

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-019

APRIL TERM, 2017

In re A.K., Juvenile

} APPEALED FROM:
}
} Superior Court, Franklin Unit,
} Family Division
}
} DOCKET NO. 14-1-15 Frjv

Trial Judge: Mary L. Morrissey

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

Father appeals the court's order terminating his parental rights to A.K., born in July 2013. On appeal, father argues that the evidence does not support the court's finding that termination is in A.K.'s best interests. We affirm.

In May 2014, the St. Albans Police Department responded to the home of mother and father due to a report of yelling and objects being thrown. DCF referred the family for services, but the parents did not comply. DCF filed a petition alleging that A.K. was a child in need of care or supervision (CHINS) in January 2015.

In October 2015, following a contested hearing, A.K. was adjudicated CHINS for lack of proper parental care. The court made the following findings by clear and convincing evidence. Leading up to the filing of the petition, A.K. lived with mother. Mother had been intermittently homeless. In May 2014, father and an accomplice forcibly entered the home of mother's boyfriend, beat the boyfriend with a cinder block, and tried to stab him. Mother intervened and was injured. She then fled with A.K. Father was criminally charged, but the charges were dropped when mother refused to cooperate. In December 2014, mother left A.K. in the care of father even though DCF had warned mother and father that A.K. should not have unsupervised contact with father. Father is a convicted sex offender whose offenses involved adolescent female children. He was incarcerated from 2004 to 2011. Mother admitted using several drugs, and tested positive for opiates, but she declined to undergo a substance abuse assessment. She pled guilty to being part of a felony cocaine distribution conspiracy.

The initial disposition was uncontested. It recommended reunification with mother and set various expectations related to drug treatment, domestic violence counseling, family time coaching, parent-child contact, employment, and avoiding criminal acts. The disposition did not contemplate reunification with father, but it did set expectations for him. He was required to engage in sex offender treatment and a domestic violence assessment, maintain parent-child contact, maintain housing, complete substance abuse treatment, and meet with DCF. A.K. was returned to mother's care in March 2016, and mother was granted conditional custody in April 2016. A.K. was returned to DCF custody after mother's arrest in June 2016 for assault and robbery and being an accessory to a felony.

A motion to terminate parental rights was filed in July 2016. After A.K. was returned to DCF custody, she returned to the foster family where she had lived for a year prior to being returned to mother's care. In June and July 2016, mother had supervised visits with A.K. in her home, but in August the court authorized visits only at DCF or NFI. Mother has had no contact with A.K. since October 2016. In November 2016, mother pled guilty to aiding in grand larceny and violating conditions of release. At the time of the final hearing, she was facing a sentence of two to ten years.

After a contested hearing, the court granted the termination petition. The court found that there was a change of circumstances based on stagnation. Father made some progress towards the expectations in the disposition plan. He participated in a psychosexual evaluation and a substance abuse assessment. He was employed and had consistently attended supervised visits with A.K. for one hour a week. However, there were significant areas where father had not made progress. He did not participate in sex offender treatment or complete domestic violence counseling. And, he did not have stable housing. Mother also had not made progress and exhibited an unwillingness to prioritize A.K.'s needs ahead of her own. Further, neither mother nor father was ready to parent within a reasonable period, especially given the child's young age and need for permanence. Father had not engaged in counseling, his living situation was unstable, and did not have the ability to care for A.K. Father agreed that, at the time of the TPR hearing, he was not in a position to parent A.K. PC 21. Therefore, the court concluded that termination was in A.K.'s best interests and granted the petition. Father appeals.*

When the termination of parental rights is sought after an initial disposition order is in place, the trial court must conduct a two-step analysis. In re B.W., 162 Vt. 287, 291 (1994). The court must first find that there has been a change in circumstances; second, the court must find that termination of parental rights is in the child's best interests. Id.; see 33 V.S.A. § 5113(b) (requiring "change in circumstances" prior to modification of disposition order). In assessing the child's best interests, the court is guided by the statutory criteria. 33 V.S.A. § 5114. The most important factor is whether the parent will be able to resume parenting duties within a reasonable period of time. In re J.B., 167 Vt. 637, 640 (1998) (mem.). On appeal, we will uphold the family court's conclusions if supported by the findings and affirm the findings unless clearly erroneous. In re A.F., 160 Vt. 175, 178 (1993).

On appeal, father first argues that the court erred in finding a change of circumstances. He asserts that his stagnation was due to factors beyond his control. He argues that he is from Vietnam and English is his second language, and DCF did not do enough to find him counseling that met his language and cultural needs. He notes testimony that DCF tried to find a referral appropriate to his language and cultural background, but failed to identify one. His failure to complete the treatment, he argues, was therefore due to factors beyond his control.

To the extent that father contends that his failure to satisfy the requirements of the case plan arose from his language limitations, the record does not support his claim. Father has lived in the United States since 1990. His testimony shows that he was aware of the expectations of the case plan. At no time before the family division did father request an interpreter or claim that he did not understand the expectations in the case plan.

Likewise, the trial court's stagnation finding with respect to father was supported by the evidence. Father does not dispute the trial court's findings that he failed to engage in the required treatment following his psychosexual evaluation, and that he did not complete a domestic violence

* Mother did not appeal the termination order.

program. Father acknowledged that the DCF caseworker sat down with him in person and explained the expectations. He also acknowledged that the DCF caseworker gave him names of referrals for these programs. The caseworker testified that she made a referral for father to the Batterers Intervention Program, but he did not respond or engage with that program. Father testified at one point that he had followed up on both referrals but that the people never got back to him. He said he contacted the person at the domestic violence program and she did not get back to him, which is why he did not make contact with the program for ten months. At another point he testified that the reason he had not followed up with sex offender treatment and domestic violence counseling was because he could not get the time off work and did not have a car. All of this evidence supports the court's implicit finding that father's progress had stagnated due to circumstances within his control. Moreover, father's lack of progress in other important areas, including the lack of stable housing, was within his control and further supports the trial court's finding of stagnation. See In re C.P., 2012 VT 100, ¶ 40, 193 Vt. 29 (concluding that DCF made reasonable efforts and termination was caused by factors within parents' control).

Father next argues that termination was not in A.K.'s best interests because he claims there was evidence to demonstrate that he had a bond with A.K. and could parent A.K. within a reasonable period of time. Our review of this claim is limited. "As we have frequently observed, our role is not to second-guess the family court or to reweigh the evidence, but rather to determine whether the court abused its discretion in terminating parental rights." In re J.M., 2015 VT 94, ¶ 8, 199 Vt. 627 (quotation and alternations omitted). Viewed in this light, there are no grounds to reverse the court's findings regarding A.K.'s best interests. While father highlights different evidence, it is up to the family court to determine the credibility of witnesses and weigh the evidence. In re B.C., 2013 VT 58, ¶ 21, 194 Vt. 391. Here, credible evidence supports the court's findings that A.K. had minimal contact with father, was well adjusted to living with her foster family, and needed immediate permanence. The evidence also supports the court's findings that father needed significant rehabilitation before he could parent A.K., including treatment called for in light of his history as a sex offender and the physical violence he perpetrated on mother's boyfriend. Because father had not yet addressed those issues, and given A.K.'s need for immediate permanence, the evidence supports the court's conclusion that father would not be able to parent within a reasonable period of time as measured from A.K.'s perspective.

Affirmed.

BY THE COURT:

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Superior Judge,
Specially Assigned