

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-228

OCTOBER TERM, 2018

In re M.M. & J.M., Juveniles	}	APPEALED FROM:
(N.M., Mother*)	}	
	}	Superior Court, Windham Unit,
	}	Family Division
	}	
	}	DOCKET NO. 19/20-2-16 Wmjv
		Trial Judge: Katherine A. Hayes

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

Mother appeals the termination of her parental rights to five-year-old son J.M. and three-year-old daughter J.M. We affirm.

J.M. was born in June 2013 and M.M. was born in July 2015. In July 2015, the Department for Children and Families (DCF) opened a family case for mother, J.M., and M.M. based on reports from the children’s daycare providers that mother was unable to properly parent the children. A social worker assisting mother during this time noted a lack of bonding between mother and M.M. and that mother was “so despondent, she ha[d] no emotional or mental capability to effectively parent her children.”

In January 2016, at DCF’s suggestion, mother went to the Lund residential treatment facility for a month. Lund staff reported to DCF that mother left the children unattended, displayed an explosive temper, yelled at staff and the children, and hit J.M. Early in mother’s stay, a Lund counselor saw mother grab J.M., who was lying on the ground crying, and pull him up quickly, twisting his arm. Staff later noticed that J.M. had a bruise under one eye and a scrape over the other, marks that were not present when the family had arrived at Lund a few days earlier. According to Lund staff, mother rebuffed their efforts at assistance and was resistant to parenting feedback. She also repeatedly stated that she could understand why people would kill DCF workers.

In February 2016, the State filed petitions alleging that the children were in need of care or supervision (CHINS). Custody of the children was transferred to DCF and they were placed in a foster home. Mother stipulated to the merits of the CHINS petitions in May 2016.

The court adopted a disposition case plan in August 2016 calling for mother to, among other things, demonstrate an ability to meet the children’s physical, emotional, and developmental needs; actively engage in a substance-abuse assessment and participate in any recommended treatment; refrain from drug use; attend visits and engage in parenting education; participate in mental-health treatment including anger management; and become financially stable. Mother was expected to achieve these goals and resume parenting the children by February 2017.

In January 2017, the State filed petitions to terminate mother's parental rights to both children. A hearing was held over three days in January and February 2018. In June 2018, the court issued a written decision granting the petitions.

At the outset of the termination hearing, J.M.'s father agreed to voluntarily relinquish his parental rights if mother's rights were terminated. M.M.'s father's rights were terminated by the court in the June 2018 decision. Neither father was significantly involved in the children's lives prior to termination or is a party to this appeal.

Based on the evidence presented at the termination hearing, the court found the following facts. Mother successfully completed an eight-week anger-management counseling program by June 2016. However, she continued to occasionally display explosive anger toward providers. At one point, the DCF case worker gave mother permission to see the children's medical records but neglected to inform their pediatrician's office. The pediatrician's office refused to share the records with mother, and she became very angry, yelled, and threw her phone. The medical staff reported that they were afraid of mother. When the DCF case worker subsequently recommended that mother continue to engage in anger-management therapy, mother blew up at her, told her she "f-ing hated" her, and stormed out. On another occasion, mother lacked transportation to a visit and DCF was unable to give her a ride. Mother yelled and cursed at the DCF case worker over the phone, and later sent the case worker a text message saying "you're going to pay for what you did to my family." Mother later apologized, but the case worker asked for the case to be reassigned to someone else.

At the time the new case worker was assigned in September 2016, mother was living in an apartment in Bellows Falls and working part time. She had supervised visits with the children twice a week. She continued to receive psychiatric medications from her physician but had stopped going to therapy because of transportation issues. Mother had applied to re-enter the Lund program but was denied admission because she tested positive for marijuana at her interview and was still self-medicating with that drug, and the Lund staff did not perceive her as having made significant progress on her anger issues. She continued to deny responsibility for the children having been taken into DCF custody.

Mother consistently attended visits and improved over time in her ability to address the children's needs and to manage their behaviors and her own reactions to those behaviors. During her visits, she engaged in appropriate play, reading, and learning activities, changed diapers and assisted with toileting, provided appropriate food, and displayed affection. The children were generally pleased and excited to see her. Mother was often left unsupervised with M.M. for an hour during visits when J.M. was visiting his father.

J.M. had significant difficulties in returning to the foster home after visits with mother. During a visit in October 2016, his eyeglasses were broken. Although mother and the family time coach both reported that he had broken them after tripping and falling, he later repeatedly told the foster mother that mother had broken them. At other visits, he would whine, throw things, and remove his shoes and socks because he did not want to leave. He once knocked a table over. Due to his difficulty with transitions, in April 2017 DCF reduced mother's visits from twice a week for two hours to one supervised visit a week for three hours.

In October 2017, mother had a third child, C.M. Supervised visits with J.M. and M.M. continued to take place at mother's home, with the family time coach providing transportation. During recent visits, J.M. and M.M. have asked about their foster parents and J.M. has expressed that he missed his foster mother and wanted to leave. The court found that visits had become more

stressful for mother and children alike since C.M. was born, as she had to attend to his needs as well, and mother had allowed J.M. and M.M. to spend more time watching videos and television.

M.M., the younger child, is well-adjusted to her foster home, parents, and foster siblings. J.M. is also bonded to his foster parents but has struggled with aggressive behavior and tantrums. This conduct was often exacerbated after he returned from visits with his parents. He has demonstrated jealous behavior toward his sister and the other children in the foster household, hitting them and locking them in rooms. When he first came into the foster home, he was withdrawn and did not know how to interact with other children. When something unexpected happened, he would run to a corner, curl up, and grunt. In November 2017, well after being completely toilet trained, J.M. began having frequent urination and bowel accidents. His therapist diagnosed him with acute stress disorder and believed the urination and bowel problems were related to anxiety.

At the termination hearing, mother admitted that she smoked marijuana daily before and after her stay at Lund but said she quit in mid-2017 when she became pregnant with her third child. There was no evidence that she habitually used any other drug or alcohol. However, she never engaged in a substance-abuse assessment or treatment. She began mental-health therapy in June 2016 but did not attend for months at a time in 2016 and 2017. Since August 2017, she had consistently attended meetings with her therapist. She also participated in parenting education classes from July 2017 to December 2017. At the time of the hearing, mother was employed at a convenience store. She had Section 8 housing and was consistently paying rent. She did not have a driver's license yet but was working with the court diversion program to pay her fines so she could reinstate her license and buy a car.

The court concluded that mother had achieved some of the goals set forth in the case plan, including finding stable housing and employment, consistently attending visits, and acting appropriately during visits. However, it found that she had moved slowly to address her own needs as recommended by the case plan. She continued to act aggressively toward providers even after completing the anger-management class in June 2016. The case plan called for her to engage in mental-health and substance-abuse treatment and parenting education by February 2017, but she did not begin to attend therapy regularly until the fall of 2017, did not begin a parenting class until May 2017, and never engaged in a substance-abuse assessment or treatment. She continued to deny responsibility for the children's removal from her care. Based on her slow progress toward these expectations of the case plan, the court agreed with the State that mother had stagnated in her ability to parent J.M. and M.M. It found that the children were now well-adjusted to their foster home, that a sudden transition back to mother's care would be extremely disruptive to them, and that it would take many months for mother to resume parenting full-time, which was not a reasonable amount of time for them. It therefore concluded that termination was in the best interests of the children.

On appeal, mother argues that the court's finding of changed circumstances is unsupported by the evidence. We disagree. "Where, as here, stagnation is the alleged change in circumstances, the question is whether the parent's improvement substantially conformed with the expectations at the time of the CHINS adjudication and with [DCF]'s case-plan, and if the expectation of improvement has been met, there is no change in circumstances." *In re D.C.*, 168 Vt. 1, 4 (1998) (alterations and quotation omitted). The court found that mother had shown improvement in some areas of the case plan, particularly in her interactions with the children. However, her progress in other areas, such as treating her own mental-health and substance-use issues, attending parenting education, and accepting responsibility for what had happened to the children, was slow or nonexistent. The record shows that mother did not consistently engage in therapy or parenting

education until the summer and fall of 2017, over a year after the children were taken into custody. At the time of the hearing, mother still only saw M.M. and J.M. once a week and had never progressed to unsupervised visits with J.M. Mother's current DCF case worker testified that although mother had made progress toward the case-plan goals since the fall of 2017, that progress had come too late for M.M. and J.M. This evidence supports the court's finding that mother had stagnated in her parenting ability.

Mother also challenges the court's determination that she would not be able to resume parenting the children within a reasonable time. She argues that the court's statements that the children would be traumatized and severely harmed by reunification and that a gradual, thoughtful reunification process would take many months are speculative. This argument is likewise without merit. The court noted that J.M. and M.M. have been in the same foster home since they were taken into DCF custody. It found that they were strongly attached to their foster parents and foster siblings and likely had no memories of living with mother. The court found that the foster mother had worked to provide J.M. with the attention and structure that he needed to make him feel safe and express his feelings in constructive ways. From these findings, which are supported by the record, the court concluded that the children could not be immediately returned to mother without causing them significant trauma. This was a reasonable inference, particularly in light of the evidence that J.M. continued to suffer anxiety and stress from his past trauma.

Furthermore, the findings and evidence supported the court's conclusion that mother would not be able to resume full-time parenting of J.M. and M.M. for many more months. It had taken over a year for mother to begin to make progress on important case plan recommendations such as mental-health treatment and parent education, and she had only begun to consistently address these issues during the previous few months. She now had a new child who took up a great deal of her attention and time. Under the circumstances, it was plain that both mother and the children would need a significant amount of additional time to work toward reunification. The court did not err in finding that this additional amount of time was unreasonable from the perspective of the children, who needed permanence and stability. See In re J.S., 168 Vt. 572, 574 (1998) (mem.) (affirming family court's conclusion that reunification would not occur within reasonable time where evidence showed parents had "delayed too long before making limited progress toward complying with the case plan").

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice