

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. 2019-383

MARCH TERM, 2020

In re P.H., Juvenile	}	APPEALED FROM:
(L.R., Mother*)	}	
	}	Superior Court, Washington Unit,
	}	Family Division
	}	
	}	DOCKET NO. 123-9-17 Wnjv

Trial Judge: Kirstin K. Schoonover

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

Mother appeals termination of her parental rights to her son P.H., born in December 2010. On appeal, mother argues that the court erred in crediting the testimony of one of the witnesses at trial. We affirm.

Due to the physical abuse of her own mother, mother was placed with a foster family as a child and lost contact with her biological siblings. Mother has a significant history of trauma. In March 2017, mother’s biological sister located her, and they began communicating. At that time, mother, father, and P.H. were living in Texas. Mother revealed that father had physically abused her and P.H. Mother fled with P.H. to Vermont in April 2017 and the two lived with various family members. Mother and P.H. moved in with mother’s biological sister and her husband. The sister had also allowed their brother, who was homeless and on probation, to stay there. The sister had concerns about mother’s parenting of P.H., who was out of control, had no formal education, and whom mother admitted to hitting. While staying at the sister’s home, P.H. was violently sexually assaulted by mother’s brother. He was substantiated for sexual abuse and incarcerated for sexually molesting P.H. Mother blamed her sister, accusing her of knowing that the brother was a sex offender. The sister denied the accusation, asserting she would not have exposed P.H. to such risk, and the court found the sister credible. Mother left with P.H. to live with another family member.

The Department for Children and Families (DCF) became involved and worked with mother to recommend services and provide referrals. Mother did not engage in services and P.H. was not in school and did not have a pediatrician. In June 2017, the State filed a petition alleging that P.H. was a child in need of care or supervision (CHINS) due to abuse and neglect. In August 2017, mother stipulated that P.H. was CHINS¹ based on the following facts: mother lacked stable housing; P.H. was not enrolled in school; mother was not engaged in mental-health treatment; P.H. disclosed abuse by his uncle and mother knowingly brought P.H. to a residence where the uncle was present; and mother did not provide adequate supervision for P.H.

¹ At the termination hearing, mother disputed these facts.

The disposition case plan had concurrent goals of reunification and adoption.² Some of the goals for mother included demonstrating an ability to meet P.H.'s needs for physical, emotional, and developmental nurturance during visits, engaging in mental-health counseling, maintaining stable employment, developing a healthy network of support, and developing an understanding of attachment and trauma. The court placed P.H. in DCF custody and, with mother's approval, P.H. was placed in foster care with his maternal aunt and uncle.

P.H. began school for the first time in the fall of 2017. He was very far behind socially and academically. P.H. began therapy. P.H. had trouble sleeping, did not know how to dress, had rotted teeth, and discussed being physically abused by both parents.

Mother became engaged to a man who had a history of domestic assault and a criminal record, including domestic assault and prohibited acts with a minor. Mother disclosed that he threatened to harm her with a sword, and although mother left him at one point, they reconciled and married in June 2018. She remained married to him at the time of the final hearing and continued to rely on him for support.

In August 2018, the State filed motions to terminate parents' residual rights based on lack of progress.

Although mother had participated in visits with P.H., she was not able to make progress in setting boundaries and ensuring P.H.'s safety. By September and October 2018, P.H. admitted to being afraid of mother. P.H. had a mental-health crisis and did not want to visit with mother after January 2019. He went to a residential stay for ten days and was diagnosed with post-traumatic stress disorder with dissociative symptoms. The court then suspended visits.

Following a hearing, the court found the following by clear and convincing evidence. There was a change in circumstances based on stagnation. Mother did not demonstrate progress toward the case plan goals. Mother did not work with a specialist to understand how domestic violence affected P.H. She did not attend parenting classes or develop parenting skills. Mother lacked permanent housing. She was unable to develop a healthy network of support and instead relied on people that were less safe. She was angry and defiant and not able to safely parent P.H. The court further found that termination was in P.H.'s best interests. P.H. is frightened of mother and refuses to see her. He is well adjusted to his foster home and has a loving relationship with his foster parents, who provide love and consistency, and have allowed him to develop socially, physically, and emotionally. P.H. has significant needs due to his chronic neglect and the abuse that he suffered in mother's care. He requires stability. Mother will not be able to parent him within a reasonable period of time. She blames others and does not take accountability for the chronic instability in her life. She has not made the behavioral changes necessary for reunification. The court therefore granted the petition to terminate parental rights. Mother appeals.

To terminate parental rights after initial disposition, the court must find by clear and convincing evidence that there is a change in circumstances, 33 V.S.A. § 5113(b), and that termination is in the child's best interests. *Id.* § 5114. In assessing the child's best interests, the court must consider the statutory criteria. *Id.* 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

² Although the disposition case plan also included reunification with father as a possibility and had goals for father, father did not engage with DCF or attend any of the hearings in the case. He has not appealed termination of this parental rights.

(1998) (mem.). On appeal, we will uphold the family court’s conclusions if supported by the findings and affirm the findings unless clearly erroneous. Id.

On appeal, mother argues that the family court’s decision should be reversed because the court improperly credited the testimony of mother’s sister. Mother contends that there was no credible basis for her sister’s claim that the sister did not know their brother was a registered sex offender when he moved in with her and before he assaulted P.H. Mother points to testimony in the record that she asserts undercuts this claim. “When findings are attacked on appeal, our role is limited to determining whether they are supported by credible evidence.” In re A.F., 160 Vt. 175, 178 (1993). The family court’s role is to “weigh the evidence and assess the credibility of witnesses,” and this Court’s role is “not to second-guess the family court or to make our own assessment of the evidence.” In re M.E., 2019 VT 90, ¶ 22 (quotation omitted). In this case, the court acted within its discretion in crediting the testimony of mother’s sister as to when she first learned that her brother was a sex offender. Whatever evidence there was to the contrary was not so significant that we would overturn the court’s decision as to credibility. The court acted well within its discretion. Moreover, the evidence supports the court’s findings, which in turn support its conclusion that termination was in P.H.’s best interests.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

William D. Cohen, Associate Justice