

*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. 2020-288

MARCH TERM, 2021

In re C.S. & S.S., Juveniles	}	APPEALED FROM:
(C.A., Mother* & E.S., Father*)	}	
	}	Superior Court, Franklin Unit
	}	Family Division
	}	
	}	DOCKET NOS. 104/105-4-18 Frjv

Trial Judge: Howard E. Van Benthuyssen

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

Mother and father appeal from the termination of their parental rights in C.S. and S.S. They argue that the court erred in evaluating their bonds with the children and their ability to parent the children within a reasonable time. We affirm.

Twins C.S. and S.S. were born in October 2015. Parents have longstanding substance-abuse issues. Mother and father are also the parents of other minor children, none of whom are in their custody.

The Department for Children and Families (DCF) began working with the family in early 2018. In April 2018, DCF filed petitions alleging that the children were in need of care or supervision (CHINS) after parents revoked their releases at the local Bay Area Addiction, Recovery and Treatment center (BAART), which prevented DCF from monitoring their progress and compliance with treatment; father reported using crack cocaine and consistently tested positive for cocaine; parents missed a meeting with DCF as well as a urinalysis test; the children had a high absentee rate at daycare; and the children were behind on their pediatrician appointments. The children were placed in DCF custody pursuant to an emergency-care order. In October 2018, parents stipulated that the children were CHINS. Parents agreed that they “ha[d] a history of substance abuse” and were not “in compliance with their recommended level of treatment” and that “[t]he children were not up to date on medical appointments.”

The disposition report recommended reunification with parents. The case plan required, among other things, that parents obtain substance-abuse assessments and treatment, sign releases allowing DCF to monitor their progress, refrain from substance abuse, submit to random urinalyses, and develop relapse-prevention plans.

In May 2020, DCF moved to terminate parents’ rights. Following a hearing, the court granted its request. It found that, aside from obtaining stable housing, parents did not comply with the case-plan goals. They did not consistently visit the children; they reportedly fell asleep during visits; they brought the children late to preschool and smelling of cigarette smoke; they did not

engage in counseling as directed; they tested positive for drugs; they admitted using crack cocaine; and they missed multiple dosing appointments at BAART.

At the hearing, father first denied using drugs but then admitted that he continued to use them, including several days before the termination hearing. He denied needing any further substance-abuse treatment. Father agreed that he had not engaged in mental-health treatment and counseling as required by the case plan but then claimed to have done so. Father testified that he had no idea why the children were removed from parents' care. He stated that he was ready to have the children back full-time.

Mother acknowledged that she did not complete a substance-abuse assessment. She agreed that she had relapsed on cocaine multiple times. She missed many days of dosing at BAART and tested positive for amphetamines and cocaine, including just before the termination hearing. She failed to provide urine samples as requested by DCF. Mother was discharged from counseling in January 2019 due to her inconsistent attendance. Mother conceded that she was "sort of" addicted to cocaine and opiates, which had interfered with her life. She denied that her drug abuse impacted her care for the children. She later denied a cocaine addiction but also described herself as a "functioning addict."

The children have been in the same foster home since June 2018. When they were first taken into custody, the children had significant unmet health needs. Both had asthma, smelled of cigarette smoke after visits with parents, and C.S. required hospitalization at one point. C.S. also was prone to throwing fits, he would cry, and overeat and stuff food in his mouth. S.S. had very little speech or motor skills and appeared very fearful of the foster father. During a brief period when the children spent overnights with parents, the children's behavior regressed and deteriorated. Once overnights ended, the children gradually returned to normal positive functioning. C.S.'s asthma also improved. The court found that the foster family was meeting the children's needs and the children were well-adjusted to their foster home, although it was not a permanent placement. It found that the children had a bond with their parents and an equal or stronger bond with their foster family.

Based on these and other findings, the court concluded that parents stagnated in their ability to parent and that termination of their rights was in the children's best interests. It explained that the children had been in DCF custody since they were two-and-a-half years old and they were now almost five. The case plan had been designed to address, among other things, parents' ongoing struggles with substance abuse and the negative effect that this had on their care for the children, and parents demonstrated no progress in addressing this issue. They continued to use drugs, they did not engage in counseling as directed, they signed and then cancelled releases for DCF. The court concluded that their lack of insight was perhaps more discouraging than their unremitting substance abuse. Father testified that parents were ready to parent the children despite his failure to comply with almost all the case-plan goals; mother asked for the chance to parent the children despite conceding addiction and the negative effect it has on her ability to conduct her life. The court acknowledged that parents had obtained stable housing but found this insufficient to defeat the termination request given their failure to meet so many of the other important goals.

Turning to the statutory best-interest factors, the court found that they all supported termination. With respect to the first factor, the court reiterated that the children had not been with parents or under their care since April 2018. Although parents had visitation and even a period of overnight visitation, the court found the children's bond with parents less significant than their bond with their foster family. The court found it highly unlikely that parents could resume their parental duties within a reasonable time, reiterating many of the findings supporting stagnation

above. The court also concluded that parents were not playing a constructive role in the children's lives. It determined that the children could not wait any longer for parents to become drug free, stable, and capable of meeting their needs and parenting them safely and appropriately. It thus terminated parents' rights. This appeal followed.

Parents first argue that the court erred in assessing their ability to parent the children within a reasonable time. They contend that the court treated the case plan as "a mere checklist [they] must satisfy to ensure the automatic return of the children" rather than focusing on the critical question of "whether the individual parent has demonstrated the improvement contemplated." In re D.M., 2004 VT 41, ¶ 7, 176 Vt. 639 (mem.). Parents assert that the evidence does not support the court's conclusion. According to parents, they did not parent the children inappropriately during visits, they were not obligated to bring the children to preschool on time or at all, and the preschool did not report any signs of abuse or neglect. Additionally, they argue that even if they did fall asleep during visits with the children, the children were not in danger and DCF did not call a visit supervisor to testify as might be expected if the supervisor considered their behavior inappropriate.

We find no error. As we have often explained, the court must consider four factors in evaluating what course of action is in a child's best interests. See 33 V.S.A. § 5114(a). The most important factor is the likelihood that the parent at issue can resume his or her parental duties within a reasonable time. See In re B.M., 165 Vt. 331, 336 (1996). As long as the court applied the proper standard, we will uphold its findings unless they are clearly erroneous; we will affirm its conclusions if supported by the findings. In re G.S., 153 Vt. 651, 652 (1990) (mem.). On review, "[o]ur role is not to second-guess the family court or to reweigh the evidence, but rather to determine whether the court abused its discretion in terminating . . . parental rights." In re S.B., 174 Vt. 427, 429 (2002) (mem.).

The court applied the appropriate standard here and its decision is supported by the record. In In re D.M., 2004 VT 41, we recognized that a court could find stagnation even where parents "participate[d] in every program set forth" in a case plan because the case plan is not a "mere checklist." Id. ¶ 7. "[T]he main concern," we explained, "must always be whether the individual parent has demonstrated the improvement contemplated at the time the children were removed from the parent's care." Id. Parents failed to make the required improvements here. The case plan was designed to address, among other things, parents' substance use and the negative effect it had on their ability to care for the children. Parents made no progress in achieving this goal. They continued to use drugs, including just before the termination hearing. They did not engage in counseling as directed and they continued to lack insight into their parental shortcomings. While parents argue that they can parent the children, the court concluded otherwise and its decision is amply supported by the evidence.

Parents next argue that the court misapprehended the record in concluding that the children had a more significant bond with their foster family than with parents. Parents state that a DCF case worker testified that the children had bonds with parents and with their foster family but she did not indicate if one bond was stronger than another. They further allege that the children's bond with their foster parents was irrelevant as it was not a preadoptive home.

We reject both arguments. First, the court appropriately considered the children's relationship with their foster family as required by statute, regardless of whether it was a preadoptive home. See 33 V.S.A. § 5114(a)(1) (stating that court must consider, among other factors, "the interaction and interrelationship of the child with his or her parents, siblings, foster parents, if any, and any other person who may significantly affect the child's best interests").

Second, the court did not need the DCF case worker to testify to the strength of the bonds for it to reach the conclusion that it did. As recounted by the court, the children had been in their foster home since June 2018; their foster mother provided respite care for them prior to that time. The children have lived in the home almost half of their lives; they were well-adjusted to the home and close to their foster family. By contrast, the children have been out of parents' care since April 2018. Their visits with parents were inconsistent and, during the brief period of overnight visits, their behavior regressed. The court's evaluation of the children's relationships with the foster family and with parents was grounded in the evidence and well within its discretion. We find no error.

Affirmed.

BY THE COURT:

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice