

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-293

JANUARY TERM, 2018

In re D.S., Juvenile

} APPEALED FROM:
}
} Superior Court, Windham Unit,
} Family Division
}
}
} DOCKET NO. 101-9-15 Wmjv

Trial Judge: Michael R. Kainen

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

Mother appeals the court's order terminating her parental rights to her son D.S., born in September 2015. On appeal, mother argues that the court's findings misapprehend the record and are not supported by the evidence. We affirm.

Mother has two older children that were placed in the custody of the Department for Children and Families (DCF) based on allegations of physical abuse and neglect. When D.S. was born, petitions to terminate parental rights to those children were pending. Mother's rights to those children were ultimately terminated. In the context of that termination proceeding, the court found, among other things, that mother had housing instability, had failed to improve in her parenting skills, was unreceptive to advice from the parenting coach, had a history of choosing abusive intimate partners, was inappropriate during visits, and had failed to progress to unsupervised visits. An emergency care order was granted days after D.S.'s birth, and he was placed with a foster family by DCF. Following a contested hearing, the court found that D.S. was a child in need of care or supervision (CHINS) based on clear and convincing evidence. D.S.'s paternity was confirmed in March 2016.

DCF moved to terminate parental rights to D.S. at the initial disposition. The court granted the petition as to father. The court found the following as to mother in its order of October 2016. Mother attended visits consistently, was prepared, and acted appropriately. Mother had a bond with D.S., but mother did not appreciate why D.S. was in DCF custody nor how her prior living situations would negatively impact a child. Mother engaged in some activities that concerned the family time coach, including putting baby food in D.S.'s bottle and cutting D.S.'s hair with electric clippers. Mother had a therapist but had not completed recommended therapy. D.S. had a strong bond with his foster family, which wished to adopt him. Mother did not have substance-abuse issues and was not engaging in criminal conduct. Mother was living with her fiancé and had a

stable relationship and housing. The court found that much of mother's stability stemmed from this relationship and expressed concerns about what would happen if the relationship ended. The court weighed the best-interests factors and concluded that termination was not in D.S.'s best interests because it found there was a likelihood mother could assume parenting in a reasonable period of time.

A month later, DCF again filed to terminate mother's parental rights. Following a hearing, the court made oral findings, including the following. Days after the decision denying termination issued, mother's relationship with her then-fiancé ended in a volatile manner. The police were involved, and items were broken in the home. Mother had cut marks and suicidal ideations. After that, visits were difficult. Mother did not have the same quality of contact with D.S. and was not engaging during visits with D.S. Mother had housing instability and economic instability because she was using her income to pay for living in hotels and hostels. Mother was more emotionally unstable. She had not followed recommendations for therapy. She engaged in conduct that resulted in three criminal charges. The court found there was a change of circumstances. The court found that previously mother had housing stability, emotional stability, and had been free of criminal conduct, but that since then mother lacked stable housing and had economic instability. The court further concluded that termination was in D.S.'s best interests because mother no longer played a constructive role in D.S.'s life and would not be able to parent within a reasonable period of time. Mother appeals.

The family court may terminate parental rights at the initial disposition proceeding if the court finds by clear and convincing evidence that termination is in the child's best interests.* In re J.T., 166 Vt. 173, 177, 179 (1997). 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, 639 (1998) (mem.).

Mother argues that several findings are not supported by the evidence. 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).

Mother first states that the evidence does not support the court's finding that mother was no longer economically stable because she claims the record shows that mother's income sources had not changed. We conclude the evidence was sufficient to support this finding. The court noted that although mother had the same sources of income, she was now spending that money to obtain short-term housing at hotels and hostels. Mother's own testimony supports that she was paying

* As explained above, DCF moved to terminate at the initial disposition. The court denied the motion to terminate and did not enter a disposition order at that time. DCF filed a modified disposition plan, and shortly thereafter, a second petition to terminate parental rights. Therefore, no existing disposition order was in effect when the court considered the motion to terminate parental rights.

for hotel rooms from her income. Therefore, the evidence supports the court's finding that mother's economic stability had changed.

Next, mother argues that the court made inaccurate findings about her behavior. The court found that previously mother was "free of criminal conduct," but that that was not the case any longer, and she had three criminal dockets pending against her. Mother contends that although she had three criminal charges pending against her, the charges were not proven and therefore it was inaccurate for the court to find that she had engaged in criminal conduct. We conclude that it is immaterial whether mother's behavior would have resulted in a criminal conviction. The court was determining whether there was a change of circumstances sufficient to modify the existing order. The evidence supports the court's finding that mother's behavior, which had previously been stable and free from criminal conduct, had changed. Mother engaged in behavior that resulted in criminal charges. Whether these ultimately could be proven was not relevant to the court's finding.

Mother also argues that the court's finding surrounding her relationships were inaccurate. In its oral findings, the court found that since her breakup mother had had four or more boyfriends and that she was already engaged to a new boyfriend, whom she had been dating for a few weeks. The court found that this behavior demonstrated a "lack of stability in judgment." Mother argues that this is inaccurate because the evidence demonstrated that she had known her current fiancé for two years and they had always been close. There was no error. The court's finding about mother's lack of stability was not focused on whether this particular relationship was a good one for mother, but on the change in mother's stability since the last disposition. The evidence of mother's various short-term relationships and quick decision to then become engaged supported the court's finding that mother exhibited a lack of stability in judgment.

The court also found that mother "engaged in unsafe and violent relationships." Mother contends this is not supported by the evidence because there was no evidence her relationships since her October 2016 breakup had been violent. The testimony indicated that mother's breakup with her fiancé in October 2016 was "extremely verbally and physically volatile." Although there was no testimony about violence in mother's other relationships since then, this was sufficient to demonstrate that she had engaged in one unsafe and violent relationship. To the extent that the court's finding implied there was more than one violent relationship, it is not material to the court's overall decision and therefore harmless. See In re D.D., 2013 VT 79, ¶ 34, 194 Vt. 508 ("In juvenile proceedings, unsupported findings do not lead to reversal if the remainder of the court's findings, which are supported by the record, are sufficient to sustain the decision." (quotation and alternations omitted)).

Finally, mother argues that the evidence does not support the finding that mother no longer played a constructive role in D.S.'s life and was not engaged with D.S. at visits. These findings are supported by the evidence. Mother's family time coach testified that mother shared information about her personal situation during visits and this took away from her time with D.S. The DCF social worker testified that DCF moved to end visits in April 2017 because mother exhibited a lack of engagement during visits and D.S. was more irritable on the days of visits with

mother. The DCF social worker also stated that mother was disconnected from D.S.'s service providers. While there may have been other evidence that demonstrated mother demonstrated love for D.S. at times, this evidence did not preclude the court from evaluating the evidence in the manner that it did and concluding that mother no longer played a constructive role in D.S.'s life. See In re A.F., 160 Vt. at 178 (explaining that family court has discretion "to determine the credibility of the witnesses and to weigh the evidence").

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Harold E. Eaton, Jr., Associate Justice