

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2007-477

APRIL TERM, 2008

In re T.C. and C.B., Juveniles	}	APPEALED FROM:
	}	
	}	
	}	Chittenden Family Court
	}	
	}	
	}	DOCKET NOS. 536/538-12-05 CnJv

Trial Judge: Christina Reiss

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

Mother appeals termination of her residual parental rights to her two children, T.C. and C.B. On appeal, mother argues that the family court failed to weigh whether severance of the parent-child bond may have a detrimental effect on the children, and therefore its termination decision is erroneous. We affirm.

In December 2005, the Department for Children and Families (DCF) filed a petition alleging that T.C. and C.B. were children in need of care or supervision (CHINS) because C.B. had a fractured elbow and multiple bruises on his head and arm. At the time, T.C. was three and C.B. was eighteen months old. Mother and her live-in boyfriend provided alternative explanations for the injuries, but since then mother has stated that she believes the injuries were caused by her boyfriend. In February 2006, mother stipulated to a CHINS finding because she failed to protect them from physical harm. The initial disposition set a goal of reunification. It required mother to accomplish several goals including completing a substance abuse assessment, maintaining a safe, clean and appropriate home environment and participating in a parent education program. In November 2006, DCF changed the case plan to a concurrent plan of reunification or termination. At the time, DCF noted that mother had made little progress towards reunification. She continued to have contact with her boyfriend who was abusive and had not made any progress in her parenting classes. Although mother attended visits with the children, they were chaotic and generally did not exceed an hour because mother could not control their behavior. DCF filed a petition to terminate mother's residual parental rights in April 2007.

Following a two-day hearing, the court found by clear and convincing evidence that mother had made little progress in meeting the goals of the disposition order, and her lack of

improvement was a substantial change in material circumstances. The court concluded that the termination was in the children's best interests. Mother appeals.

On appeal, mother does not challenge the court's findings, nor does she challenge the court's conclusion that there was a substantial change in material circumstances. Instead, mother argues that the court's analysis of the children's best interests is erroneous because the court did not specifically consider an additional factor—whether severance of her bond with the children would be harmful to them.

We conclude that the court properly considered the children's best interests in this case. Once the family court determines that there has been a substantial change in material circumstances, the court must consider whether termination is in the best interests of the child. In re H.A., 153 Vt. 504, 514 (1990). In determining the children's best interests, the court is directed by statute to consider four factors, two of which particularly relate to the bond between parent and child. 33 V.S.A. § 5540 (listing factors to be considered in determining best interests including the "interrelationship of the child with his natural parents" and whether the natural parent plays a constructive role in the child's life). Thus, in assessing the children's best interests, the quality of the bond between mother and her children was subsumed by the court's analysis on these factors. On these factors, the court found that although the children were excited to see mother, the visits were chaotic, anxiety-ridden and did not exceed an hour because mother could not control the children. The court also found that the children exhibited unmanageable behavior during and following visits, and the older child often blamed himself when visits did not go well. In addition, the court found that mother's relationship with the children had not always been constructive because she had exposed the children to abusive situations. Moreover, on the most important factor in determining the best interests of the child, the court found that mother would not be able to resume her parental duties within a reasonable period of time. See In re E.B., 158 Vt. 8, 12 (1992) (explaining that the most important factor in assessing a child's best interests is whether the parent will be able to resume parenting within a reasonable period of time); see also 33 V.S.A. § 5540(3). The court explained that mother was incapable of providing a safe home for the children or of parenting them for any length of time. The court's findings are supported by the evidence and are not contested by mother.

None of the cases cited by mother compel a different result. In In re D.B., we reversed a family court order terminating the mother's parental rights because we concluded that several of the court's findings were not supported by credible evidence. 2003 VT 81, ¶ 4, 175 Vt. 618 (mem.). In particular, we concluded that the record did not support the court's conclusion that the mother and the child shared no parent-child bond. Id. ¶ 5. While an erroneous finding regarding the bond between parent and child may require reversal of a termination order, this does not mean that a court is obligated to specifically address the quality of the bond between parent and child. Particularly in a case such as this where mother did not present any evidence below on how severing the parent-child bond would be harmful to the children, there was no reason for the trial court to specifically consider this issue in its findings.

Mother's reliance on In re E.M., 620 A.2d 481 (Pa. 1993), is also unavailing in that it is based on a different statutory scheme and also does not require specific consideration of the parent-child bond in all cases. In that case, the Supreme Court of Pennsylvania remanded a termination order for evaluation of whether a beneficial bond existed between the mother and

child, “such that, if the bond were broken, the child could suffer extreme emotional consequences.” *Id.* at 485. The court explained that examination of the bond was necessary because it was obvious from the evidence that such a bond existed, and the State’s own expert witness testified that it should be more fully explored. *Id.* at 484-85. In this case, there was no suggestion during the family court proceedings that mother’s bond with her children should be more fully evaluated. We recognize that the court may consider additional factors, such as the bond between parent and child, but the family court is not required to specifically address the issue, especially when it is not raised. See *In re J.F.*, 2006 VT 45, ¶ 13, 180 Vt. 583 (mem.) (“[I]n some cases a loving parental bond will override other factors in determining whether termination of parental rights is the appropriate remedy.”). In any event, as explained above, the family court did consider the quality of mother’s relationship with her children and the role mother played in the children’s lives. We find no error in the court’s analysis of the children’s best interests and conclude that its findings support its conclusion to terminate mother’s residual parental rights.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice