

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

**ENTRY ORDER**

VERMONT SUPREME COURT  
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2008-492

MAY 29 2009

MAY TERM, 2009

In re H.C., M.C., M.C. and C.C., Juveniles	}	APPEALED FROM:
	}	
	}	Franklin Family Court
	}	
	}	DOCKET NOS. 121-9-06, 122-9-06, 123-9-06 & 124-9-06 Frjv

Trial Judge: Howard E. VanBenthuyesen

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

Mother appeals termination of her parental rights to her three daughters, H.C., Ma.C., and C.C., and one son, Me.C. On appeal, mother argues that that the family court's finding that mother's bonds with her children are weak is not supported, and that the court failed to make findings on mother's role in the children's lives. We affirm.

The court found the following facts. This termination proceeding involves mother's parental rights. Prior to coming to Vermont, the family lived in Minnesota, where child protective services was involved due to reports of physical abuse of the children and dirty and unsafe house conditions. The parents admitted to striking the children for discipline and were resistant to intervention. In March 2006, the family moved to Vermont from Minnesota and enrolled the two oldest children in Vermont schools. The children quickly came to the attention of school counselors and officials due to their aggressive behavior and angry outbursts. In August 2006, the Department for Children and Families (DCF) first became involved with the family following a report that mother had hit the eldest daughter, H.C., in the head, drawing blood, and that father had threatened to "break every bone" in Me.C.'s body due to his misbehavior. The two eldest children told the investigator that mother and father hit them frequently for discipline, including with a knotted rope and the flat side of a sword, and that the blows often left bruises. The parents admitted to striking their children with objects, but denied leaving bruises. On a visit to the home, the investigator observed that the place was filthy. Following a report from the school guidance counselor that the family was planning to move out of state, the family court granted the State's request for a pick-up order and the children were taken into DCF custody in September 2006 and placed with foster families.

On November 27, 2006, the court adjudicated all four children as children in need of care or supervision (CHINS) based on the parents' stipulation. The initial case plan contemplated reunification. The plan required parents to establish a clean and safe living environment, to demonstrate the ability to meet and understand the children's emotional needs, to implement appropriate discipline rather than harsh physical violence, and to demonstrate an understanding of why the children were in custody. A key provision of the case plan was that parents develop parenting strategies that did not involve using physical violence towards the children.

Initially, the parents had an erratic visitation schedule with the children. In May 2007, the parents began regularly attending visitation with the children. At a May 2007 supervised visit, however, father became angry after son referred to his foster parent as “dad.” Father grabbed the child by the face and squeezed him. Father’s visits were suspended and father never met the requirements to resume his visitation. From May to August, mother visited with all the children together, but it was too difficult for her to manage. She and DCF agreed to have individual visits.

DCF offered mother and father a variety of services. Despite these offerings, parents made little progress on the case plan goals. They resisted counseling and other services, and continued to endorse severe physical punishment as an appropriate response to child misbehavior. The parent educator, who worked extensively with parents and supervised visits with the children, testified that after ten months of intensive services parents made little progress. After father’s visits were suspended in May 2007, mother indicated that she was considering separating from father and that she would meet with a domestic violence counselor. Shortly thereafter, she changed her mind, declined the counseling and continued to support father’s attitude toward discipline. The parents did not make progress on the treatment plan goals and both continued to be unable to model or implement positive parenting skills. A family evaluation was conducted in the spring of 2007, which concluded that parents did not have good insight into the developmental needs of their children and expected behavior that was out of proportion to their actual developmental levels.

In October 2007, due to parents’ lack of progress, DCF filed for termination of parental rights. The court held a contested hearing over seven days from January to October 2008. In a written order, the court granted the State’s petition to terminate rights for all of the children. The court concluded that there was a substantial change in circumstances due to parents’ stagnation. The court concluded that there was no possibility the parents would be able to resume parenting within a reasonable period of time given their failure to accept responsibility for the children being in custody or needing services, and to convincingly renounce physical abuse as a punishment tool. The court found that the children were making positive progress and had adjusted well to their foster homes. H.C. was making significant improvement, no longer was physically aggressive and was learning to control her anger. Me.C was making steady improvement in his ability to regulate his emotions. The younger children were also thriving in foster care. Based on these findings, the court concluded that termination was in the children’s best interests. Mother appeals.

The family court has broad discretion in termination proceedings. “We will affirm the court’s decision if the findings are based on the evidence and support the court’s conclusions.” In re D.M., 2004 VT 41, ¶ 5, 176 Vt. 639 (mem.). To terminate, the court must first find a substantial change in material circumstances, which is most commonly demonstrated by stagnation. Id. If the court concludes there was a change in circumstances, the court must then consider the statutory best interests factors set forth in 33 V.S.A. § 5540. In re J.B., 167 Vt. 637, 639 (1998) (mem.). The most important factor is whether the parent will be able to resume parenting within a reasonable period of time. Id.

Mother does not challenge the court’s finding that there was a change of circumstances based on mother’s stagnation. Mother argues that the court’s conclusion on the children’s best interests is flawed because the court’s conclusion that mother’s “bond with the children is weak and weakening” is not supported by the evidence. Mother contends that this finding is inconsistent with the court’s finding that son “still harbors love and affection for his mother and

is happy to see her.” Mother also argues that there was no evidence that mother’s bond with her daughters was weakening.

While the children may still harbor affection for their mother, this does not undermine or contradict the court’s central conclusion that mother’s bond with the children is weakening, which is well supported by the findings. The court found that the children do not ask their foster parents about their natural parents or about going back home. The court found that even though DCF gave parents vouchers to buy gifts for the children, the parents missed a scheduled December 2007 visit with them. In addition, mother’s contact with the children was minimal, due in part to her own choices. Mother missed a ceremony at son’s school in April 2008, even though the date was rescheduled to accommodate her. Between July and October 2008, mother saw her daughters once and her son twice. Mother did not send a birthday card or present to daughters Ma.C. or C.C. on their recent birthdays. This unchallenged evidence supports the court’s findings that mother’s bond with the children was weak and weakening.

Mother also argues that the court’s finding that mother did not play a constructive role in the children’s lives is flawed because the court failed to consider whether severing the mother-child bond would be harmful to the children. Mother contends that the court should have required testimony from the therapists of the three older children on the issue of how loss of contact with their parents would affect the children. We disagree. The State presented the testimony of many witnesses, including experts, concerning the children’s best interests. Based on this testimony, the court made extensive findings on all of the statutory best interests factors, including mother’s role in the children’s lives. The unchallenged evidence was that the children were subjected to physical abuse for many years under mother’s care, mother made little progress on changing her attitude or behavior, and mother’s interaction with the children was minimal due to mother’s own choices. This evidence supports the court’s finding that mother did not play a constructive role in the children’s lives. See In re S.B., 174 Vt. 427, 429 (2002) (mem.).

Even accepting mother’s assertions that some bond exists with the children and that she plays a limited constructive role in the children’s lives, we find no basis for reversal. The remainder of the court’s findings, in particular the court’s conclusion that mother will not be able to resume parenting within a reasonable period of time, are sufficient to sustain the court’s conclusion that termination is in the children’s best interests. See In re A.F., 160 Vt. 175, 178 (1993) (even if a finding is erroneous, reversal is not required where other evidence supports termination).

Affirmed.

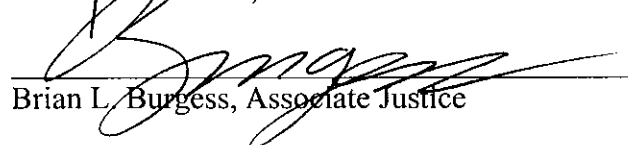
BY THE COURT.



Paul L. Reiber, Chief Justice



Denise R. Johnson, Associate Justice



Brian L. Burgess, Associate Justice