

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2017-295

JANUARY TERM, 2018

In re A.H. & K.H., Juveniles (J.H., Father)	}	APPEALED FROM:
	}	
	}	Superior Court, Franklin Unit,
	}	Family Division
	}	
	}	DOCKET NO. 93/94-5-15 Frjv

Trial Judge: Mary L. Morrissey

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

Father appeals the superior court's order terminating his parental rights with respect to his two children, K.H. and A.H. We affirm.

K.H. and A.H. were born in August 2013 and October 2014, respectively. As the result of an incident in March 2015 when father allegedly grabbed the steering wheel from mother while she was driving with the children in the car, mother and the children moved into the home of the maternal grandparents and mother filed a petition seeking relief from abuse (RFA). In May 2015, the superior court granted the petition, restricting father's contact with the children to the grandparents' residence or a designated center. Later that same month, father was arrested for violating the RFA order and incarcerated. Five days after father's arrest, the Department for Children and Families (DCF) filed a petition alleging that the children were in need of care or supervision (CHINS). At a temporary care hearing, the court continued DCF custody and placed the children with the maternal grandparents. In October 2015, the parties stipulated that, at the time the CHINS petition was filed, the children were CHINS because there were incidents of domestic violence in the family while the children were in the home; mother brought the children to visit father in violation of the RFA order; father had problems with alcohol use; and mother had been using nonprescription drugs. At that time, the court ordered father to engage in supervised visitation with the children a minimum of once a week.

DCF filed a disposition case plan with the court in February 2016. The concurrent case plan goals were reunification or adoption. The disposition report set forth the following expectations for father: (1) engage with a mental health counselor or an appropriate program to address issues regarding depression and anxiety, healthy relationships, protective parenting, and the impact that his decision-making had had on the children; (2) follow all recommendations from a substance-abuse assessment done in October 2015; (3) keep DCF informed of his contact information; (4) follow the visitation plan and attend all scheduled visits with the children; (5) and engage in the Nurturing Parents Program. The court adopted the plan, but extended the timeframe for achieving its goals to July 2016.

Father was incarcerated for five months from May-October 2015 on charges of violating the RFA order. After he was released, he actively engaged with DCF, participated in a Department of Corrections' risk-reduction program, attended some Shared Parenting meetings, and began visiting the children through Family Time Coaching. In February 2016, however, father went on "escape status" after he lost his housing with his father. As a result, he was reincarcerated and charged with felony escape. His ensuing conviction resulted in a three-to-six-month sentence to serve. He remained incarcerated until July 2016, during which time he had no contact with the children. Following his release, father and DCF initially worked toward a gradual reintegration into the children's lives. After four visits in August and September 2016, however, father cut off his electronic monitoring bracelet and went on "escape status" again. In March 2017, he turned himself in, at which time he was reincarcerated. Father was found not guilty of escape and was released on furlough in May 2017 on the previous offenses, having a maximum release date of July 2018. From May 2015 when the children were placed in DCF custody until the termination hearing in June 2017, father's contact with the children was limited to his weekly supervised visits from October 2015 to February 2016 and four supervised visits in August and September of 2016.

In April 2017, DCF filed petitions to terminate mother's and father's parental rights. At the start of the June 19, 2017 termination hearing, mother voluntarily relinquished her parental rights conditioned upon father's parental rights being terminated. Following the hearing, the superior court terminated father's parental rights. The court concluded that father's ability to parent the children had stagnated due to his failure to meet the disposition plan expectations, especially the requirement that he have consistent contact with the children. See *In re T.M.*, 2016 VT 23, ¶ 13, 201 Vt. 358 ("The State must demonstrate, and the family court must find, stagnation by clear and convincing evidence before the court may consider whether termination of parental rights is in the children's best interests."). The court further concluded that each of the four statutory best-interests factors militated in favor of terminating father's parental rights. See 33 V.S.A. § 5114(a) (stating best-interests criteria).

On appeal, father challenges the court's finding that the children had "worms" when they arrived at the home of the maternal grandparents in March 2015. Father acknowledges that both children were infested with intestinal worms at some point and that the maternal grandfather testified that the children had worms when they came to live with him, but he cites DCF's failure to clarify the precise timing of the worm infestations as well as the DCF social worker's testimony on cross-examination indicating that the children did not show signs of worms until eight or nine months after they moved into the maternal grandparents' home. Father also notes that the maternal grandparents live on a "hobby farm" with goats and chickens and that the children's chores involved close contact with those animals.

We find these arguments unavailing. There was no medical evidence presented by any party as to how children can contract intestinal worms, the type of worms that these children had, whether that type of worm could be passed to the children through farm animals, or the length of the incubation period in the intestinal tract before worms can be passed through the system. In any event, to the extent the challenged finding lacked evidentiary support, it was not critical to the court's conclusions regarding the stagnation of father's parenting ability or the children's best interests. See *In re A.F.*, 160 Vt. 175, 178-79 (1993) (erroneous finding does not require reversal of termination order when other findings and conclusions support decision). The court found stagnation based on father's failure to address the issues that resulted in the children being placed in DCF custody—namely, domestic violence and substance abuse—and most particularly on father's lack of consistent contact with the children over a critical two-year period when the children were at formative ages. Similarly, the court's best-interests analysis focused on father's absence from the children's lives over a lengthy period of time in their young lives when they

required stability and permanency. Indeed, the court made no mention of worms in its conclusions of law.

For the same reasons, we find unavailing father's objection to the court's findings regarding A.H.'s low weight and the fact that K.H. gained a significant amount of weight "binge eating" when he first arrived at the home of the maternal grandparents. According to father, DCF never asserted medical neglect and yet these findings imply that the parents did not provide medical care or sustenance for the children while they were living with them. The court's findings regarding the children's weight are accurate and do speculate as to the cause of the children's condition or behavior, neither of which, in any case, was a factor in the court's stagnation and best-interests analyses or its decision to terminate father's parental rights.

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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Harold E. Eaton, Jr., Associate Justice