THIRD DIVISION
ELLINGTON, P. J.,
ANDREWS and RICKMAN, JJ.

January 31, 2018

NOT TO BE OFFICIALLY REPORTED

In the Court of Appeals of Georgia

A17A1856. IN THE INTEREST OF A. R. A. ET AL. CHILDREN (MOTHER).

RICKMAN, Judge.

The mother appeals the juvenile court's denial of her petitions to terminate the maternal grandmother and step-grandfather's ("the grandparents") temporary guardianship of her two minor children. The mother contends that the evidence did not support the juvenile court's denial of her petitions. For the following reasons, we vacate the judgment and remand the case for proceedings consistent with this opinion.

The record shows that the mother has two children, F. R. M. and A. R. A. In August 2011, the probate court appointed the grandparents temporary guardians of F. R. M. after the mother was served by publication and by default did not object to the appointment. In September 2014, after the mother consented, the probate court

appointed the grandparents temporary guardians of A. R. A. Both children have lived with the grandparents for the majority of their lives.

In November 2016, the mother filed petitions in the probate court, pursuant to OCGA § 29-2-8,[1] to terminate the grandparents' temporary guardianships of each child. The grandparents filed objections to both petitions and the cases were transferred to the juvenile court. Following a hearing, the juvenile court issued an order denying the petitions to terminate the guardianships.

While the mother contends that the evidence did not support the denial of her petitions, we need not reach this alleged error because we conclude that the juvenile

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[1] Either natural guardian of the minor may at any time petition the court to terminate a temporary guardianship; provided, however, that notice of such petition shall be provided to the temporary guardian. . . If the temporary guardian objects to the termination of the temporary guardianship within ten days of the notice, the court shall have the option to hear the objection or transfer the records relating to the temporary guardianship to the juvenile court, which shall determine, after notice and hearing, whether a continuation or termination of the temporary guardianship is in the best interest of the minor.

OCGA § 29-2-8 (b).

court failed to complete the best interest of the child analysis as required under OCGA § 29-2-8 (b).

> Guardianships are intended to encourage parents experiencing difficulties to temporarily turn over the custody and care of their children—safe in the knowledge that they will be able to regain custody in the future. This policy would be frustrated if guardianships were difficult to terminate and constitutional parental rights were not protected, because parents would be less likely to voluntarily petition for a guardian to be appointed to care for their minor children. Therefore, children would unnecessarily be placed in jeopardy in many circumstances.

(Citations and punctuation omitted.) *Boddie v. Daniels*, 288 Ga. 143, 146-147 (702 SE2d 172) (2010). "[W]here, as here, a custody dispute arises between a noncustodial biological parent and a third party . . . the state [is not permitted] to interfere with the parent's right to raise her child unless, at a minimum, the state acts to protect the child's health or welfare and the parent's decision would result in harm to the child." (Citations and punctuation omitted.) Id. at 145-146.

The inquiry into whether it would be in the best interest of the child to terminate the temporary guardianship under OCGA § 29-2-8 (b) is two-fold:

> the third party must prove by clear and convincing evidence that the child will suffer physical or emotional harm if custody were awarded to

> the biological parent by terminating the temporary guardianship. Once this showing is made, the third party must then show that continuation of the temporary guardianship will best promote the child's welfare and happiness.

(Citation and punctuation omitted.) *Boddie*, 288 Ga. at 146.

The juvenile court found that the grandparents met their burden under the first prong of this test of showing by clear and convincing evidence that if their temporary guardianships were terminated the children would suffer long-term emotional harm. The juvenile court, however, erred in denying the petitions to terminate the temporary guardianships without finding that the temporary guardianship would best promote the children's welfare and happiness.[2] Accordingly, we vacate the judgment of the juvenile court and remand this case for proceedings consistent with this opinion. See *Boddie*, 288 Ga. 143; see also *Floyd v. Gibson*, 337 Ga. App. 474, 478-479 (1) (788 SE2d 84) (2016); *Lopez v. Olson*, 314 Ga. App. 533, 542 (3) (724 SE2d 837) (2012).

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[2] It appears from the record that the grandparents noticed this error because they filed a motion to amend the final order, acknowledging that under *Boddie* they were required to show that continuation of the temporary guardianships will best promote the children's welfare and happiness. The grandparents further stated that, "[the juvenile court] made no explicit finding that continuation of the guardianships will best promote the children's welfare and happiness" and moved the court to amend its order to include that finding.

Additionally, in its order, the trial court found that the mother works in the sex industry,[3] and that

> being in the adult-entertainment industry alone, does not warrant the [m]other unable or incapable of raising her children. However, the clear and convincing evidence in this case is that the [m]other will continue her employment, which is performed in her home and the nature of the employment does create a substantial risk to the children, which cannot be overlooked. This risk is so substantial that exposure will result in long term emotional harm.

When considering the issue of harm in this context, the juvenile court was required to consider various factors including: "(1) who are the past and present caretakers of the child; (2) with whom has the child formed psychological bonds and how strong are those bonds; (3) have the competing parties evidenced interest in, and contact with, the child over time; and (4) does the child have unique medical or psychological needs that one party is better able to meet." (Citations, punctuation, and footnotes omitted.) *Clark v. Wade*, 273 Ga. 587, 598-599 (IV) (544 SE2d 99) (2001); see *Boddie*, 288 Ga. at 146 (explaining that the lower court must consider the *Clark*

[3] There was testimony that the mother works in the sex industry from home utilizing the telephone and internet.

factors when "applying this rigorous harm standard so as to ensure that the temporary guardianship will be continued only when a real threat of harm would result from termination").

The juvenile court analyzed each of the *Clark* factors when conducting the harm analysis and its conclusion related to the mother's employment does not appear to be the sole basis in determining that the children would suffer long term emotional harm if the guardianship where terminated. However, because it could be relevant upon remand, based upon this record, we are unpersuaded that speculation as to the risk of the children's potential exposure to the mother's employment constitutes a real threat of harm.

"Parents have a fundamental liberty interest in the care, custody, and management of their children and there can scarcely be imagined a more fundamental and fiercely guarded right than the right of a natural parent to his offspring." (Citation and punctuation omitted.) *Floyd*, 337 Ga. App. at 479 (1). "When that fundamental interest is at stake, the court must give full, fair, and thoughtful consideration to the serious matter at hand." Id.

In sum, we make no statement as to the propriety of the juvenile court's denial of the mother's petitions to terminate the grandparents' temporary guardianships.

Rather, we remand this case to give the juvenile court the opportunity to complete the two-prong best interest of the child analysis under OCGA § 29-2-8 (b). We note that pursuant to OCGA § 29-9-2 (a), "[t]he court in its discretion may at any time appoint a guardian ad litem to represent the interests of a minor . . . in proceedings relating to the guardianship . . . of that individual." See *Lively v. Bowen*, 272 Ga. App. 479, 484 (1) (612 SE2d 625) (2005) (considering the evidence presented, including testimony by the guardian ad litem that the child would suffer emotional harm if returned to parental custody, there was reasonable evidence to support the trial court's conclusion that clear and convincing evidence showed a real threat of emotional harm to the child if returned to parental custody).

Judgment vacated and case remanded. Ellington, P. J., concurs. Andrews, J., concurs in judgment only.