

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2002-121

JUNE TERM, 2002

In re B.S., Juvenile

|   |                               |
|---|-------------------------------|
| } | APPEALED FROM:                |
| } |                               |
| } | Franklin Family Court         |
| } |                               |
| } | DOCKET NO. 248-12-00 Frjv     |
| } |                               |
| } | Trial Judge: Jane G. Dimotsis |
| } |                               |
| } |                               |
| } |                               |

In the above-entitled cause, the Clerk will enter:

Father appeals the termination of his parental rights to his daughter, B.S., [\(1\)](#) claiming the court erred by (1) failing to make findings and conclusions on B.S.'s need for permanency, and (2) denying his motion to reopen the evidence. We affirm.

B.S. was conceived while both of her parents were juveniles; father was seventeen years old at the time, and mother was thirteen. As a result, father was convicted of a prohibited act and was placed on probation. He was subsequently charged and convicted of a variety of other offenses, including aggravated assault and violations of the terms of his probation. During most of B.S.'s short life, father has been incarcerated. Father's probation is conditioned on his successful completion of the Department of Corrections' Pathways program, which is designed to address issues related to interpersonal violence and substance abuse. Although father entered the program, he was removed for cause once, and after rejoining it, left voluntarily approximately one month later. As of December 2001, father's minimum and maximum release dates were May 2002 and May 2008 respectively. Father has had limited contact with B.S. since her birth.

In April 2001, the juvenile court adjudicated B.S. a child in need of care and supervision (CHINS) pursuant to the parties' stipulation. The court's findings reveal that up until that time, B.S. did not have consistent care or consistent housing due to mother's instability and substance abuse. In accordance with SRS's November 2001 case plan, the court heard evidence in December 2001 on the agency's request to terminate mother's and father's parental rights. In its termination order, the court adopted SRS's November 2001 case plan in its entirety, including its findings on B.S.'s needs for permanency. It found that B.S. needs a stable and permanent home so she can grow and develop socially, educationally, and emotionally. She needs security, consistency, structure, age appropriate activity and stimulation, limit setting, and safety. The court found that father could not yet recognize and provide for B.S.'s changing emotional and physical needs, and had not demonstrated an understanding of child development or age appropriate expectations. Due to father's personal and family instability, he could not provide B.S. with an adequately safe and nurturing environment or developmentally appropriate care for his daughter. Importantly, the court found that father had done nothing to address the issues that resulted in his separation from B.S., and failed to understand the impact the separation has had on the child - "[h]e sees it only as it has affected him," the court found. After considering father's past history and present circumstances, and analyzing the matter under the statutory factors, the court terminated father's parental rights. Father then appealed to this Court.

Father first argues that the court omitted findings and conclusions on how soon B.S. "needs to find permanency either with her father or with another permanent placement to avoid physical and emotional harm." That argument has no merit in view of the law, the court's order in this case, and the record upon which that order is based. When considering whether termination is appropriate in any given case, the court must "consider the parent's prospective ability to parent the child" within a reasonable time as measured by the child's needs. In re B.M., 165 Vt. 331, 337 (1996). The inquiry, father correctly points out, is forward looking. Id. "Past circumstances that have affected the parent-child relationship will of course be relevant to whether a parent can resume a caregiving role," however. Id. Here, the court found that father's past and present circumstances, including his virtual estrangement from B.S., prevented him from parenting B.S. or any other child, and that a reasonable period of time had already elapsed for him to gain the necessary skills and stability to do so. Contrary to father's assertion, the court made findings on B.S.'s immediate need for a permanent home and care giver. The court's order does not suffer from the defect father alleges, and we find no cause to disturb the court's ruling.

Father also claims the court erred by denying his V.R.C.P. 60(b)(2) motion to reopen the evidence. See Vermont Rules for Family Proceedings Rule 2(a)(1) (civil rules apply in juvenile proceedings). Father wanted the court to consider a letter from his corrections case worker describing a change in the length of the Pathways program. The evidence suggests that if father entered Pathways, and if he successfully completed the program in six months, he could exit Pathways by July 2002. Believing that his parental rights were terminated primarily because the court found it unlikely he would be released from prison before his maximum release date in 2008, father contends the new evidence could alter the result in this case.

Father's premise was rejected by the juvenile court. The court reasoned that the scenario father presented had been addressed during the hearing, and that regardless of his release date, father was unable to parent B.S. within a reasonable period of time. The record fully supports the court's determination. Moreover, the mere fact of father's incarceration was not central to the court's conclusion. Rather, the order reflects that father's behavior, his failure to take meaningful steps to resolve the reasons for his repeated criminal conduct and his separation from B.S., and his lack of any real relationship with his child, formed the basis for the court's conclusion that he could not become a parent to B.S. within a reasonable time. Under the circumstances, the court did not abuse its discretion by denying father's motion. See Stalb v. Stalb, 168 Vt. 235, 248 (1998) (family court has wide discretion in ruling on motions under V.R.C.P. 60(b)).

Affirmed.

BY THE COURT:

---

John A. Dooley, Associate Justice

---

James L. Morse, Associate Justice

---

Marilyn S. Skoglund, Associate Justice

1. Mother's rights were also terminated, but she has not appealed that decision.