

**ENTRY ORDER**

VERMONT SUPREME COURT  
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2009-401

FEB 25 2010

FEBRUARY TERM, 2010

In re E.H., Juvenile

} APPEALED FROM:  
}  
} Addison Family Court  
}  
} DOCKET NO. 75-11-08 Anjv

Trial Judge: Cortland Corsones

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

Mother and father appeal from the family court's order terminating their parental rights in daughter E.H. Mother argues that the court failed to sufficiently assess the adequacy of the case plan developed by the Department for Children and Families (DCF). Father asserts that the court erred in weighing the evidence. We reject these arguments and affirm the family court's decision.

Mother is the biological parent of six children, including E.H., all of whom have been removed from her custody. Father is the biological parent of four of these children. Parents have a mutually abusive relationship and each has serious mental health issues. DCF became involved with the family when a pediatrician reported that O.H., born in May 2005, had several fractured ribs and was failing to thrive. Mother never sought treatment for these injuries, and she provided numerous and differing explanations as to how the injuries occurred. DCF provided mother with numerous services to improve her parenting skills, to little or no avail. DCF sought and obtained custody of O.H. in May 2006, after the child suffered additional physical injuries, including bruising on his face and neck, petechiae under one eye, and a cut on his lip.<sup>1</sup> A CT scan also revealed that the child had a healing skull fracture. Mother again provided varied explanations for the child's skull fracture. The family court found that the child was the victim of physical abuse, and that mother was unable to provide the child with care and nurturing. In a later interview with police, father indicated that it was "possible" that he hit the child on the head on a post in parents' bedroom three to four times, and that it was "possible" that he had pushed the child's ribs harder than he realized. Father indicated that mother witnessed these events.

Another child, D.H., was born in June 2006. Due to the severity of O.H.'s injuries, the lack of explanation as to how the injuries occurred, and mother's failure to access recommended services, D.H. was taken into DCF custody upon his birth. Mother voluntarily relinquished custody of both O.H. and D.H. in September 2007, and both children were adopted by their

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<sup>1</sup> As the court explained, petechiae are tiny clumps of broken blood vessels beneath the skin and they are a red flag for possible child abuse, including shaken baby syndrome and strangulation.

foster parents. In December 2006, mother's two eldest children, A.H. and A.H., were taken into DCF custody based on concerns that mother was unstable. Custody of these children was eventually transferred to their biological father, although mother apparently now shares custody of these children.

E.H. was born in March 2008, and DCF petitioned the court for an immediate detention order upon her birth based on parents' history of abuse. In the end, parents retained custody subject to a protective supervision order. In July 2008, the parties stipulated that the DCF case would be dismissed based upon an agreement requiring parents to perform certain tasks. Parents did not comply with these requirements. They also continued to engage in abusive behavior toward one another, which directly involved E.H. Father filed a petition for relief from abuse against mother in July 2008. In November 2008, DCF petitioned the court for custody of E.H. based on suspicion on child abuse. A pediatrician observed petechiae on E.H.'s eyes and face as well as a bruise on her forehead. Mother had no explanation for the child's injuries. A subsequent skeletal exam revealed that E.H. had a healing fracture of her left leg. Mother had various explanations for this injury, which the court did not find plausible. E.H. was taken into emergency custody, and parents later stipulated that she was a child in need of care or supervision (CHINS) because they neglected her medical needs and because their relationship posed a risk of harm to E.H. due to domestic violence.

In March 2009, DCF filed a petition to terminate parents' rights, and, following a hearing, the court granted its request. The court made extensive findings of fact, none of which parents challenge on appeal. Essentially, the court found that mother failed to demonstrate consistent improvement in caring for her children. She continued to struggle to feed and interact with them, and she failed to follow through with recommendations from the parent educator. Mother believed that she did not need to work on her parenting, but that she only needed to improve her relationship with father. Father struggled with depression, and he allowed mother to control the parties' relationship, to the detriment of E.H. While parents engaged in couples therapy, they had far to go to create a safe environment for E.H., and there remained a high level of domestic violence within the home. Mother gave birth to another child, T.H., in May 2009, and father testified that the stress level in the house had intensified following her birth.<sup>2</sup> The court found that mother remained resistant to individual mental health counseling, which was a consistent theme for mother since 2005, when DCF first opened a case on O.H. Mother finally started individual therapy in July 2009. Despite numerous requests from DCF, and a court order that she provide DCF with copies of her counseling records, mother refused to allow DCF to see her counseling records. Mother failed to understand why her mental health status was important to E.H.'s safety, and her behavior impeded DCF's ability to make appropriate recommendations. The court found that mother still needed significant mental health counseling and that her serious mental health issues prevented her from forming a healthy attachment or bond with E.H., and they prevented her from providing E.H. with a home free of domestic violence.

As to father, the court found that he had started individual counseling in May 2009 and was diagnosed with major depressive disorder and suicidal ideations without a plan of suicide. The court noted that father had allowed DCF to access his mental health records, and he was

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<sup>2</sup> Due to the parties' history of abuse and neglect, T.H. was placed in state custody upon her birth.

trying to address his mental health issues and parenting skills. Due to his depression, however, father lacked the confidence to remove himself from his controlling relationship with mother. He needed significantly more counseling to learn how to cope with his depression and to be in a position to provide a safe home for E.H., free of domestic violence.

The court found that E.H. was doing well in her foster placement. Within two weeks of her removal from mother's home, E.H. was feeding better, making better eye contact, and interacting more with others. She gained strength and learned to sit. E.H. had lived with her foster parents for more than half of her life, and the court found that it would be very damaging to E.H. to remove her from this home. It noted, moreover, that the quality of E.H.'s visits with mother during this time was declining. E.H. would "shut down" during the visits and engage in self-harming behavior, such as pulling her own hair and hitting her head against the wall. E.H. did not engage in similar actions at her foster home. The court found that mother was not empathetic to E.H.'s needs and failed to understand her role in E.H.'s past abuse or her role in what was happening to E.H. Based on these and numerous other findings, the court evaluated the criteria found in 33 V.S.A. § 5114. It found that neither parent could parent E.H. within a reasonable period of time, and that termination of parents' rights was in E.H.'s best interests. This appeal followed.

Mother argues on appeal that DCF should have recommended a certain type of counseling for her, and that the family court erred by failing to discern this shortcoming in DCF's case plan. According to mother, the court therefore should not have faulted her for her lack of commitment to mental health counseling. Father argues that he was making progress in addressing his parental shortcomings, and that the court did not properly weigh the evidence.

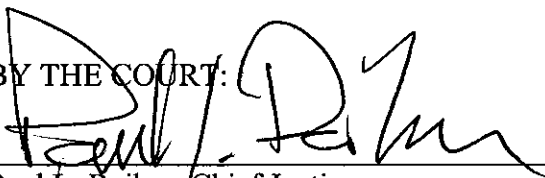
These arguments are without merit. As we have often repeated, the family court must consider four statutory factors to determine if termination of parental rights is in a child's best interests. See 33 V.S.A. § 5114. The most important factor in the court's analysis is the likelihood that the natural parents will be able to resume their parental duties within a reasonable period of time. 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.).

As previously noted, neither parent challenges the court's factual findings. The findings recount in detail parents' physical abuse of this child (as well as their other children) and their inability to make any significant progress in addressing the issues that brought E.H. into DCF custody. Mother remained resistant to individual mental health counseling. She refused to allow DCF to access her counseling records, and she lacked any insight into why her mental health status was important to the safety of E.H. There is no support whatsoever for mother's assertion that the result in this case might have been different had DCF recommended, and mother actually engaged in, a different type of counseling. Father's argument on appeal is equally unavailing. He challenges the court's assessment of the weight of the evidence. It is the exclusive province of the family court, not this Court, to determine the credibility of the witnesses and weigh the evidence. In re A.F., 160 Vt. 175, 178 (1993). The court here found that while father made some progress, he remained unable to parent E.H. and provide her with a safe home. We will not disturb this assessment on appeal. The court's findings overwhelmingly support its conclusion

that neither mother nor father can parent E.H. within a reasonable time and that termination of their parental rights is in E.H.'s best interests.

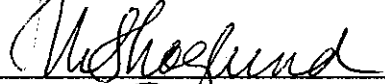
Affirmed.

BY THE COURT:



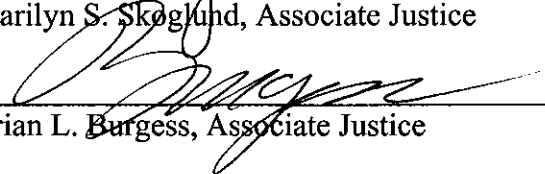
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Paul L. Reiber, Chief Justice



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Marilyn S. Skoglund, Associate Justice



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Brian L. Burgess, Associate Justice