

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-549

MAY TERM, 2004

In re T.K., B.K., D.K., Juveniles

}	APPEALED FROM:
}	
}	Franklin Family Court
}	
}	DOCKET No. 86/87/88-5-01 Frjv
}	
}	Trial Judge: Hon. Howard E.
}	VanBenthuisen
}	
}	

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

Father and mother appeal from the family court's order terminating their residual parental rights over T.K., B.K., and D.K. Father argues that the family court erred because its findings in material part are clearly erroneous. Mother asserts that the court erred in concluding that she had not made enough progress and could not resume her parental role within a reasonable period of time. We affirm.

Father and mother are the parents of T.K., born in December 1996, B.K., born in January 1998, and D.K., born in March 2001. At the time of T.K.'s birth, mother was seventeen and father was thirty three. SRS became involved with parents in March 1998 after receiving reports that mother was mistreating B.K., and that parents were neglecting the children's medical needs. Between 1998 and 2001, SRS continued to receive reports that the children were being neglected and abused. In May 2001, a protective services case was opened and specific behavioral requirements were imposed on parents. Parents immediately informed SRS that they were moving to New York with the children. The children were then taken into SRS custody, although they were released to parents in New York shortly thereafter. Parents returned to Vermont, and in October 2001, the children were returned to SRS custody. In January 2002, the children were found to be in need of care and supervision based on the parties' stipulation. In November 2002, motions to terminate parental rights were filed on behalf of the juveniles, which the State joined.

In October 2003, after a hearing, the court terminated mother and father's residual parental rights. The court made extensive findings of fact. The court found that parents had neglected their children's medical and dental needs. The children had suspicious bruises and cigarette burns on their bodies, and neither parent accepted responsibility for the burning of the children. The court found that mother had deliberately burned B.K. and T.K. with cigarettes out of anger and frustration with her inability to care for and control them. Father was seen kicking one of the children, who was then two-years old. The children had developmental delays, severe dental problems, and other medical problems. Parents were unable to recognize T.K. and B.K.'s special needs regarding speech and language deficits, and they did not appropriately address these needs. The court found that, in the past, parents had not been able to secure stable housing, and they had engaged in a substantial amount of partying, including drinking and smoking pot. Parents argued and quarreled regularly. The children were not properly fed or bathed.

The court found that mother struggled with her inability to care for the children and she has had periods of depression and outbursts of anger toward the children. She struggled with low self-esteem, lack of self-confidence, social isolation, lack of transportation, and mental health problems. She had a hard time functioning independently, and if father was unavailable, she would cancel her visits with the children. While mother acknowledged that she yelled at the children, she refused to accept responsibility for her other parental shortcomings. Mother did attend parenting classes and engage in counseling, but the court found that the counseling appeared to have been unfocused, rambling, and largely

ineffective. The court found that mother needed to take responsibility for her role in the abuse and neglect of the children, which she had not done, and she needed to develop more self-esteem and become more adept at her own self-care.

As to father, the court found that he was absent from the home for long periods of time due to his job as a truck driver, and he had an unstable work history. He relied totally on mother as the children's primary care giver, and mother was largely unable to function independently. After the children were taken into SRS custody, he was inconsistent with parent-child contact, and during supervised visits, he did not consistently exercise appropriate supervision over the children. Father was often uninvolved or minimally involved with the children. During one supervised visit, father angrily confronted an SRS child protection services worker, who was frightened by his behavior. The court found that father needed more counseling to learn to control his anger and to develop insight into the children's situations. The court also found that father had not been able to demonstrate the sorts of abilities and knowledge one would expect as a result of his completion of parenting classes. Based on these and numerous other findings, the court concluded that termination of parents' residual rights was in the children's best interests. Father timely appealed; mother did not.

Mother asks that we invoke our authority under 4 V.S.A. ' 2(b) to reach the merits of her appeal as A necessary to the furtherance of justice.@ In support of her request, mother avers that she repeatedly asked her attorney to file a notice of appeal before the expiration of the thirty-day appeal period but he failed to comply with her request. We find this case similar to In re A.D.T., 174 Vt. 369, 375 (2002) (furtherance of justice required Supreme Court to hear mother's appeal from termination of parental rights order where mother's attorney simply missed the appeal deadline and admitted there was A really no excuse for it,@ and mother wrote the trial court asking for permission to appeal the order within days of being informed of the court's decision). Consequently, we address the merits of mother's appeal A to advance the interests of justice and fundamental fairness.@ See id.

On appeal, father asserts that the family court erred because its findings are in material part clearly erroneous. Father essentially argues that the record shows that his parenting skills are adequate. To this end, father asserts that he had not engaged in any domestic violence since the disposition order, he does not have anger management problems, he would be able to address the children's medical and dental needs in the future, and his absence from the children's lives can be explained by the demands of his job.

Mother argues that the court's conclusion that she had not made enough progress and cannot resume her parental role within a reasonable period of time is not supported by the court's findings or the evidence. Mother focuses her argument on two of the court's findings, that she burned the children with cigarettes, and that she lacked insight into her parental shortcomings. She argues that while these conclusions are supported by some of the court's findings, the findings themselves are not supported by the evidence.

When the termination of parental rights is sought, the trial court must conduct a two-step analysis. In re B.W., 162 Vt. 287, 291 (1994); 33 V.S.A. ' 5532(a). The court must first find that there has been a substantial change in material circumstances; second, the court must find that termination of parental rights is in the child's best interests. In re B.W., 162 Vt. at 291. A substantial change in material circumstances is most often found when a parent's ability to care for a child has either stagnated or deteriorated over the passage of time. Id. A Stagnation may be shown by the passage of time with no improvement in parental capacity to care properly for the child.@ Id. (internal quotation marks and citation omitted). A [T]he mere fact that a parent has shown some progress in some aspects of his or her life does not preclude a finding of changed circumstances warranting modification of a previous disposition order.@ Id. (internal quotation marks and citations omitted). On appeal, we will affirm the trial court's findings unless they are clearly erroneous, and we will affirm its conclusion if supported by the findings. In re B.S., 166 Vt. 345, 350 (1997).

The record supports the court's conclusion that both mother and father had stagnated in their ability to properly care for the children, which constituted a material change in circumstances. The court found that while father and mother had made some progress in improving their parenting skills by taking parenting classes and securing stable housing, this progress was insufficient from the perspective of the children's needs. The court explained that the children had been in custody for over two years. When they came into custody, they were malnourished, had serious unmet medical needs, had been subject to numerous moves and caregivers, and the two older children had suffered verbal and physical abuse at the hands of mother. The two oldest children were also developmentally delayed. The court found that all of the

children had been exposed to domestic strife, neglect, and abuse in their household. The court explained that since the children had been taken into SRS custody, parents had been inconsistent with parent-child contact, and the children had a negative reaction to those visits that did occur. Parents continued to struggle to control the children, and the children were not well-bonded to them.

The court made specific findings with respect to each parent. The court found that father had not addressed his abuse of mother and he remained dependent on mother to care for and discipline the children despite her objectively dismal record in both departments. Father continued to have difficulty managing his anger, and he lacked insight into his shortcomings as a parent. As to mother, the court found that she had not addressed her abuse of the children, nor had she engaged in the sort of psychotherapy that would encourage a disinterested observer to conclude that she had truly gained insight into her actions and found strategies to overcome and admit responsibility for them. She continued to struggle to control the children during visits. The court also found that the children were less bonded to mother than to their foster parents, with whom they had been living for over two years. The court found that most of mother's progress, such as getting her driver's license, had been recent and it had come long after the termination proceedings began. The court thus concluded that a reasonable amount of time had passed from the perspective of the children without significant progress in mother and father's ability to parent. As the court explained, A [n]othing the parents have done since the children came into custody suggests that they are now fully able to understand and foster their children's developmental needs. The court's findings are supported by the record, and they support the court's conclusion that there has been a material change in circumstances.

Mother's arguments on appeal do not undermine the court's conclusion. First, contrary to her assertion, the court's finding that she intentionally burned the children with cigarettes is supported by credible evidence in the record. Although T.K.'s treating physician testified that she could not conclusively state, to a reasonable degree of medical certainty, that T.K.'s injury had been caused by a cigarette, evidence was presented that T.K. had told others that his mother had burned him with a cigarette, and the wound was the right size for a cigarette burn. It is immaterial whether T.K.'s treating physician was herself suspicious that T.K. had been burned with a cigarette, or whether these suspicions had been brought to her attention by others. Additionally, while mother claims that she accidentally burned B.K. with a cigarette, the court found otherwise. It rejected her testimony as contradictory. We will not disturb the court's assessment of mother's credibility on appeal. See Kaanan v. Kaanan, 163 Vt. 402, 405 (1995) (trial court's findings entitled to wide deference on review because it is in unique position to assess the credibility of witnesses and weigh the evidence presented). We note that mother's intentional burning of the children was only one of the many egregious parental shortcomings found by the court.

Mother's assertion that the court erred in finding that she had not sufficiently addressed her parental shortcomings, through therapy or otherwise, is equally without merit. Like father, she essentially disagrees with the family court's interpretation of the evidence, but she fails to demonstrate that the court's findings are clearly erroneous. The court's conclusion that mother had not made sufficient progress is supported by numerous findings, which are in turn supported by credible evidence in the record. We need not repeat all of the court's factual findings in this regard. We find no error in the court's conclusion that mother had stagnated in her ability to parent her children.

When there has been a substantial change in material circumstances, the court must next assess whether termination of parental rights is in a child's best interests. To determine the best interests of the child, the court must consider four statutory factors. See 33 V.S.A. ' 5540. The most important factor in the court's analysis is the likelihood that the natural parent will be able to resume his or her parental duties within a reasonable period of time. See In re B.M., 165 Vt. 331, 336 (1996). As long as the court applied the proper standard, we will not disturb its findings on appeal unless they are clearly erroneous; we will affirm its conclusions if they are supported by the findings. In re G.S., 153 Vt. 651, 652 (1990) (mem.).

In this case, the family court considered the statutory factors in arriving at its conclusion that termination of mother and father's residual parental rights was in the children's best interests. The court made numerous factual findings that support its conclusion that neither mother nor father would be able to resume their parental duties within a reasonable period of time. Additionally, as the court found, parents were not playing a constructive role in the children's lives, as reflected in part by the children's negative reaction to supervised visits. In contrast, the children were thriving in their foster homes. As the court explained, the children needed stability, love and support from committed parents who

possessed the insight and capabilities to meet their special and everyday needs, and these parents had demonstrated a significant inability and failure to properly care for and meet the children's needs.

Neither mother nor father has shown that the court erred in concluding that termination of their parental rights was in the children's best interests. We rejected mother's arguments above, and find them equally unavailing in the context of the court's assessment of the children's best interests. Like mother, father disagrees with the family court's interpretation of the evidence. His assertion that the court speculated as to what was he was taught in his parenting classes is simply immaterial to the court's conclusion that he was unable to adequately parent his children. Moreover, the court's findings demonstrate that it rejected father's testimony that he would change jobs to be more available for the children and he would be more attentive to the children's medical and dental needs in the future. Finally, the record supports the court's finding that father had not addressed his domestic violence issues and he continued to struggle to manage his anger. The court's findings are supported by the record, and they support the court's conclusion that termination of both mother and father's residual parental rights was in the children's best interests.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice