

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2016-425

APRIL TERM, 2017

In re N.C. and A.F., Juveniles	}	APPEALED FROM:
	}	
	}	Superior Court, Franklin Unit,
	}	Family Division
	}	
	}	DOCKET NO. 155/156-9-14 Frjv
		Trial Judge: Mary L. Morrissey

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

Mother appeals the superior court’s order terminating her parental rights with respect to her children, N.C. and A.F. We affirm.

The three children who were the subject of the proceedings below, M.F., N.C., and A.F., were born in November 2008, April 2010, and June 2011, respectively. Each of the children have different fathers, none of whom have appealed the termination of their parental rights. On the third day of the four-day termination hearing, mother voluntarily relinquished her parental rights to M.F. She appeals the termination order, however, with respect to N.C. and A.F., arguing that the superior court erred in finding she had not substantially improved her parenting during family time visits and in concluding she did not have a significant or constructive relationship with the children.

The family court’s findings, which are unchallenged apart from two challenges noted above, reflect the following. Between 2009 and 2012, the Department for Children and Families (DCF) received reports about the family concerning issues of substance abuse, unsafe persons in the home (including sex offenders), unsanitary conditions, and the basic needs of the children not being met. From 2012 to 2014, DCF maintained a “family support case,” during which time DCF worked in a collaborative role with mother and the father of M.F., who were living together with the three children. Among other things, DCF assisted with housing, transportation, and getting the children in childcare and to medical appointments.

In September 2014, mother obtained a final relief-from-abuse order based on a finding that the father of M.F. had abused mother and the children. Shortly thereafter, the children were taken into DCF custody pursuant to an emergency care order after DCF filed a petition alleging that they were children in need of care or supervision (CHINS). The emergency care order was based upon findings that: (1) the children’s hygiene was neglected; (2) the children were not regularly attending preschool or daycare; (3) the family home was unsanitary; (4) eviction proceedings were underway; and (5) mother was having contact with M.F.’s father and the children were spending time in the presence of convicted sex offenders.

A temporary care hearing was held over three days in the fall of 2014. In December 2014, following the hearing, the superior court maintained DCF custody of the children pending a merits

hearing. The children were adjudicated CHINS in May 2015 based on the parties' stipulation that the family home was not sanitary or safe, that the children had been exposed to unsafe adults and violence between the parents, and that mother was using illegal substances.

The children were initially placed together with their daycare provider, but first M.F., and later N.C., were placed in separate foster homes because of their aggressive behaviors toward their siblings or other foster children in the home. At the time of the termination hearing, N.C. was with a second foster parent who had not committed to adopting her but was committed to working with service providers to transition her into a permanent home. A.F. remained with her original foster family, who wants to adopt her.

In July 2015, the superior court approved a disposition case plan with concurrent goals of reunification and adoption. At mother's request, the court extended the time frame in which she could work toward reunification from September 2015 to November 2015. That time frame was further extended to December 2015 following an October 2015 permanency hearing. At another permanency hearing in January 2016, the court again extended the time frame to work toward reunification until March 2016.

The July 2015 disposition case plan called for mother, among other things, to complete a parenting class, work with service providers, participate in a substance-abuse assessment and follow its recommendations, refrain from using nonprescribed drugs, submit to urinalysis upon request, keep DCF informed of her living situation, allow unscheduled visits of her home by DCF, maintain parent-child contact, participate in mental health treatment, and attend the children's medical appointments. Mother satisfied some of these requirements, including completing a parenting class and attending the children's medical and dental appointments. She also generally followed through with visitation.

Mother missed some visits with the children, however, claiming at different times that she had cancer and had been gang-raped, excuses that the court did not find credible. In late 2014, mother started with weekly one-hour visits with all three children, but was unable to manage the children together, so M.F. was separated from her sisters at visits. Mother continued to visit N.C. and A.F. once a week for one hour through family time coaching. Mother was unable to progress to unsupervised visits.

Mother did not satisfy other case plan requirements set forth at disposition. Despite her CHINS stipulation acknowledging that she was using illegal substances, mother denied having any substance abuse issues, a claim that the superior court did not find credible. She failed to follow through with the assessment called for in the case plan, and she refused all requests for urinalysis. Providers working with mother observed, at various times, a white powdery substance around her nose, which she claimed was cornstarch. The court did not find this claim credible and concluded that mother had an untreated substance abuse problem. Mother also failed to engage in mental health counseling.

DCF filed TPR petitions for all three children in March 2016. The termination hearing spanned four days in July and September 2016. In November 2016, following the conclusion of the hearing, the superior court issued an order terminating mother's parental rights to N.C. and A.F. The court first concluded that mother's ability to parent the children had stagnated over the two years that they had been in state custody, citing mother's untreated substance abuse issues and her failure to progress to the point of having supervised contact with the children. See *In re J.G.*, 2010 VT 61, ¶ 10, 188 Vt. 562 (mem.) ("The threshold finding of a substantial change of material

circumstances is most often found when the parent's ability to care properly for the child has either stagnated or deteriorated." (quotation omitted)). As for the four statutory best-interest factors set forth in 33 V.S.A. § 5114(a), the court concluded that: (1) although mother loves the children and has substantially maintained contact with them and attended their medical appointments, her contact with them over the past two years while they were in state custody had not progressed to unsupervised visits and she had not yet demonstrated an ability to meet their needs; (2) the children had adjusted well to their foster homes, schools, and communities; (3) the children have a paramount need for permanency after having been in state custody for over two years, and mother will be unable to resume her parental duties within a reasonable period of time from the perspective of the children, in light of her unaddressed substance abuse issues, her failure to engage in mental health counseling, and her failure to progress to unsupervised visits with the children; and (4) mother's overall relationship with the children was not constructive because, although mother loves the children and has demonstrated a commitment to maintain contact with them since they were taken into state custody, the foster families, and not mother, were the ones who had worked to address the behavioral impact on the children of the living conditions and experiences they had while in mother's custody.

On appeal, mother first argues that the superior court erred in finding that she had not made substantial progress in parenting in family time coaching. In support of this argument, mother states that while her family time coach from November 2015 to January 2016 testified that mother had made no progress, her other family time coach from January 2015 to July 2016 testified that overall mother had made progress despite "slide-backs" during "some periods." She also cites the testimony of N.C.'s foster mother, who noted progress in mother's parenting. According to mother, reversal of the termination order is required because the court's conclusion that there were changed circumstances as the result of stagnation was based on this erroneous finding as to mother's lack of progress in family time coaching.

We find no merit to this argument. While the evidence showed, and the court found, that mother had made some progress in parenting through family time coaching, two years after her children were taken into state custody she still not had progressed beyond once-a-week one-hour supervised visits with the children. Mother relies on the testimony of the second family time coach, but when asked whether mother's progress within the context of the weekly visits translated to mother being able to meet the children's needs on a full-time basis, that family coach replied: "Not very well." The superior court found changed circumstances based on stagnation due largely to mother's failure to address substance abuse and mental health issues and to progress beyond brief supervised visits. The record supports the finding of changed circumstances via stagnation. See *In re J.G.*, 2010 VT 61, ¶ 10 ("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." (quotation omitted)).

Mother also argues that the superior court erred in concluding that the first and fourth statutory factors, which concern the children's relationships with important persons in their lives and whether the parents continue to play a constructive role in the children's welfare, favor termination of parental rights. According to mother, the evidence demonstrates that she continues to play a significant and constructive role in the children's lives. She cites to testimony that she has a strong bond with N.C., who at times has expressed a desire to be reunited with mother, and that although A.F. may say she does not want to visit with mother, she enjoys her time with mother when they do visit.

We discern no basis in this argument to overturn the termination order. The superior court acknowledged that mother loves the children, has substantially maintained contact with them for the past two years while they have been in DCF custody, and has a bond with N.C. The court found, however, that mother continues to have a limited relationship with the children that has not progressed beyond supervised weekly visits and that the foster families have been the people who have met the children's substantial needs. The court further found that the children suffered greatly under mother's care and that as late as the spring of 2016, mother acknowledged that they do not trust her. During N.C.'s limited contact with mother, mother continues to be inattentive to her at times and engages her in conversations that cause her to be confused about her future. Mother has a strained relationship with A.F., who is reluctant to visit mother and has behavioral issues following visits with her. While mother has made some progress, she still struggles with her parenting skills. In short, the record does not support mother's contention that she has a significant or constructive relationship with the children. In large part, the court's termination order is based on mother's ongoing limited relationship with the children, who have a paramount need for permanency after spending the last two years in state custody without mother making sufficient progress toward reunification. The record supports the court's findings and conclusions in this regard.

Affirmed.

BY THE COURT:

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Superior Judge,
Specially Assigned