

DISTRICT OF COLUMBIA COURT OF APPEALS

In re Petition of D.R.M.; T.M.S., Appellant

In re Petition of D.R.M. · No. Nos. 16-FS-1291, 16-FS-1292 & 16-FS-1293 · Decided January 10, 2019

SUMMARY

The District of Columbia Court of Appeals affirmed the termination of T.M.S.’s parental rights over her three daughters and the waiver of her consent to their adoption by foster parent D.R.M. The court held that clear and convincing evidence supported findings that T.M.S. was unfit to parent and that adoption by D.R.M. was in the children’s best interests.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Blackburne-Rigsby, Chief Judge; Glickman, Associate Judge; Thompson, Associate Judge
JURISDICTION	District of Columbia
DECIDED	January 10, 2019
DOCKET	Nos. 16-FS-1291, 16-FS-1292 & 16-FS-1293
DISPOSITION	affirmed
PROCEDURAL POSTURE	T.M.S. appealed the Superior Court's order terminating her parental rights over her three biological daughters and granting D.R.M.'s adoption petition. The magistrate judge entered the order, and an associate judge affirmed it on review.
STANDARD OF REVIEW	The court reviews termination-of-parental-rights and waiver-of-consent decisions for abuse of discretion, errors of law, and clear lack of evidentiary support. Legal questions are reviewed de novo, factual findings for clear error, and the court assesses whether the decision used the correct standard of proof and was supported by substantial reasoning drawn from a firm factual foundation.
PRECEDENTIAL VALUE	Published appellate opinion; precedential value is not otherwise specified in the source.
PARTIES	T.M.S. v. D.R.M., District of Columbia

TOPICS

termination of parental rights

adoption

parental rights

family law procedure

appellate procedure

PRACTICE AREAS

family law

termination of parental rights

adoption

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court clearly erred or abused its discretion in finding, by clear and convincing evidence, that T.M.S. was unfit to parent her three children.
2. Whether the trial court properly found, by clear and convincing evidence, that T.M.S. was withholding consent contrary to the children's best interests and therefore properly waived her consent to D.R.M.'s adoption petition.
3. Whether the trial court applied the correct standard of review, evidentiary standard, and statutory best-interests factors in terminating parental rights and granting the adoption.

HOLDINGS

1. The trial court properly found by clear and convincing evidence that T.M.S. was unfit because her ongoing mental-health issues, lack of insight, inability or unwillingness to correct the conditions leading to removal, unstable housing, and failure to demonstrate that she could meet the children's needs without endangering their welfare impaired her intention and ability to parent.
2. A parent's mental illness, standing alone, does not establish unfitness or justify termination of parental rights; the evidence must demonstrate that the illness interferes with the parent's ability to care for the child or exposes the child to an undue risk of harm.
3. The trial court properly waived T.M.S.'s consent because clear and convincing evidence showed that she was unfit, that she withheld consent contrary to the children's best interests, and that the statutory termination-of-parental-rights factors favored adoption by D.R.M.

KEY QUOTATIONS

"Once the court has found by clear and convincing evidence that the biological parent is unfit to parent the child, the court may find that a waiver of the parent's consent is in the child's best interest." (at 10)

"A parent's "[f]itness refers to the parent's intention and ability" to care "for a child's wellbeing and meet the child's needs, with the basic inquiry focusing on 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."" (at 10-11)

"The fact that a parent has a mental illness does not, in and of itself, constitute a lack of fitness to parent a child." (at 12-13)

"The paramount consideration in TPR and adoption cases is the best interest of the child, which is presumptively served by placing the child with a fit natural parent." (at 16-17)

FACTUAL BACKGROUND

In January 2012, police found T.M.S.'s three daughters, ages ten, nine, and four, home alone in a residence with minimal electricity, no gas or hot water, minimal food, and a mouse infestation. T.M.S. stipulated that neglect resulted from mental illness affecting her parenting, failure to obtain treatment, unsafe home conditions, and leaving the children unattended. Despite therapy and other services, the trial court found that her mental-health problems, lack of insight into the causes of removal, unstable housing, and limited progress continued to impair her ability to meet the children's educational, physical, mental, and emotional needs. The children had formed a stable and supportive relationship with foster parent D.R.M., wanted to be adopted by her, and had improved while in her care.

PROCEDURAL HISTORY

The children were removed from T.M.S.'s home after police found them home alone in unsafe and inadequate living conditions. T.M.S. stipulated to neglect, the permanency goal was later changed from reunification to adoption, and the children were placed with D.R.M. After a four-day termination-of-parental-rights and adoption hearing, the magistrate judge found T.M.S. unfit, determined that withholding consent was contrary to the children's best interests, waived her consent, and granted the adoption petition. The associate judge affirmed, and the Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- In re J.O., 176 A.3d 144, 153 (D.C. 2018)
- In re J.J., 111 A.3d 1038, 1043 (D.C. 2015)
- In re T.W.M., 964 A.2d 595, 601 (D.C. 2009)
- In re J.O., 174 A.3d 870, 881-82 (D.C. 2017)
- In re Ta.L., 149 A.3d 1060, 1081-83 (D.C. 2016) (en banc)
- In re W.D., 988 A.2d 456, 459 (D.C. 2010)
- In re S.L.G., 110 A.3d 1275, 1285-88 (D.C. 2015)
- In re G.A.P., 133 A.3d 994, 998 n.11 (D.C. 2016)
- In re D.S., 88 A.3d 678, 694 (D.C. 2014)
- In re J.G., 831 A.2d 992, 1000-01, 1004 (D.C. 2003)
- In re P.B., 54 A.3d 660, 667 (D.C. 2012)

OPINION

PER CURIAM.

1 Notice: This opinion is subject to formal revision before publication in the Atlantic 2 and Maryland Reporters. Users are requested to notify the Clerk of the Court of 3 any formal errors so that corrections may be made before the bound volumes go 4 to press. 5 6 DISTRICT OF

COLUMBIA COURT OF APPEALS 7 8 Nos. 16-FS-1291, 16-FS-1292 & 16-FS-1293 9 10 IN
RE PETITION OF D.R.M.; 11 T.M.S., APPELLANT.

12 13 Appeals from the Superior Court of the 14 District of Columbia 15 (ADA-70-15, ADA-71-
15, & ADA-72-15) 16 17 (Hon. Sean C. Staples, Magistrate Judge) 18 (Hon. Yvonne Williams,
Associate Judge) 19 20 (Argued September 27, 2017 Decided December 20, 2018) 21 22
(Amended January 10, 2019) * 23 24 Leslie J. Susskind for appellant T.M.S. 25 26 Sabine Browne
for appellee D.R.M.

27 28 Rhodalyn Primes Okoroma, Assistant Attorney General, with whom Karl A. 29 Racine,
Attorney General for the District of Columbia, Todd S. Kim, then Solicitor 30 General, and Loren
L. AliKhan, then Deputy Solicitor General, were on the brief, for 31 the District of Columbia. 32
33 N. Kate Deshler Gould, guardian ad litem, filed a statement in lieu of a brief 34 in support of
appellee D.R.M. * This amended opinion reflects a clarification in our standard of review.

2 35 Before BLACKBURNE-RIGSBY, Chief Judge, and GLICKMAN and THOMPSON, 36
Associate Judges. 37 38 BLACKBURNE-RIGSBY, Chief Judge: Appellant T.M.S. appeals the
Superior 39 Court’s order terminating her parental rights over her three biological daughters, 40
A.S., M.S., and T.S., and granting the adoption petition of the children’s foster 41 parent, appellee
D.R.M.

T.M.S. broadly argues that the magistrate judge, in his 42 order, which the associate judge
affirmed, erred in (1) finding that she was unfit to 43 parent her children, and (2) finding that
D.R.M.’s petition for adoption was in the 44 best interests of her children.

The trial court’s decision that T.M.S. was unfit to 45 parent her children and that adoption is in the
best interests of the children is 46 supported by clear and convincing evidence in the record. We
affirm. 47 48 I. Factual and Procedural Background 49 50 The record demonstrates that on
January 28, 2012, Metropolitan Police 51 Department (“MPD”) officers found ten-year-old A.S.,
nine-year-old M.S., and 52 four-year-old T.S., home alone. “[T]he home had minimal electricity,
no gas, was 53 infested with mice, and had minimal food and no hot water.” The children reported
54 to the officers that T.M.S. had left the “home early that morning and had not returned 55 by
evening.” Upon removal, the girls were placed at St. Ann’s Infant and Maternity 3 56 Home until
February 29, 2012, when they were placed together in a foster care home.

57 On April 25, 2012, T.M.S. stipulated to the adjudication of neglect of her three 58 daughters,
admitting that “she suffered from a mental illness that impacted her 59 ability to parent” her
children, “and that her failure to receive treatment, the 60 condition of her home and her leaving
the children unattended provided a basis for 61 the Court to find neglect pursuant to D.C.

Code [§§] 16-2301 (9)(A)(ii) and (iii) 62 [(2012 Repl.).” As a result, the three children were put
into the care of the Child 63 and Family Services Agency (“CFSA”). On September 9, 2013,

T.M.S. and the 64 children's biological father, R.L.A., 1 were granted supervised visitation rights.

On 65 December 20, 2014, the girls were placed into D.R.M.'s home. 66 67 Following the children's removal from T.M.S.'s home, the trial court ordered 68 her to undergo a mental health evaluation and participate in Cognitive Behavioral 69 Therapy ("CBT") and weekly drug tests. Following a psychiatric evaluation of 70 T.M.S., McClendon Center psychiatrist, Dr. Steven Steury, diagnosed T.M.S. with 71 "Adjustment [D]isorder, mixed depression [and], mixed depressed mood," and 72 prescribed her Zoloft.

T.M.S.'s treating therapist Korey Puckett, who has been 73 treating T.M.S. using CBT, testified that T.M.S.'s symptoms include "maladaptive 1 R.L.A. and T.M.S. share nine children. R.L.A. has been in and out of jail for all of the children's lives and consented to the girls' adoption. 4 74 thoughts," "crying spells and repressed feelings," which cause her to "have a 75 heightened suspicion" of others and assume others are trying to hurt her.

The record 76 indicates that the paramount concern of Dr. Steury and Mr. Puckett is that T.M.S.'s 77 mental illness causes "poor [behavior] choice[s]," which prevent her from putting 78 the best interests of her children above what she wants for her children.

On June 5, 79 2013, the permanency goal was changed from reunification to adoption. 80 81 a. The Termination of Parental Rights ("TPR") and Adoption 82 Hearing 83 84 The TPR and adoption hearing was held on October 15, 16, 23 and 28, 2015, 85 before Magistrate Judge Staples.

Although none of the three children testified at 86 trial, the trial court admitted statements that they made to their counselor, James 87 Sean Delehant, regarding their wishes for adoption and future relationship with 88 T.M.S. All three children expressed their desire to be adopted by D.R.M., exhibited 89 a clear understanding of the meaning of adoption, and understood "that they may 90 lose all contact with [T.M.S.]" should they be adopted.

The trial court took judicial 91 notice that A.S., who was fourteen years old at the time, consented to the adoption, 92 after A.S. signed and submitted to the court a consent form indicating her desire to 93 be adopted by D.R.M. See D.C. Code § 16-304 (b)(1) (2012 Repl.). 94 5 95 At the hearing, the court heard a great deal of testimony about T.M.S.'s 96 struggles with mental illness and her lack of progress in ameliorating the conditions 97 that led to her children's removal.² The court also heard quite a bit of testimony 98 about the children's mental, emotional, and developmental struggles and their 99 progress throughout their time following their removal from T.M.S.'s care.

The 100 court relied primarily on the testimony of six key witnesses: the foster mother, 101 D.R.M.; the social worker, Christine Dogger; the expert witness, Dr. Seth King; the 102 counselor,

Mr. Delehant; the birth mother, T.M.S.; and the birth mother's therapist, 103 Mr. Puckett.³ 104
105 2 Dr. Steury has been treating T.M.S. since approximately 2010.

Although he did not testify during the proceedings, portions of his reports and diagnoses were read into the record by Joy Ellis-George, the Director of Nursing and Health Services at the McClendon Center. Ms. Ellis-George testified that Dr. Steury diagnosed T.M.S. with "Adjustment [D]isorder, mixed depression, [and] mixed depressed mood" and that T.M.S.'s records also indicated mental retardation, personality disorder, general medical conditions, hypertension, psychosocial environmental problems, stressors, and financial stressors.

3 Although the trial court relied less heavily on their testimony, the following five witnesses also testified and were credited by the court: (1) Pamela Brown of D.C. Pretrial Services; (2) Arleina Davis, a CFSA family support worker who assisted during visitations between the girls and T.M.S.; (3) Toi Bailey, A.S.'s community support worker; (4) Ashley Singleton, M.S.'s and T.S.'s community support worker; and (5) Joy Ellis-George, custodian of records for the McClendon Center.

6 106 b. The Magistrate Judge's Ruling and the Associate Judge's 107 Affirmance on Review 108
109 In detailed findings of fact and conclusions of law based on the 110 aforementioned testimony, the trial court concluded that T.M.S. was unfit to parent 111 the girls. See D.C. Code §§ 16-304 (e) and -2353 (b) (2012 Repl.).⁴ Therefore, the 112 trial court concluded that T.M.S. withheld her consent to adoption contrary to the 113 children's best interests.

Finally, the trial court concluded that adoption by D.R.M. 114 was in the children's best interests, and T.M.S.'s consent was therefore waived. 115 116 The trial court noted that T.M.S. "deeply loves her children," but that she, 117 nonetheless, was not fit to parent the children "due to her long-term, ongoing 118 unresolved mental health issues, refusal to admit to the neglectful conditions that her 119 children were living in, and lack of stable housing." The trial court further reasoned 120 that T.M.S. cancelled several scheduled visits with the children over the years.

121 During several of the visits that T.M.S. attended, she exhibited a variety of irrational 122 emotional states, which upset and agitated the children. Additionally, she continued 4 Section 16-304 (e) provides that the trial court may grant a petition for adoption without the natural parent's consent upon finding that the natural parent is withholding consent contrary to the child's best interest.

Section 16-2353 (b) outlines the Termination of Parental Rights factors, which the court must consider before determining that terminating a natural parent's right to parent a child, is in that child's best interests. 7 123 to bring large amounts of food and unhealthy snacks to visits with the children, 124 notwithstanding that two of the three children struggled with obesity, which greatly 125 impacted their health and wellbeing.

Finally, the trial court did not find T.M.S.'s 126 progress sufficient and did not expect her to make adequate progress in a reasonable 127 amount of time to be able to care for her children "in a way that does not endanger 128 their welfare." 129 130 The trial court credited D.R.M.'s testimony and found that D.R.M. provided 131 a loving and stable home for the children.

Magistrate Judge Staples further found 132 that D.R.M. understood and was capable of addressing the children's educational, 133 medical, and emotional needs, and that adoption by D.R.M. was in the children's 134 best interests. 135 136 On review, Associate Judge Williams affirmed the magistrate judge's 137 decision, finding that it was based on firm factual findings and that the magistrate 138 judge did not abuse his discretion.

The trial court thus concluded, by clear and 139 convincing evidence, that T.M.S.'s withholding of consent was contrary to the best 140 interests of the children. This appeal followed. 141 142 8 143 II. Discussion 144 145 When reviewing a proceeding to terminate parental rights and waive a natural 146 parent's consent to adoption, we review "for abuse of discretion, errors of law, and 147 clear lack of evidentiary support." In re J.O., 176 A.3d 144, 153 (D.C.

2018) (citing 148 In re J.J., 111 A.3d 1038, 1043 (D.C. 2015)). In our review, we must determine 149 whether the trial court "exercised its discretion within the range of permissible 150 alternatives, based on all the relevant factors and no improper factors." In re T.W.M., 151 964 A.2d 595, 601 (D.C. 2009) (internal quotation marks and citation omitted). 152 "Legal questions are reviewed de novo, but findings of fact are reviewed for clear 153 error." In re J.O., supra, 176 A.3d at 153 (citing D.C.

Code § 17-305 (a) (2012 154 Repl.)). We then evaluate "whether the trial court applied the correct standard of 155 proof," and assess whether the "decision is supported by substantial reasoning drawn 156 from a firm factual foundation in the record." In re T.W.M., supra, 964 A.2d at 601 157 (citation and quotation marks omitted); see also In re J.O., 174 A.3d 870, 881 (D.C.

158 2017). 159 160 161 9 162 a. The Trial Court's Determination That T.M.S. Is Unfit to Parent 163 Her Three Children Is Supported by Clear and Convincing 164 Evidence 165 166 Adoption requires the consent of the biological parent. D.C. Code § 16-304 167 (a). If, however, the biological parent has not voluntarily consented, the court may 168 waive this consent by finding that the biological parent is unfit, In re Ta.L., 149 A.3d 169 1060, 1081 (D.C.

2016) (en banc), and that the parent is withholding consent 170 contrary to the child's best interests. D.C. Code § 16-304 (e). We clarified, in our 171 en banc decision, In re Ta.L., that given the presumption that a child's best interests 172 are "served by being placed with his or her fit natural parent," prior to terminating 173 parental rights, the court must make "an independent determination of parental 174 fitness" and find that the natural parent is not fit to parent his or her child.

149 A.3d 175 at 1083; see also *In re J.O.*, supra, 174 A.3d at 881.5 Once the court has found by 176 clear and convincing evidence that the biological parent is unfit to parent the child, 177 the court may find that a waiver of the parent's consent is in the child's best interest. 178 *In re W.D.*, 988 A.2d 456, 459 (D.C. 2010) (internal citation omitted). 179 5 We note that *In re S.L.G.*, which remains good law, states that "the presumption in favor of the natural parent in a TPR or contested adoption proceeding is 'rebutted only by a showing that the parent is either unfit or that exceptional circumstances exist that would make the continued relationship detrimental to the child's best interest.'" 110 A.3d 1275, 1286 (D.C.

2015) (emphasis added; citation and footnote omitted). 10 180 A parent's "[f]itness refers to the parent's intention and ability" to care "for a 181 child's wellbeing and meet the child's needs, with the basic inquiry focusing on 182 whether the parent is, or within a reasonable time will be, able to care for the child 183 in a way that does not endanger the child's welfare." *In re J.O.*, supra, 174 A.3d at 184 881 (internal alternations and quotation marks omitted) (citing *In re Ta.L.*, supra, 185 149 A.3d at 1082).

The determination of whether a parent is unfit "is not merely a 186 restatement of the 'best interests of the child'" but rather, fitness "is an independent 187 determination of parental 'intention and ability over time.'" *In re G.A.P.*, 133 A.3d 188 994, 998 n.11 (D.C. 2016) (quoting *In re S.L.G.*, supra, 110 A.3d at 1287).

The 189 ultimate purpose of this determination being, "to resolve the natural parent's 190 capacity to 'care for the child' and protect the child against 'undue risk of harm.'" 191 *In re G.A.P.*, supra, 133 A.3d at 998 n.11 (quoting *In re S.L.G.*, supra, 110 A.3d at 192 1287). Factors that may be considered in determining whether a parent is unfit 193 include: 194 past or ongoing child abuse, neglect, maltreatment, or 195 abandonment; a failure to maintain contact with, nurture, 196 or support the child; involvement in criminal or other 197 activities that are seriously inimical to a child's welfare; 198 the inability or unwillingness to make reasonable efforts 199 to correct the behaviors or conditions that led to the child's 200 removal from the parent's custody, to provide a safe and 201 stable home for the child, or to meet a particular child's 202 special needs; chronic drug or alcohol abuse; and mental 203 health issues or other impairments that demonstrably 204 interfere with the parent's ability to care for the child or 205 that expose the child to undue risk of harm.

11 206 *In re S.L.G.*, supra, 110 A.3d at 1287 (internal citation omitted). The determination 207 of unfitness shall be focused on the parent's willingness and ability and, because 208 unfitness is a separate determination, it should not be made by comparing the birth 209 parent's fitness with that of the adoptive parent. *Id.* at 1288. 210 211 On appeal, T.M.S. makes the conclusory assertion that the trial court's 212 findings that she has "long term ongoing unresolved mental health issues," which 213 render her unfit to parent the girls, were not based on clear and convincing evidence.

214 We disagree. There is clear and convincing evidence in the record that supports the 215 trial court's conclusion that T.M.S.'s mental illness negatively impacts her ability to 216 care for her children and renders her unfit to parent her three girls, given their 217 educational, physical, mental, and emotional needs.

The trial court based this 218 conclusion on the testimony of Dr. King, Mr. Puckett, and Mr. Delehant, which it 219 credited and which were corroborated by the credited testimonies of two CFSA 220 social workers and two community support workers.

The trial court acknowledged 221 that T.M.S.'s multiple mental health diagnoses, the primary being Adjustment 222 Disorder, cause her to have overly negative thoughts, an inability "to recognize the 223 gravity of her mental health needs," and difficulties with exercising good judgment. 224 The trial court also acknowledged that T.M.S. is prescribed Zoloft and despite telling 225 her therapist that she takes it regularly, she admitted to her community support 12 226 worker that she does not take her medication as prescribed.

The court stated that it 227 was unable to fully credit T.M.S.'s testimony because she "refused to acknowledge 228 any factual basis for her children's removal from her home" and "refused to answer 229 questions regarding her current mental health diagnosis" and ongoing struggles with 230 treatment.

Finally, T.M.S.'s stipulation to suffering "from a mental illness that 231 impacted her ability to parent" her children, and "her failure to receive treatment" 232 formed an adequate basis for the children's April 25, 2012 neglect adjudication. 233 T.M.S.'s circumstances have not significantly changed since then. 234 235 The fact that a parent has a mental illness does not, in and of itself, constitute 236 a lack of fitness to parent a child.

In re D.S., 88 A.3d 678, 694 (D.C. 2014) ("[A] 237 parent's poverty, ill health, or lack of education or sophistication, will not alone 238 constitute grounds for termination of parental rights.") (quoting In re J.G., 831 A.2d 239 992, 1000-01 (D.C. 2003)).

The court's concern is with "the degree that such 240 [illness] affects the welfare of the child." D.C. Code § 16-2353 (b)(2). The relevant 241 determination is whether the mental illness "demonstrably interfere[s] with the 242 parent's ability to care for the child." In re S.L.G., supra, 110 A.3d at 1287; see In 243 re P.B., 54 A.3d 660, 667 (D.C. 2012) (holding that in order to prove a child is 244 neglected, the government must not only show mental incapacity but "must also 13 245 show a nexus between a parent's mental incapacity and an inability to provide proper 246 parental care") (internal quotation marks and citation omitted).

247 248 The trial court found that T.M.S. "has consistently failed to recognize the 249 gravity of her mental health needs and lack[s] motivation to address those needs," 250 which prevents her from putting "the best interests of her children" above her own 251 personal desires.

In addition to Dr. King's recommendation that the children not be 252 returned to T.M.S.'s care, T.M.S.'s treating psychiatrist of six years, Dr. Steury, also 253 would not support T.M.S.'s efforts to gain custody of her children. Dr. Steury's 254 reasoning was based on the fact that, during the six years he treated T.M.S., she was 255 "never... forthcoming with him regarding" the details of the girls' removal from 256 her care.

T.M.S. consistently lacked an appropriate perception of the gravity of her 257 behavior. When asked to support the girls with their academic struggles—the girls 258 have Individualized Education Plans ("IEP") and have been diagnosed with learning 259 disabilities—T.M.S. refused to acknowledge their academic struggles and instead 260 responded, "my children are very intelligent." In addition, despite A.S.'s and M.S.'s 261 diagnoses of obesity and other health concerns, T.M.S. insisted on giving her girls 262 large amounts of unhealthy food, including sweets and fast food, at visits.

263 14 264 T.M.S. also was unwilling to address the problems that led to her children's 265 removal in the first place. Before the trial court, T.M.S. denied that her children 266 were removed from her home because it was roach- and rodent-infested, lacked 267 electricity, that the sink and bathtub were clogged, and that trash and clutter were 268 strewn throughout her home, even though she previously stipulated to these 269 conditions.

T.M.S. would only admit that her children were removed because their 270 educational needs were not being met because they missed a lot of school. Despite 271 the fact that T.M.S.'s home was unsuitable for her children, T.M.S. would not allow 272 the social workers to visit and assess the home before the TPR and adoption hearing. 273 Although T.M.S. regularly attended therapy with Mr. Puckett, he admitted that 274 T.M.S.'s progress with CBT has been extremely slow—what typically takes patients 275 one year to complete has taken T.M.S. over four years.

As a result of her slow and 276 minimal progress, based on a recent psychological evaluation, the court ordered 277 T.M.S. to increase the frequency of her visits with Mr. Puckett. Mr. Puckett also 278 testified that if the three girls were returned to T.M.S., they would be a stressor on 279 her life, and she would need additional support to cope with the change.

280 281 The evidence in the record supports the trial court's conclusion that T.M.S. 282 has a history of ongoing unresolved mental health issues that continue to impair her 283 judgment and her ability to parent her children. While T.M.S.'s efforts in seeking 15 284 treatment and her regular visits with Mr. Puckett are commendable, her condition 285 has not significantly improved and it still impairs her ability to adequately assess 286 reality and respond appropriately to the needs of her children.

To reiterate, the 287 evidence shows that T.M.S. is still dealing with a high level of anxiety surrounding 288 her children, which initially led to the deterioration of her home and the

children's removal from her care. Further, T.M.S. still remains unable to acknowledge the health, developmental, and emotional issues that her children are dealing with, which negatively impacts her ability to support them in a meaningful way.

Although T.M.S. maintains that she wants her children back and will be able to care for them, she has not exhibited concrete evidence of such an ability—for example, she maintains that her home is clean and organized but has denied entry by the social worker, Ms. Dogger.

The combination of these conditions provides a firm basis for the trial court's ruling that T.M.S. "is not, and will not be within a reasonable amount of time, able to care for the [children] in a way that does not endanger their welfare." It was therefore not an abuse of discretion for the magistrate judge and the associate judge to find that T.M.S. is not fit to parent A.S., M.S., and T.S.

300 301 302 16 303 b. The Trial Court's Determination That Waiving T.M.S.'s Consent to the Adoption of Her Three Children Is Supported by Clear and Convincing Evidence 306 307 The paramount consideration in TPR and adoption cases is the best interest of the child, which is presumptively served by placing the child with a fit natural parent. 309 However, this presumption is not absolute and must "give way" when clear and convincing evidence shows that a parental placement is contrary to the child's best interest—either because the parent is unfit or because exceptional circumstances exist that would make the continued relationship detrimental to the child's best interest.

See *In re S.L.G.*, supra, 110 A.3d at 1285-86; see also *In re J.O.*, supra, 174 A.3d at 882. The court must make a finding that the natural parent is withholding her consent contrary to the best interests of the child.

In re S.L.G., supra, 110 A.3d at 1285. In deciding what is in the child's best interests, the court shall look to the TPR factors because granting a petition for adoption over a natural parent's consent effectively terminates their rights. *Id.* "The court must weigh the same statutory factors that are considered in a TPR proceeding to decide whether termination is in the child's best interest." *Id.* Four of those factors are relevant here: (1) the child's need for continuity of care and caretakers and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages; (2) the physical, mental and emotional health of all individuals involved to the degree that such affects the welfare of the child, the decisive consideration being the physical, mental and emotional needs of the child; (3) the quality of the interaction and interrelationship of the child with his or her parent, siblings, relative, and/or caretakers, including the foster parent; [and] 336 337...

338 339 (4) to the extent feasible, the child's opinion of his or her 340 own best interests in the matter[.] 341 342 D.C. Code § 16-2353 (b). If, upon weighing these factors, the court finds that a 343 parent is withholding his or her consent contrary to the child's best interests, then 344 the court may waive the parent's consent. 345 346 The trial court applied the TPR framework and found that T.M.S. was not 347 entitled to the presumption that the girls' best interests would be served by T.M.S.

348 The trial court weighed each of the factors and determined that the outcome favored 349 keeping the girls with D.R.M. We are satisfied that the trial court's determinations 350 were supported by clear and convincing evidence in the record that the girls' best 351 interests were served by placement with D.R.M. and that T.M.S.'s consent should 352 therefore be waived.

353 18 354 i. The Children's Need for Continuity of Care and Caretakers 355 356 With respect to this first factor, the trial court emphasized that D.R.M. has 357 provided a stable and supportive family environment for the three girls.

Although 358 T.M.S. has indicated she wants her girls back, the evidence of her lack of fitness 359 indicates that she will not be able to provide a stable home for the girls anytime soon. 360 The record does not indicate a reason to disturb the trial court's determination that 361 this factor weighs in favor of keeping the girls under D.R.M.'s care. 362 363 ii.

The Physical, Mental, and Emotional Health of All 364 Individuals Involved 365 366 In weighing this second factor, the trial court noted that D.R.M. has taken 367 every measure to maintain the girls' health and development since the girls entered 368 D.R.M.'s care in December 2014; for example, D.R.M. takes the girls to the park to 369 stay active, encourages them in school, and has fully integrated them into her family 370 and her extended family.

The children initially struggled with emotional and mental 371 health issues, including sadness, depression and abandonment issues, but their 372 conditions have improved since living with and adjusting to life with D.R.M., and 373 attending therapy. 374 19 375 The trial court found that, in contrast, although T.M.S. is informed of the 376 girls' IEP meetings and doctors' appointments, she either does not attend or she 377 participates via telephone; further, although she is aware that her older girls are 378 considered obese, she insists on bringing the girls unhealthy food to scheduled visits.

379 The trial court noted that T.M.S. continues to battle her own mental health issues, 380 which negatively impact her ability to adequately take care of the three girls' unique 381 physical, mental, and emotional needs.

The trial court thus properly found that this 382 factor also weighs in favor of keeping the girls with D.R.M. and we discern no error. 383 384 iii. The Quality of the Interaction and Interrelationship of the 385 Children with Their Parent, Siblings, Relative, And/Or 386 Caretakers,

including the Foster Parent 387 388 The trial court weighed the third factor and concluded that the children love 389 T.M.S. but that their relationship with her is not healthy for them.

During visits, 390 T.M.S. has overshared her health issues with her children including that she has high 391 blood pressure, “she might die,” that “her tooth was falling out” and that she had 392 problems with her hair. These statements caused the two older girls, A.S. and M.S., 393 a lot of stress and worry over her well-being.

The girls’ therapist, Mr. Delehant, 394 testified that T.M.S.’s emotional state “could be anywhere from excited to 395 depressed, to tearful, confused, [or] happy,” which made the children “anxious.” 396 The oldest child, A.S., acknowledged that T.M.S.’s home is “not a good place to 20 397 return to for her and her sisters” and the middle child, M.S., “wishes things were 398 better” with T.M.S.

399 400 The trial court determined that living with D.R.M. has given M.S. a “sense of 401 safety.” The trial court credited Mr. Delehant’s testimony that the girls were initially 402 “more withdrawn” and “anxious” with D.R.M. but have adjusted well to her and 403 now have a calm and trusting demeanor with “very good signs of attachment and 404 bonding.” Further, the trial court relied on community support worker Ms. 405 Singleton’s testimony that the girls are bonded to D.R.M. and her daughter as M.S.

406 “really really likes D.R.M.’s daughter.” The trial court ultimately concluded that the 407 girls have a loving and trusting relationship with D.R.M., who supports them in 408 every aspect of their lives and is a reliable mother to them. Further, the trial court 409 noted that although the children love T.M.S. and have a relationship with her that 410 cannot be discounted, the overall quality of the interactions and interrelationship of 411 the children with D.R.M. is substantially greater.

Therefore, the trial court did not 412 abuse its discretion in finding by clear and convincing evidence that this factor 413 weighed in favor of the adoption. 414 415 416 21 417 iv. The Children’s Opinion of Their Own Best Interests 418 419 The trial court weighed this fourth factor and credited the testimony of Dr. 420 King that the children wanted to live with their adoptive mother and not their 421 biological mother.

The girls’ guardian ad litem as well as their social worker Ms. 422 Dogger also testified in support of the adoption. According to the testimony of Mr. 423 Delehant and Dr. King, which the trial court credited, the children understood what 424 adoption meant and that there was a possibility that they may no longer have visits 425 with T.M.S., and all three still wished to be adopted by D.R.M.

The trial court did 426 not abuse its discretion by concluding the children wanted to be adopted by D.R.M. 427 428 The trial court did not err in finding by clear and convincing evidence that the

429 relevant statutory factors weighed in favor of keeping the girls with D.R.M., and 430 concluding that it was in the girls' best interests to terminate T.M.S.'s parental rights 431 and grant the adoption petition by D.R.M.

432 433 III. Conclusion 434 435 T.M.S.'s significant mental health diagnoses and challenges severely impact 436 her ability to care for her children and render her unfit to parent A.S., M.S., and T.S., 22 437 given their specific learning disabilities and physical and emotional health concerns. 438 The magistrate judge's findings were supported by clear and convincing evidence in 439 the record demonstrating that T.M.S. is not fit to parent the girls and which satisfies 440 each of the applicable TPR factors.

In re J.G., supra, 831 A.2d at 1001. The 441 adoption is necessary to protect the girls "from protracted legal limbo" and "to afford 442 them a stable and permanent home," which T.M.S. is unable to provide. Id. at 1004. 443 444 Affirmed.