

RECENT DEVELOPMENT

IN RE ADOPTION/GUARDIANSHIP OF CROSS H.: NO BAR AGAINST THE INITIATION OF A TERMINATION OF PARENTAL RIGHTS PROCEEDING DURING THE PENDENCY OF A CHILD IN NEED OF ASSISTANCE APPEAL; COURT DID NOT ERR IN DENYING PLACEMENT OF THE CHILD WITH GRANDMOTHER; TERMINATION OF PARENTAL RIGHTS WAS IN THE BEST INTEREST OF THE CHILD.

By: Caitlin Evans

The Court of Special Appeals of Maryland held that there is no bar against the initiation of a termination of parental rights (“TPR”) proceeding when a child in need of assistance (“CINA”) appeal is pending. *In re Adoption/Guardianship of Cross H.*, 200 Md. App. 142, 24 A.3d 747, cert. granted, 422 Md. 352, 30 A.3d 193 (2011). Additionally, the court held that the circuit court did not err in refusing placement with the grandmother during the TPR hearing, and that termination of parental rights was in the best interest of the child. *Id.* at 145, 24 A.3d at 749.

On August 28, 2007, Cross H. was born to Virginia H. Cross H. was exposed prenatally to HIV, Hepatitis C, and drugs and alcohol. He was immediately placed in intensive care because he was born premature, was anemic, and weighed less than four pounds. He also suffered from heart arrhythmias, damage to his retinas, had difficulty breathing, and experienced poor muscle control. On October 3, 2007, the hospital released Cross H. and he was immediately adjudicated a CINA. Accordingly, Cross H. was committed to the Department of Social Services (“DSS”) and placed into foster care.

Virginia H. suffered from psychological disorders for which she received hospitalization on several occasions and she was incarcerated shortly after Cross H.’s birth. Upon her release, she entered a rehabilitation center. In January 2009, a paternity test confirmed Aaron R. as the biological father of Cross H. and the court adjusted the permanency plan for reunification. Aaron R., however, did not comply with DSS’s request for completion of a drug treatment program or a psychological examination.

Acknowledging that he could not care for Cross H. at that time, Aaron R. requested that Cross H. be placed with his grandmother, Barbara J. At the court’s direction, DSS conducted a home and bonding study and found a lack of significant attachment between the grandmother and

child. As a result, on October 28, 2009, the court recommended a permanency plan of adoption by a non-relative. Virginia H. filed exceptions to the permanency plan, but the circuit court affirmed. Virginia H. filed a timely appeal to the Court of Special Appeals of Maryland.

While the appeal was pending, DSS filed a TPR petition. On August 10, 2010, Aaron R. filed a motion to stay the TPR proceedings until resolution of the CINA appeal. The juvenile court denied the motion and granted guardianship of Cross H. to DSS, terminating Virginia H. and Aaron R.'s parental rights. On October 22, 2010, Virginia H. appealed this decision and argued that the circuit court erred in proceeding with the TPR case while the CINA appeal was pending.

DSS filed a motion to dismiss the CINA appeal, arguing that the TPR order rendered the CINA appeal moot. The Court of Special Appeals of Maryland denied the motion and affirmed the lower court's permanency plan. Virginia H. and Aaron R. filed a petition for a writ of certiorari to the Court of Appeals of Maryland in the CINA case, which the court denied. For that reason, the Court of Special Appeals of Maryland addressed the TPR appeal only.

The Court of Special Appeals of Maryland first addressed whether the circuit court erred in granting a TPR proceeding while a CINA appeal was pending. *In re Cross*, 200 Md. App. at 148-49, 24 A.3d at 751-52. This issue was moot because the CINA appeal was not granted certiorari in the Court of Appeals of Maryland and, therefore, could not change the outcome of the TPR proceeding. *Id.* at 149, 24 A.3d at 752. However, the court stated this is an area of public concern and used this opportunity to clarify the interplay between CINA and TPR proceedings. *Id.*

Cross H.'s parents argued that this case is analogous to *In re: Emileigh F.*, in which the Court of Appeals of Maryland held that the circuit court erred in terminating the juvenile court's jurisdiction while a CINA appeal was pending. *In re Cross*, 200 Md. App. at 149, 24 A.3d at 752 (citing *In re: Emileigh F.*, 355 Md. 198, 733 A.2d 1103 (1999)). The Court of Special Appeals of Maryland disagreed that the cases were similar. *In re Cross*, 200 Md. App. at 149, 24 A.3d at 752. In *In re: Emileigh F.*, the court held that terminating jurisdiction was inconsistent with the pending CINA appeal and vacated the judgment closing the CINA proceedings. *Id.* at 149, 24 A.3d at 752 (citing *In re: Emileigh F.*, 355 Md. 198, 733 A.2d 1103). In the present case, however, jurisdiction was never terminated during the TPR proceeding and no action was taken to close the CINA appeal. *In re Cross*, 200 Md. App. at 149, 24 A.3d at 752. In fact, when DSS filed the motion to dismiss the CINA appeal, the Court of Special Appeals of Maryland denied the motion. *Id.* at 148, 24 A.3d at 751.

A CINA adjudication must precede a TPR determination, but the two are separate legal proceedings. *In re Cross*, 200 Md. App. at 150, 24 A.3d at 752. Often, a CINA case will set the stage for a TPR proceeding if it results in a permanency plan of adoption by a non-relative. *Id.* Further, the court recognized that according to the statutory scheme, a TPR case would terminate a CINA case due to the extinguishment of jurisdiction. *Id.* However, the court held that a legal error in a CINA proceeding could affect the outcome of a TPR determination. *Id.* For that reason, the court was concerned with authorizing juvenile courts to terminate jurisdiction through a TPR proceeding, while a CINA case was on appeal. *Id.* at 150, 24 A.3d at 752. This would frustrate the actions of the appellate courts and, therefore, the court held that an appellant's right to appeal a CINA decision should not be defeated by the juvenile court's actions to terminate jurisdiction through a TPR proceeding. *Id.* at 150, 24 A.3d at 752 (citing *In re: Emileigh F.*, 355 Md. at 202, 733 A.3d 1103).

The court then analyzed whether the circuit court erred in refusing to order custody of Cross H. to his grandmother, Barbara J. *In re Cross*, 200 Md. App. at 151, 24 A.3d at 753. First, the court concluded that the issue in the TPR case concerned the fitness of Virginia H. and Aaron R. as parents, not the grandmother. *Id.* at 152, 24 A.3d at 754. Second, the court fully addressed the suitability of placement with Barbara J. in the CINA case. *Id.* at 151, 24 A.3d 753. The court explored placement with Barbara J. but denied custody when a home and bonding study resulted in negative findings. *Id.*

The final issue was whether the lower court erred in terminating the parents rights. *In re Cross*, 200 Md. App. at 152, 24 A.3d at 754. In reviewing a lower court's decision to terminate parental rights, the appellate court must determine if the court considered the correct standard, whether there were clearly erroneous factual determinations, and whether the court abused its discretion. *Id.* at 155, 24 A.3d at 755 (citing *In re Adoption/Guardianship/CAD No. 94339058*, 120 Md. App. 88, 706 A.2d 144 (1998)). Accordingly, the Court of Special Appeals of Maryland found that the lower court considered the appropriate standard by evaluating the child's best interest. *In re Cross*, 200 Md. App. at 157-58, 24 A.3d at 757. The lower court met that standard by making factual findings for each statutory factor when considering whether terminating parental rights was in the best interest of the child. *Id.* (citing MD CODE ANN., FAM. LAW § 5-323 (West 2006)). Therefore, the lower court did not abuse its discretion in determining that Virginia H. and Aaron R. exemplified parental unfitness, and the decision to terminate parental rights was in the best interest of the child. *In re Cross*, 200 Md. App. at 157-58, 24 A.3d at 757.

In *In re Cross*, the Court of Special Appeals of Maryland clarified how TPR and CINA cases are related yet distinct proceedings. Favoring

permanency for children in foster care, the court held that pendency of a CINA appeal would not preclude a TPR proceeding. This decision puts family law attorneys on notice that they must prepare to defend against both CINA and TPR proceedings in order to fully protect their clients rights. On the one hand, this decision helps the courts move to more permanency for children because the TPR cannot be stayed. Alternatively, it could create a lengthier process if a legal error occurs in the CINA appeal, which will affect an already adjudicated TPR proceeding and could lead to a longer period of instability for the child involved. The Court of Appeals of Maryland granted certiorari to determine whether the circuit court can proceed with a TPR hearing while a CINA appeal is pending.