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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-083

JUNE TERM, 2008

In re M.B., Juvenile	}	APPEALED FROM:
	}	
	}	
	}	Caledonia Family Court
	}	
	}	
	}	DOCKET NO. 21-4-07 Cajv
		Trial Judge: Thomas A. Zonay

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

Mother and Father individually appeal the family court's order terminating their parental rights with respect to their son, M.B. We affirm.

The facts, according to the family court's unchallenged findings, are as follows. Father and mother, who are not married, met when both were homeless and living on the streets of Boston. Both mother, a teenager at the time with a history of childhood abuse, and father, who is seventeen years older than mother, had significant and longstanding drug addictions and psychological problems. The couple moved to Vermont in the fall of 2006 with M.B., who was born in June 2006. In February 2007, the Department For Children and Families (DCF) became involved with the family after mother told mental-health workers that she could not go home for fear of harming her son. Following meetings, DCF determined at that time that mother did not present a risk to the child. In March 2007, father admitted himself into a treatment center for detoxification from alcohol and drug abuse. Following his detoxification, father was admitted into a residential treatment facility because he met criteria indicating that (1) his alcohol and drug use placed him in imminent danger; (2) he had co-occurring disorders that interfered with his ability to control his drug use and made it necessary for him to recover in a controlled environment; (3) he was experiencing an acute intensification of relapse symptoms; and (4) he did not have a sober support network. Shortly after father went into the residential-treatment facility, mother was discovered cutting herself in front of her child and was asked to leave the apartment in which she was residing. Within the next week, mother was again discovered cutting herself in front of the child and was taken to the hospital and placed in protective custody after consuming diet pills and excessive amounts of alcohol.

At that point, DCF took custody of M.B. on an emergency basis. The next day, April 10, 2007, mother checked herself into the Brattleboro Retreat. She was discharged two weeks later after being diagnosed with major depressive disorder, Asperger's disorder, eating disorders, alcohol abuse, cocaine abuse, amphetamine abuse, laxative abuse, and cannabis abuse. Mother continued her cutting behavior during her stay at the retreat. On April 27, 2007, father was discharged from the residential-treatment facility after being diagnosed with alcohol dependence, opiod dependence, cocaine abuse, and posttraumatic-stress syndrome.

On May 10, 2007, mother and father stipulated to M.B. being a child in need of care or supervision (CHINS). One week later, mother and father moved into an apartment made available through a community agency. Father obtained a job as a roofer, and both parents attended weekly supervised-visitation sessions with M.B. Based on these steps toward stability that the parents had taken, M.B. was reunited with his parents on May 25, 2007, with DCF retaining legal custody. DCF assured that there were numerous supports in place for the parents, including full-time child care, transportation to and from day care, weekly parental education classes, employment support with vocational rehabilitation, individual therapy for each parent, random urine tests, and weekly home visits. On June 7, 2007, the family court issued a disposition order accepting a disposition report requiring mother and father to ensure that M.B. would live in a safe and stable home free of all illegal substances. The report also required that mother complete a parenting program and that both parties engage in therapy addressing the issues that had resulted in M.B. being placed in DCF custody. At that time, the goal was reunification, with the understanding that the parents had to make substantial and steady progress toward being able to parent M.B.

In early June 2007, the social worker and parent educator assisting the parents met with mother to express their concern over her canceling several mental-health-counseling appointments. In mid-July 2007, DCF received reports that the parents were hosting loud parties at their apartment. When the social worker shared this information with mother's therapist, she learned that mother was not attending therapy sessions and was not taking her medications. DCF also learned that father was not attending therapy sessions. In late July, the DCF social worker met with mother and father individually to impress upon them the need to engage in services to assure M.B.'s safety. She warned the parents that if DCF needed to remove M.B. from their custody again, the case-plan goal might be changed to adoption. During the meeting with father, he tested positive for cocaine and he admitted that he was consuming alcohol. On July 29, 2007, DCF learned that mother had been taken to the hospital after becoming extremely intoxicated, and that, while she was drinking, she had left M.B. with two caregivers who had not been approved by DCF, including one who was a convicted felon. When DCF went to check on M.B., they found the child with a soiled diaper and dried feces all over his body. They also learned that father had been drinking and had left an open vodka bottle within easy reach of the child. Concluding that M.B. was in danger, DCF took him into custody. An examination of M.B. revealed that he had welts on his penis due to a severe diaper rash, that he had an ear infection, and that he was so congested that he was wheezing when he tried to breathe.

At a treatment team meeting held on August 1, 2007, DCF again set forth its concerns that the parents' substance abuse was endangering M.B, and further stressed the importance of permanency time frames for young children such as M.B. At this meeting, father tested positive for cocaine. Two weeks later, father was arrested for driving while intoxicated, stealing a

vehicle, nearly hitting several people, and striking a police cruiser. At the time of his arrest, father's blood-alcohol concentration was over two-and-one-half times the legal limit. On that same day, mother was charged with consumption of alcohol by a minor, the most recent of several such charges in the past month. Despite DCF's efforts to set up supervised visits, father did not visit M.B. between July 30 and November 13, 2007, and rarely thereafter. Mother visited M.B. only three times in August, and inconsistently thereafter. On at least one occasion, the child appeared to be afraid of her. At mother's last visit in January 2008, she tested positive for cocaine. The parents were evicted from their apartment in October 2007, and mother was later asked to leave a homeless shelter for failing to follow rules. At the time of the termination hearing, mother and father were renting a room in the home of friends, one of whom was a convicted felon. Meanwhile, M.B. was thriving and living with a foster family who was interested in adopting him.

In early September 2007, DCF changed the case-plan goal to adoption and filed a petition to terminate the parental rights of mother and father. A termination hearing was held on January 31, 2008. Following the hearing, the family court granted DCF's petition, finding that there had been a substantial change in material circumstances insofar as the parents' parenting skills had stagnated if not regressed, and that termination of the parents' parental rights was in M.B.'s best interests because neither parent had either played a constructive role in the child's life or would be able to resume parental duties within a reasonable period of time. Mother and father independently appeal the family court's decision. Mother argues that because there was no evidence either that she improperly cared for M.B. in June and July 2007 when the child was placed with her and father or that the child's stage of development required an immediate permanent home, the record does not support the family court's conclusion that she will not be able to resume parental duties within a reasonable period of time. For his part, father argues that because the evidence and findings do not support the family court's conclusion that there was stagnation in their ability to care for M.B., the court erred in terminating his parental rights.

We address father's argument first because it concerns the threshold requirement for modifying a previous disposition order and terminating parental rights. "The decision to terminate parental rights is committed to the discretion of the family court, and requires a threshold determination that a substantial change in material circumstances has occurred." In re D.M., 162 Vt. 33, 38 (1994). A substantial change in material circumstances is "most often found when the parent's ability to care properly for the child has either stagnated or deteriorated." In re H.A., 153 Vt. 504, 515 (1990). Stagnation can be shown either "by the passage of time with no improvement in parental capacity to care properly for the child" or where "the improvement is so insignificant that it is unlikely the parent will be able to resume parental duties in a reasonable time." D.M., 162 Vt. at 38.

As the family court stated, the record in this case overwhelmingly supports a finding of stagnation. According to father, the court's finding of stagnation is erroneous because he made progress toward parenting M.B. during June and July 2007 when the child was placed with the parents. He further argues that because the original disposition report established a six-month time frame for him and mother to be ready to assume care of M.B., his parenting skills could not have stagnated by September 2007, when DCF filed a petition to terminate parental rights. We find no merit to this argument. The family court was obligated to consider whether there was stagnation at the time of the termination hearing at the end of January 2008. The evidence

demonstrated, and the court found, that although the parents made enough progress in stabilizing their lives to have M.B. placed with them at the end of May 2007, they quickly regressed, to the point where M.B. was removed from their care within two months. The evidence showed that shortly after M.B. was placed with them, both father and mother began engaging once again in the same behaviors that had led to M.B. being taken into state custody. By the time of the termination hearing, both parents had been abusing alcohol and drugs for months, had failed to engage in services directed at addressing their problems, and had failed to visit M.B. consistently. In short, as the family court stated, both parents' ability to parent M.B. had not only stagnated, but deteriorated. Instead of making steady progress toward achieving the goal of reunification with M.B., father and mother regressed into an unstable and drug-dependent lifestyle that was incompatible with raising a child. The record overwhelmingly demonstrated a substantial change in material circumstances.

Mother's argument challenging the family court's conclusion that the parents would be unable to resume parental duties within a reasonable period time fares no better. In making this argument, mother contends that there is no evidence that she cared inadequately for M.B. during June and July 2007 or that M.B.'s state of development required an immediate permanent placement. We disagree with mother that no evidence supported these findings. There was evidence indicating that the parents' regression into behaviors that had led to M.B.'s removal from their care recommenced within weeks of M.B. being placed with them. Further, both common knowledge and information in the exhibits admitted by stipulation supported the family court's unremarkable statement that M.B. is a young child at a critical stage in his life during which time he needs stability, a safe environment, and appropriate guidance. As we have stated, in determining whether a parent will be able to resume parental duties within a reasonable period of time, "[t]he court must consider the parent's prospective ability to parent the child." In re B.M., 165 Vt. 331, 337 (1996). Here, the family court concluded that the parents had regressed with respect to longstanding problems, including drug abuse, and were unable to take care of themselves, let alone a child. In the court's view, neither parent would "even be close" to assuming care of M.B. within a reasonable period of time. The record overwhelmingly supports this conclusion.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice