit court violate Father's due process rights as an incarcerated individual to have meaningful participation in the proceedings?

2. Did the circuit court err in finding that the Department made reasonable efforts to achieve reunification by denying Father visitation and giving non-relative foster parents preferential status over Father and the paternal grandparents?

3. Did the circuit court make sufficient factual and legal findings on the record to support its ruling?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

CINA Proceedings

On February 14, 2017, Mother gave birth to W.K. at the Upper Chesapeake Medical Center ("UCMC"). That day, UCMC contacted the Harford County Department of Social Services ("the Department") and reported that W.K. was a substance-exposed newborn, as Mother tested positive for marijuana at the time of delivery. Mother had substance abuse and mental health problems: from October 2016 to January 2017, Mother had been incarcerated for a violation of the terms of her probation related to driving under the

influence ("DUI"); several weeks before W.K.'s birth, she publicly threatened suicide; she had not attended her substance abuse classes; she was seen drinking alcohol a few days before W.K.'s birth; and she attempted to deliver W.K. alone in her house so the Department could not take W.K. Mother had two upcoming court cases: (1) on March 1, 2017, a trial for leaving another child unattended; and (2) on March 29, 2017, a trial for a DUI charge.

After completing an unscheduled home inspection of Mother's home with Mother's roommate and learning that Mother had failed to make an appointment with a substance abuse program, the Department informed Mother that it would be removing W.K. from her care. She promised that she would clean her house, make the necessary repairs, and arrange for a substance abuse program.

Upon first meeting with the intake worker, Mother "refused to provide the name of the baby's father." Mother subsequently identified Father as W.K.'s father, stating that he was incarcerated for several years.[1]

On February 17, 2017, the Department filed a petition for shelter care, requesting that the court find W.K. to be a child in need of assistance ("CINA").[2] The Department

[1] Father was arrested on August 26, 2016, and he remained in jail until he was sentenced on March 1, 2018, to a sentence of 12 to 35 years.

[2] Md. Code Ann., Cts. & Jud. Proc. Art. § 3-801(f) defines a child in need of assistance ("CINA") as a child who requires court intervention because "[t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder," and the child's parents "are unable or unwilling to give proper care and attention to the child and the child's needs."

listed Father as W.K.'s father, noting that he was incarcerated and his address was unknown. The Department requested that the court find W.K. to be a CINA and allow W.K. to remain in foster care treatment for the 30-day shelter care period.

The court granted the shelter care petition that day, finding that it was contrary to W.K.'s welfare to be returned to Mother and placing W.K. in the Department's custody for placement in foster care. The court set the matter for adjudication on March 15, 2017.

At the hearing on March 15, 2017, Mother's attorney, but not Mother, attended, and neither Father nor his attorney attended.[3] None of the facts in the petition were contested, and the magistrate found that the facts alleged were sustained, that W.K. had been neglected, and that W.K. was a CINA. The court ordered that W.K. be placed in the Department's custody for placement into foster care, and it ordered that both Mother and Father have visitation with W.K., to be supervised by the Department.

On March 30, 2017, the court granted the Department's request to have Father submit to a paternity test.

On August 16, 2017, a magistrate held a permanency plan hearing. W.K. was living with foster parents, but Ms. R, Mother's "biological cousin," was a resource for W.K. and had been approved to be a foster parent. Father's mother, Ms. T, who lived in Delaware, also presented as a resource, but the Department stated that it had to complete a paternity test for Father before it could conduct inspections in Delaware, pursuant to the Interstate

[3] The Department's report indicated that Mother had been convicted of neglect of a minor and sentenced to five years, all but six months suspended, beginning on March 10, 2017.

Compact on the Placement of Children ("ICPC"), which regulates adoption and guardianship for out-of-state resources.[4] There had been problems with getting Father tested because of issues with the prison. The Department recommended that the permanency plan remain reunification, and W.K. remain in her foster care placement. Father was not notified of this proceeding due to his out-of-state incarceration, but Mother, who was incarcerated in Harford County, was notified.

On December 6, 2017, a magistrate held an emergency review of W.K.'s placement and found that it was contrary to W.K.'s welfare to remain in foster care because a less restrictive placement became available. Neither Father nor counsel for Father was present.[5] The Department, however, had advised him about the upcoming change in placement in November 2017.

The magistrate recommended that W.K. be placed with "relatives," the R's, and the court adopted the recommendations, providing Mother with visitation.

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[4] The Interstate Compact on the Placement of Children ("ICPC") establishes "legal and administrative procedures which govern the interstate placement of children." *Association of Administrators of the Interstate Compact for the Placement of Children*, AM. PUB. HEALTH HUM. SERVS. ASS'N, https://www.aphsa.org/AAICPC/default.aspx#:~:text=The%20Association%20of%20Administrators%20of,and%20the%20U.S.%20Virgin%20Islands, available at (https://perma.cc/3HR7-PJDJ) (last visited June 9, 2022). *See* Md. Code Ann., Fam. Law Art. ("FL") § 5-601 (2019 Repl. Vol.). The purpose of the ICPC is to "facilitat[e] interstate adoption and increas[e] the number of acceptable homes for children in need of placement." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 314 (1997). "Compliance with the procedures set forth in the ICPC are mandatory." *Id.*

[5] Father's attorney did not enter her appearance until January 3, 2018.

Prior to the January 3, 2018 placement review hearing, Catelin Dagilas, a case worker for the Department, wrote a report. She noted that Mother was still incarcerated in the Harford County Detention Center, where she was enrolled in GED classes and various substance abuse programs. Mother wanted W.K. to be placed with the R's, noting that Ms. R had been bringing W.K. to visit Mother in jail. Ms. Dagilas had been in contact with Ms. T, who was approved on December 13, 2017, as a relative placement for W.K. Ms. T had been visiting with W.K. through visits set up by the R's, but the visits were inconsistent due to Ms. T cancelling because of scheduling conflicts. Ms. Dagilas had been in contact with Father, whose release date from prison was still not yet known. Father stated that he wanted visitation while incarcerated, but the prison advised Ms. Dagilas that it required Father's name to be on W.K.'s birth certificate prior to visitation. Ms. Dagilas contacted the court to get an order to add Father to the birth certificate, and Father was added to W.K.'s birth certificate by May 2018.

At the permanency placement review on January 3, 2018, the magistrate found that W.K. continued to be a CINA, and it recommended that the permanency plan be reunification. The magistrate recommended that the court order that W.K. remain in placement with relatives, the R's, and that Father and Mother both have visitation with W.K., supervised by the Department. Both Father and his attorney, Kimberly Wagner, attended this hearing.[6] No exceptions to the recommendations were filed prior to the court's signing of the order.

[6] Father attended the hearing by conference call from prison.

On February 14, 2018, a magistrate held a permanency plan review hearing. Father participated by conference call and was represented by counsel. The magistrate recommended that W.K.'s permanency plan remain reunification, with Father to have supervised visitation upon his release. That recommendation was not signed by a court as an order.

On March 1, 2018, Father was sentenced to serve 12 to 35 years in a State prison in Pennsylvania, with credit for time served since August 2016.

Prior to the May 23, 2018 permanency plan hearing, Ms. Dagilas noted in her report that, on April 10, 2018, the Department held a Family Involvement Meeting ("FIM") to discuss W.K.'s permanency plan. Concerns regarding Mother's living conditions after being released from prison, her substance abuse, and her mental health were addressed. After discussing these concerns, "the Department recommended that the permanency plan be changed from reunification to adoption."

On April 16, 2018, Father was transferred to Camp Hill Correctional Institute. Father did not communicate with the Department regarding the transfer.

On May 9, 2018, the court signed the order to add Father to W.K.'s birth certificate. It crossed out, however, the portion of the order that Father have visitation with W.K. supervised by the Department.

After the permanency plan hearing on May 23, 2018, the magistrate found that W.K. had been in an out-of-home placement for 15 of the most recent 22 months, and therefore, a petition for termination of parental rights ("TPR") should be filed. It recommended that

the primary permanency plan be adoption and both Mother and Father have visitation with W.K. supervised by the Department. Father did not file any exceptions. On October 24, 2018, the court entered an order adopting the magistrate's recommendations.

II.

TPR Proceedings

On June 13, 2018, the Department filed its TPR petition, arguing that it would be in W.K.'s best interest for the Department to be granted guardianship with the right to consent to adoption and/or long-term care short of adoption. On July 16, 2018, Father filed a handwritten notice of objection, stating that he "would like the opportunity to be a father to [his] only child upon [his] release from prison." On September 3, 2018, Mother passed away.[7]

The TPR hearing began on December 6, 2018. Father was not present, but he was represented by counsel.

Ms. Dagilas testified that she was assigned to W.K.'s case in February 2017, right after W.K.'s birth, when W.K. was identified as a substance-exposed newborn. Ms. Dagilas worked on W.K.'s case until June 2018, when the case was transferred to Ms. Francis, another social worker for the Department. In September 2019, Ms. Francis left the Department, and the case was transferred back to Ms. Dagilas.

[7] In the court's ruling, it noted that, despite Mother having obstacles in her life, "she died essentially a hero trying to save somebody else's life."

In February 2017, within a week of W.K.'s birth, Mr. and Ms. R came forward as a possible placement resource. Father's parents, Mr. and Ms. T, who lived in Delaware, also came forward as a possible resource. Once Father was confirmed to be W.K.'s father in August 2017, and the T's were approved to a be a resource, the Department attempted to establish a relationship between W.K. and the T's. The T's, however, were inconsistent in setting up visits; they cancelled visits and did not contact the Department or the R's for weeks at a time.

In December 2017, when the plan was reunification with Mother, the Department placed W.K. with Ms. R because Ms. R was willing to participate in allowing Mother to visit W.K., and she lived closer to Mother than the T's did, who lived in Delaware. Ms. R was a relative, and when the plan was still reunification, it was Mother's wish that W.K. be with the R's. Ms. Dagilas informed Father that she was placing W.K. with the R's, and he was "okay with it."

Although the initial goal was reunification with Mother, by February 2018, the Department was not close to reuniting W.K. with Mother because she was "in and out of jail," facing numerous criminal charges, violating probation orders, and continuing to struggle with substance abuse, without seeking treatment. Father was "not a suitable resource for [W.K.] due to his criminal sentence" of 12 to 35 years, "the duration of [W.K.'s] minority."

Regarding W.K.'s special needs, Ms. Dagilas testified that, when W.K. turned two, she started suffering from separation anxiety when she was apart from Ms. R. Ms. Dagilas

recommended daycare to the R's as a possible solution to this issue. She stated that the bond between W.K. and Ms. R could make it difficult for W.K. to develop other relationships, but Ms. R was willing to work with Father's family to develop their relationship with her.

W.K. had fetal alcohol syndrome ("FAS"), which led to behavioral issues and anxiety. W.K. showed symptoms of FAS very early in the form of autism and anxiety. W.K.'s hands tremored, she did not sleep well, and she cried frequently. Ms. R arranged for a behavioral specialist to evaluate W.K., and Ms. Dagilas believed that the specialist identified W.K. as having FAS. Ms. R used a weighted vest and fidget toys to help with these issues.

W.K. was doing well in the R's care. She had toys at their house, and she was able to participate in music and dance classes. At the December 6, 2018 hearing, she testified that the R's offered monthly visits to the T's, Father's parents. Ms. R set up this arrangement with Ms. T, without the Department. She testified that W.K., who was 22 months old, was "energetic," "sweet," and "kind." W.K. called the R's "[m]om and dad."

Regarding the Department's involvement with Father, Ms. Dagilas testified that, initially, Mother did not tell her "much of anything" regarding "who the father could be." In March 2017, she became aware that Father was W.K.'s father.[8] Ms. T called the Department about W.K., and Father sent a letter requesting a paternity test. Because a

[8] As indicated, the original CINA petition indicated that Mother told the Department that Father was W.K.'s father when she was still in the hospital after giving birth to W.K.

court order was required to schedule a paternity test, Ms. Dagilas tried to get an order signed by the court. The order was signed on March 30, 2017, but Father was not tested until August because there was a miscommunication between the laboratory and the prison regarding scheduling the test and access to Father in prison. In August 2017, Father's paternity was established.

Ms. Dagilas testified that she initially offered Father visitation, but he did not want it, and she regularly communicated with Ms. T. At the time of the December 6, 2018 hearing, Father had not visited with W.K. She did remember speaking with Father on the phone regarding visitation in October 2017, and he expressed his desire for the T's to bring W.K. to visit him. She told Father that they "had to work on the relationship between [W.K.] and [his] parents before the Department felt comfortable having [his] parents take her for a visit." Ms. Dagilas also noted that bringing any child to a prison is "very traumatic," especially a prison that is three hours away and the child does not know the individual. W.K.'s special needs made this process even more traumatic.

During the October 2017 conversation, Ms. Dagilas informed Father that a FIM was scheduled to take place in November 2017 to discuss W.K.'s placement with the R's. According to the meeting notes, Father was in agreement with placing W.K. with the R's, but he wanted the Department to continue to pursue his parents as another possible placement option.

After Father's request and the court's order that Father receive visitation, Ms. Dagilas learned that, for W.K. to visit with Father, Father's name had to be on W.K.'s birth

certificate. She contacted the Office of Vital Records and the Department's lawyer to get an order for Father's name to be placed on W.K.'s birth certificate. On May 9, 2018, the court signed an order that Father be added to W.K.'s birth certificate. Ms. Dagilas then sent the order to Vital Records. Another worker was responsible for setting up visitation, not Ms. Dagilas, so she was not aware of the exact methods the Department used to get visitation, but she knew that visitation was never arranged. She testified that when Father got transferred to another prison in April 2018, he did not write her a letter or otherwise contact her.

The last phone call between Ms. Dagilas and Father was in 2017, and the Department was not in contact with him after this point, either by phone calls or letters. The court hearings and reports provided Father updates, and it was the Department's procedure to go through Father's attorney. Ms. Dagilas acknowledged that Father expressed his desire to build a relationship with W.K. Although she testified that the Department did everything it could to enable Father to build a relationship with W.K. while he was incarcerated out of state by establishing his paternity, trying to let W.K. establish a relationship with his side of the family, and exploring the possibility of having Father write letters for W.K., she ultimately stated that the Department "could have done more."

Ms. R testified that she was Mother's biological cousin. Although Mother was legally adopted, the two had remained in contact. Ms. R called the Department two days after Mother gave birth to W.K. to make herself available as a resource. She spoke with Ms. Dagilas a few times on the phone, and on March 15, 2017, Ms. R had her first visit

with W.K. When W.K. was just a few months old, Mother requested that Ms. R accompany W.K. on her doctor visits so Mother could learn what was happening with W.K. The R's underwent the process to become foster parents, all while having extended overnight visits with W.K. On December 6, 2017, W.K. was placed with the R's. Mr. and Ms. R were "100,000 percent" an adoptive resource for W.K., and W.K. was their "whole entire world."

Ms. R left her job to stay at home with W.K., and Mr. R worked as a truck driver. They had a "ranch style house," and W.K. had her own bedroom, a playroom with toys, a large backyard, and a nearby park. Ms. R took W.K. to the library for story time and enrolled W.K. in music and dance classes, which helped her with her special needs. She testified that W.K. called her and Mr. R "[m]ama and dah dah."

The T's started visiting with W.K. in the fall of 2017. They called and set up a day that worked for all of them, usually one Saturday every other month. W.K. did not have a relationship with the T's at that time, but she was starting to get more comfortable with them.

The December 2018 hearing was then continued to give Father time to review the transcripts with his attorney and prepare a response to the evidence that had been presented. As discussed in more detail, *infra*, Father was given transcripts of the hearing to review and discuss with his attorney. He ultimately dismissed two different attorneys and elected to proceed unrepresented.

The court reconvened the hearing on August 25, 2021. Father was present virtually from the Pennsylvania Department of Corrections.

Father called Ms. R, who testified that she had not spoken to the T's in years. Regarding W.K.'s relationship with Father, Ms. R testified that it should be W.K.'s choice whether she wanted to have a relationship with Father, noting that W.K. would be, at the earliest, 11 years old when Father was released from prison. Ms. R was willing to provide Father with updates, and Father could call at any time, but she did not give Father her address to write to W.K. due to concerns for safety. She had never attempted to contact Father.

Ms. R discussed W.K.'s separation anxiety. Early on, if Ms. R walked out of the room, W.K. cried. W.K. always wanted to be in Ms. R's lap when other people were around. Ms. R enrolled W.K. in school because the doctor recommended that these problems could be ameliorated by more socialization with children. When W.K.'s routine changed, she would shake, crawl under Ms. R's clothes, hide under tables, cry, and scream. She did not do well with meeting new people, and it took a "very long time" for her to get better with a new individual.

W.K. had FAS, autism spectrum disorder, a receptive language disorder, ADHD, oppositional defiant disorder, and anxiety disorder. Ms. R took W.K. to the Kennedy Krieger Institute, and W.K. attended occupational therapy and speech therapy once per week. She saw behavioral specialists every other week, visited with her pediatrician every three months for her special needs, and saw a developmental pediatrician once a month.

At the time of the August 25, 2021 hearing, W.K. was doing well, and she was "a very happy little girl." After working with behavioral specialists and developmental pediatricians, W.K. was "having a better time of things." Ms. R enrolled her in a Montessori school for children with "extra needs," and she attended for six months. W.K. was then enrolled in preschool. Ms. R also was fostering another child.

Ms. Dagilas testified that W.K., who was four at the time of the August 2021 hearing, was very bonded to the R's and did not allow Ms. R to leave her sight. Ms. Dagilas was concerned that, if W.K.'s placement were to change, it would "completely uproot her and change her life."

Ms. T testified at the hearing and requested that W.K. be placed with the T's. She notified the Department in March 2017 that she was available as a potential resource for W.K., and she was approved in less than one month. Ms. T contacted Ms. Dagilas many times, and Ms. Dagilas did not answer the phone or return her phone calls. Ms. T emailed with Ms. Dagilas only after her calls were not returned, but Ms. T did not always get a response. Ms. T asked Ms. Dagilas about setting up overnight visitation with W.K., and Ms. Dagilas told her that Ms. T had to do more visits with W.K., and as long as they continued with the visits, she could reevaluate. She did not say specifically when this request could be reevaluated.

Ms. T wanted the court to place W.K. with her because W.K. "should know the black side of her family," and visitation could not accomplish this goal because it had not been successful in the past. She testified that she would be able to care for W.K.'s special

needs, including taking her to her medical appointments, arranging the appointments, finding appropriate doctors, and taking over her schooling needs. Mr. T was retired and also available to take W.K. to her appointments.

Father gave Ms. T money from his commissary to purchase a gift for W.K. He also gave her two letters for W.K., and Ms. T gave them to Ms. R. He sent her "a hand drawn handkerchief" to give to W.K., which Ms. T gave to Ms. R.

Mr. T testified that he enjoyed playing with W.K. during their visits, and W.K. was not afraid of him or otherwise upset. Mr. T was "home 24/7" so he could care for W.K.'s special needs, and W.K. would come first.

On August 26, 2021, the court issued its ruling. It noted that the delays in resolving the case were due to multiple factors, including pausing the hearing to afford Father his due process rights to review transcripts due to his incarceration, Father's dismissal of two different lawyers, and the court closures due to COVID-19.

The court stated that the case had to be viewed "through the lens that the Department's initial plan . . . was reunification" with Mother, and that was the Department's focus. What Father "perceive[d] as a lack of effort on the Department's part" was really the Department focusing reunification efforts on Mother and not Father, "which as we all know was not possible given his current status of being incarcerated."

The court then considered the relevant factors pursuant to Md. Code Ann., Fam. Law Art. ("FL") § 5-323(d) (2019 Repl. Vol.). It noted that W.K. was placed in foster care because she was a substance-exposed newborn, who had since been diagnosed with

multiple health issues, including being on the autism spectrum. The plan was for reunification with Mother, and the Department offered Mother services for her substance abuse and visitation. It also offered visitation for the T's. Although there was disagreement between Ms. T and Ms. R regarding how the visitation ended and whether Ms. T was consistent in her visitation, it was clear there had been no visitation for the last 17 months. After Mother's death, the permanency plan was focused on adoption with the R's.

The court noted that there were difficulties in arranging visitation with Father, including establishing paternity and coordinating the transportation of a very young child to an out-of-state prison. It "sincerely doubt[ed] that it would have been possible to do more than what was done to facilitate" visitation.

The court noted that Father did not point to any case law that required the Department to provide services when reunification would be futile. Although, "[i]n hindsight," the Department may have been able to do more for Father, the court found that the Department "did use reasonable efforts." It found that further "attempts would have been futile given the long length of incarceration" and that Father had been incarcerated since prior to W.K.'s birth. The court noted that "the overarching factor" to consider was "the best interests of the child," and it questioned the value of visitation with Father, given W.K.'s age and special needs, including her anxiety.

Regarding whether additional services would bring about a lasting parental adjustment so that the child could be returned home within an ascertainable period of time not to exceed 18 months, the period of 18 months since placement "ha[d] long since

passed," and the court declined to make a finding that it would be in W.K.'s best interest for this period to be extended. Father could not be released until W.K. was, at the earliest, 11 years old, which the court found "very significant."

Regarding the child's emotional ties towards parents and siblings, the court found that W.K. never had the opportunity to bond with either of her biological parents, but she had bonded with the R's and her biological sibling C.K. It noted that, in an ideal scenario, the T's would be able to maintain some contact with W.K., as their love for her was sincere, and then Father ultimately could develop a relationship with W.K. The court also noted that Ms. R was Mother's cousin, so "there is a family connection here that we also are dealing with."

Regarding the child's adjustment to the community, the court noted that, although W.K. was very young, she was involved in age-appropriate activities and extracurricular activities. There was "zero testimony" suggesting that W.K. was not adjusted to her home situation, and the testimony indicated that she was happy and receiving services for her needs. The Department had recommended that W.K. be enrolled in daycare to continue to develop her social skills, and the R's took that suggestion and enrolled her in the Montessori program. The court also noted that it gave "some weight" to the conclusion of W.K.'s attorney, Ms. Earlbeck, that it would be "a severe challenge" for W.K., given her bond with the R's, for her situation to change at this point.

The court found that the impact of terminating parental rights on W.K.'s well-being, was a "positive factor," noting the "need for permanency in [W.K.'s] life." The R's were

in the best position to raise her and were adequately addressing her special needs. Father was not available to do so "by his own actions."

Based on these findings, the court found that there were "exceptional circumstances by virtue of [Father's] indeterminant incarceration, [W.K.'s] age, [W.K.'s] special needs, as well as [W.K.'s] bonding with the [R's]," and it was in W.K.'s best interest to terminate Father's parental rights and grant the Department's request for guardianship with the right to consent to adoption.

This appeal followed.

STANDARD OF REVIEW

The Fourteenth Amendment to the United States Constitution protects the fundamental right of a parent to parent their child, free from interference from the State. *Boswell v. Boswell*, 352 Md. 204, 217–20 (1998). The State can infringe upon this right only if it is "clearly justified." *In re Adoption/Guardianship No. 95195062-CAD in the Circuit Court for Baltimore City*, 116 Md. App. 443, 454 (1997). There is a "presumption that the interest of the child is best served by maintaining the parental relationship." *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 48 (2019). This presumption, however, is not absolute, and it "may be rebutted upon a showing either that the parent is 'unfit' or that 'exceptional circumstances' exist which would make continued custody with the parent detrimental to the best interest of the child." *In re Rashawn H.*, 402 Md. 477, 497 (2007). *Accord* FL § 5-323(d).

In *In re B.C.*, 234 Md. App. 698, 707 (2017), we explained:

> Because the termination of parental rights is total, irrevocable, and leaves the parent with no right to visit or communicate with the child, it is held to three different, but interrelated, standards: (1) a clearly erroneous standard, applicable to the juvenile court's factual finding; (2) a de novo standard, applicable to the juvenile court's legal conclusion; and (3) "when the appellate court views the ultimate conclusion of the [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [juvenile court's] decision should be disturbed only if there has been a clear abuse of discretion."

(footnote omitted) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). Our decision is not to determine whether, after viewing the evidence, we would have recached another conclusion, but rather, we decide only "whether there was sufficient evidence – by a clear and convincing standard – to support the chancellor's determination that it would be in the best interest of [the child] to terminate the parental rights of the natural [parent]." *Id.* at 708 (quoting *In re Abigail C.*, 138 Md. App. 570, 587 (2001)).

DISCUSSION

I.

Due Process Rights

Father contends that the court violated his due process rights by not allowing him to adequately participate in the proceedings.

The Department contends that the court conducted a "fundamentally fair proceeding that protected [Father's] procedural due process rights." It asserts that the procedure adopted by the court "exceeded the procedural protections" required and "appropriately minimized the potential for any erroneous deprivation of [Father's] interests in maintaining a parental relationship to a child he had never met and whom he would remain unable to

raise due to his incarceration which will continue until at least 2028." W.K.'s counsel similarly contends that the court "properly exercised its discretion pertaining to Father's procedural Due [Process] Rights."

A.

Proceedings Relating to Father's Participation in the Hearings

The TPR hearing began on December 6, 2018. The court denied Father's motion to postpone and counsel's objection to proceeding without Father present by phone. The court explained that,

> after the evidence is presented today by the Department, we will order a transcript to be prepared of these proceedings and that transcript can be sent off to the Pennsylvania Department of Corrections. And then [defense counsel] will be given an opportunity not only to communicate with her client, but then subsequently to place anything on the record in a subsequent hearing before any closing argument is made and any decision is made of the [c]ourt, which obviously is not going to take place today. We are only going to proceed with the Department's case today.

The Department presented its case that day, calling to the stand Ms. Dagilas and Ms. R, and defense counsel cross-examined both witnesses.

On April 1, 2019, Father sent defense counsel a letter informing her that he had filed a motion for her to withdraw as counsel. He requested that all relevant documents be sent to Ms. T. On April 5, 2019, defense counsel filed a motion to strike her appearance.

A hearing was held on April 23, 2019, on what was supposed to be the continuation of the hearing wherein Father would give his response to the December 6 hearing. The Department argued that Father's motion to have his counsel withdraw was a ploy to prolong the case. The court nevertheless granted defense counsel's motion to strike her

appearance and granted Father an extension of time, postponing the hearing until June 10, 2019. The court instructed Father to secure counsel immediately or prepare to present his own case.

On May 29, 2019, Father sent a 51-page handwritten response to the Department and W.K.'s attorneys regarding the presentation of their cases on December 6, 2018, responding to witness testimony and providing legal arguments. He did not file the response with the court.

On June 10, 2019, the court held a hearing, at which counsel for the Department and counsel for W.K. were present, and they discussed Father's response. Both parties stated that they did not anticipate putting on any additional evidence in response to Father's response, but the Department noted that Father did not attach some exhibits he referenced, and some of Father's arguments included hearsay. Both counsel for the Department and counsel for W.K. presented substantive arguments as to why the court should terminate Father's parental rights and should approve adoption of W.K. by the R's. The court postponed making its ruling until it could read Father's response, as Father had not filed it with the court.

On September 12, 2019, the court wrote a letter to the parties stating that, after reading Father's response, it believed that Father should be represented by counsel, and it had contacted the Office of the Public Defender regarding appointing replacement counsel. It rescheduled the case for February 14, 2020.

On December 6, 2019, a new attorney entered her appearance on behalf of Father. On January 23, 2020, she filed a motion to postpone trial, and the court granted the motion, ordering that the trial be postponed to June 19, 2020.

Due to the concerns of the COVID-19 pandemic limiting in-person trials, counsel for W.K. requested a postponement so the trial would not have to be held virtually. All parties agreed, and on January 8, 2021, the court set the trial for August 25, 2021.

In January 2021, Father requested that his new attorney strike her appearance. On February 6, 2021, the new attorney filed her motion to strike appearance, informing the court that the Public Defender's Office stated that Father's case would not be assigned to another attorney.

On February 17, 2021, the court granted the new attorney's motion to strike appearance. On the same day, the court sent a letter advising Father that the hearing was scheduled for August 25, 2021, it would not be rescheduled, and he had to retain another attorney by his own means.

On August 25, 2021, at the hearing, the court stated that the purpose of the hearing was to provide Father with the "opportunity to present any evidence that he had." Father stated that he was "under the impression that [he] would be here for the purpose of cross-examining the Department's witnesses that they presented." The court stated that it could call the Department's witnesses to the extent that they were at the trial that day, but if they had not been subpoenaed to testify, then he could not do so. Father stated that he thought that this was a "continuation of the trial." The court stated that it was, and if the witnesses

were at the trial, he was able to call them. Father stated that he wanted to call Ms. Dagilas, Ms. R, and Ms. Francis, a social worker on the case for a period of time. Ms. Francis had moved to Alabama, but Father was able to cross-examine Ms. Dagilas and Ms. R.[9] He also called Ms. T and Mr. T as witnesses and presented closing arguments as to why his parental rights should not be terminated. Father told the court that he did not wish to testify.

B.

Analysis

We examined the rights of an incarcerated parent to participate in TPR proceedings in *In re Adoption/Guardianship No. 6Z980001 in Dist. Court for Montgomery Cnty.*, 131 Md. App. 187 (2000). We concluded that, when a person is incarcerated out of state, they do not have the right to be brought into the state for the TPR hearing if they are represented by counsel and provided with means of participating in the hearing. *Id.* at 193. Procedural due process requires an "'opportunity to by heard at a meaningful time and in a meaningful manner.'" *Id.* (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). *Accord In Int. of F.H.*, 283 N.W.2d 202, 204, 208–10 (N.D. 1979) (Due process guarantees access to the court but not the right to attend).

In assessing due process in the TPR context, "a pivotal issue is the risk of error created by the challenged procedure." *No. 6Z980001*, 131 Md. App. at 198. This risk of error, i.e., the erroneous deprivation of parental rights, "is magnified unless arrangements

[9] The court stated that, because Ms. Francis was no longer employed by the Department and did not live in Maryland, it was not sure that, even if Father had served a subpoena, it would have been able to compel her attendance at the trial.

are made to permit an incarcerated parent to present evidence, consult with his or her attorney, and to confront the witnesses called by the State." *Id.*

Meaningful participation in a proceeding may be provided in various ways. Permitting phone testimony, testimony by deposition, and being given an opportunity to review evidence presented by the State and consult with one's attorney are safeguards that help to ensure a just decision. *Id.* at 194–96. In *No. 6Z980001*, we held that the appellant was given a meaningful opportunity to participate in the proceeding where he was represented by counsel, given the opportunity to appear by deposition, given certified copies of audiotapes of the trial to review, and permitted to prepare a written statement after reviewing the audiotapes. *Id.* at 198–99.

Here, Father similarly was provided "meaningful access to the courts." *Id.* at 199. Father was represented by counsel at the first guardianship hearing in December 2018, and the court arranged for Father to get the transcript of that proceeding.[10] Father had counsel to review the proceeding with him, but he discharged his lawyer and submitted his own lengthy, written response to the evidence presented. The court then delayed the

[10] Father claims that he did not receive the transcript from the March 3, 2020 hearing, at which his counsel was present, and during which the court held a hearing regarding the R's request to obtain a passport for W.K. for the purpose of international travel for a wedding. This hearing, however, had nothing to do with the termination of Father's parental rights. He further claims that he did not receive a transcript of the June 10, 2019 hearing. At that hearing, the court was supposed to issue the final decision on the case, but instead, it granted an extension to review Father's written submission, which had not been filed with the court. To the extent that Father did not get these transcripts, this did not deny him meaningful access to the court with respect to the decision to terminate his parental rights.

proceedings to review the response and contacted the Office of the Public Defender to assist Father in getting another lawyer. The court also provided Father with a postponement after the second lawyer expressed problems meeting with Father in prison. Father then discharged this second lawyer and decided to represent himself. He appeared remotely for the final days of the hearing. He presented evidence, cross-examined witnesses, and gave closing argument. Father was given meaningful access to the court.

II.

Reasonable Efforts

Father next contends that the circuit court erred in finding that the Department made reasonable efforts to achieve reunification. In support, he asserts that the Department denied him visitation and gave the R's, "non-relative foster parents," preferential status over Father and the parental grandparents.

With respect to the issue of relative status, Father argues that Ms. R is not related to Mother because, although Ms. R was related to Mother biologically, Mother was adopted, and, he asserts, once a child is adopted, "the child is no longer legally related to their birth family." Father cites no case that supports the argument that a biological cousin cannot be considered as a relative resource for TPR purposes if the parent was adopted as a child.

In any event, the focus in a guardianship hearing may not be placed on the potential suitability of a person as a placement for the child. *In re Adoption/Guardianship of Cross H.*, 200 Md. App. 142, 152 (2011), *cert. dismissed*, 431 Md. 371 (2013). That issue is one to be addressed in the CINA case, which "is a separate legal proceeding." *Id.* at 150. Father

cannot use the placement of W.K. with the R's as a ground to reverse the court's ruling terminating Father's parental rights.

Moreover, we note that, during these proceedings, Father did not file any exceptions to the decision to place W.K. with the R's. Indeed, Father agreed with the placement as long as the court considered the T's as a potential placement option.

With respect to Father's argument that the court erred in excusing the Department's failure to provide him reunification efforts, W.K. argues that the court properly found that the Department focused its efforts on reunification services for Mother as the most likely to reunify with W.K. Because Father was incarcerated out of state for 12 to 35 years, there were no services the Department could have provided that would have made Father "ready, willing, and able to care for W.K. within a reasonable amount of time."

The Department contends that the court's decision in a TPR proceeding is reviewed for abuse of discretion, and the court properly found that the Department made reasonable efforts to facilitate reunification services by attempting to arrange visits with Father at the Pennsylvania prison. These visits presented "substantial difficulties" because of Maryland's lack of jurisdiction over a Pennsylvania jail. Further services would have been "futile" due to W.K.'s special needs and Father's inability to fulfill a parenting role during his incarceration. Moreover, the Department argues that maintaining Father's "parental rights would have required W.K. to endure a state of suspended animation in foster care that would extend through the majority – and potentially the entirety – of her childhood."

FL § 5-323(d) codifies four factors that the court must use to assess the exceptional circumstances needed to terminate a person's parental rights. *C.E.*, 464 Md. at 50. The first factor is "the services that the Department has offered to assist in achieving reunification of the child with the parents[.]" *Id.* at 51. Regarding this reunification factor, § 5-626(d)(1) provides that the court must consider

> (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 services agreement, if any . . . .

FL § 5-626(d)(1)(i)–(iii).

It is well settled that, where "attempts at reunification would obviously be futile, the Department need not go through the motions in offering services doomed to failure." *In re Adoption/Guardianship No. 10941 in the Circuit Court for Montgomery Cnty.*, 335 Md. 99, 117 (1994). The crux of FL § 5-323 looks at "whether the parent is, or within a reasonable time will be, able to care for the child in a way that does not endanger the child's welfare[,]" with primary consideration given to the health and safety of the child. *Rashawn H.*, 402 Md. at 499–500. Accordingly, the Department is required to provide "a reasonable level" of services to facilitate reunification. *Id.* at 500. *Accord In re Adoption/Guardianship of H.W.*, 460 Md. 201, 233–34 (2018). "These efforts need not be perfect, but are judged on a case-by-case basis." *H.W.*, 460 Md. at 234 (internal citations omitted).

Here, the court noted that the Department's efforts were focused on reunification with Mother, given Father's incarcerated status. With respect to Father, visitation presented challenges because Father's paternity had to be established, W.K. was very young for transportation, and Father was incarcerated out of state in Pennsylvania, a jurisdiction over which the court had no jurisdiction. The court stated that it "sincerely doubt[ed] that it would have been possible to do more than what was done to facilitate visitation." It found that, although the Department, in "hindsight," could have done more, "the reality is that the Department did use reasonable efforts." It found that "further attempts would have been futile given the long length of incarceration and the fact that [Father] had been incarcerated since prior to [W.K.'s] birth."

The court did not err or abuse its discretion. *See In re Adoption of C.A. and D.A.*, 234 Md. App. 30, 54–55 (2017) (Where "no amount of services would have alleviated the primary obstacle to Father's inability to care for the child, namely, his incarceration and impending deportation," reunification services were not required.); *In re Adoption No. J970013*, 128 Md. App. 242, 256–57 (1999) (The Department was relieved of the obligation to provide reunification services where this would put the child's "welfare in 'legal limbo' while waiting for the scant possibility that the appellant will be released [from prison] in the near future.").

III.

Factual Findings

Father's final contention is that the court made several erroneous factual findings, which "resulted in a ruling that fails to meet the legal standard for a termination of parental rights finding." The Department and W.K. argue that the court made sufficient factual findings, that these findings were supported by the evidence, and that these findings support W.K.'s best interest.

As indicated, there is a presumption favoring the continuation of parental rights unless there is a showing that the parent is unfit or exceptional circumstances exist to justify terminating parental rights. FL § 5-323(b). *Accord Rashawn H.*, 402 Md. at 495. As the Court of Appeals has explained:

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

Rashawn H., 402 Md. at 501. *Accord H.W.*, 460 Md. at 219.

Father contends that the court erred in finding exceptional circumstances. The court stated that it found "exceptional circumstances by virtue of [Father's] indeterminant

incarceration, [W.K.'s] age, [W.K.'s] special needs, as well as [W.K.'s] bonding with the [R's]."

"An exceptional circumstances analysis must turn on whether the presence – or absence – of particular facts and circumstances makes continuation of the parental relationship detrimental to the child's best interests." *H.W.*, 460 Md. at 232. A parent's incarceration is relevant in this analysis, and in some cases, can act as "a critical factor in permitting the termination of parental rights, because the incarcerated parent cannot provide for the long-term care of the child." *No. J970013*, 128 Md. App. at 252. *Accord C.A. and D.A.*, 234 Md. App. at 55. What is of upmost importance "is not the natural parent's interest in raising the child but rather what best serves the interest of the child." *No. J970013*, 128 Md. App. at 252. (quoting *In re Adoption/Guardianship No. A91-71A*, 334 Md. 538, 561 (1994)). In a circumstance where incarceration is temporary and not long-term in nature, then the parent's incarceration may not justify termination of his or her parental rights. *See In re Adoption/Guardianship Nos. CAA 92-10852, 92-10853*, 103 Md. App. 1, 29 (1994). Long-term incarceration, on the other hand, may justify terminating parental rights if continuing the parental rights is not in the child's best interest. *See No. J970013*, Md. App. at 256 (The court properly terminated a father's parental rights because his prison sentence of 20 years to life placed the child "in suspended animation until 2001 or even beyond waiting for his potential parole to be realized, an occurrence that the trial court noted may never come to be.").

Father contends that the court erred in finding that his incarceration was "indeterminate." To be sure, there was a range for his sentence, 12 to 35 years, but because it was not clear when he would be released during these years, which could be after W.K. became an adult, the court's finding was not clearly erroneous.

Father next contends the court's finding that W.K. had special needs was clearly erroneous, arguing that there was no basis for such a finding "other than lay person testimony." Initially, we note that Father never argued below, as he does here, that W.K. did not have special needs, or that the Department had to prove this through expert testimony.

In any event, the finding was not clearly erroneous. We review the court's factual findings for clear error and "assume the truth of all evidence, and of all favorable inferences fairly deducible therefrom, tending to support the factual conclusion of the trial court." *B.C.*, 234 Md. App. at 707 (quoting *Abigail C.*, 138 Md. App. at 587)). The evidence introduced at trial showed that Mother tested positive for marijuana at W.K.'s birth, that Mother struggled with substance abuse during the time of W.K.'s birth, that W.K. was a substance-exposed newborn, and that Ms. R had been seeking treatment for W.K.'s special needs, all of which supports the court's conclusion that W.K. has special needs. The court's finding in this regard was not clearly erroneous.

Finally, Father contends that the circuit court's "finding that W.K.[] had a bond with the R's was not sufficient to overcome the presumption of parental rights." Although the court did discuss W.K.'s bond with the R's, it did not place sole emphasis on this factor.

It noted that W.K. would be 11 or 12 years old, at the earliest, when Father was released from prison, which the court called "very significant." It found that it was in W.K.'s best interest to terminate Father's parental rights to W.K. because there was a need for "permanency in [W.K.'s] life," and Father was not in a good position to raise W.K. because he was not available due to his own actions leading to his incarceration. There was no error in the court's factual findings in this regard.

Considering all the circumstances, we perceive no error or abuse of discretion by the circuit court in determining that it was in W.K.'s best interest to terminate Father's parental rights.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

Additional material from this filing is available in the Clerk's Office.