

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2004-197

SEPTEMBER TERM, 2004

In re C.M., T.M., J.M. and J.M., Juveniles	} } } } } } } } } } } } } } } }	APPEALED FROM:  Orleans Family Court  DOCKET NO. 20/21-4-01 OsJv  Trial Judge: Alan W. Cheever
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In the above-entitled cause, the Clerk will enter:

Mother and father appeal the termination of their residual parental rights in their four children. They argue that the court erred by finding a change of circumstances due to parents' stagnation. Parents also contend that the court failed to address parents' claim that the State Department of Children and Families, formerly known as the Department of Social and Rehabilitation Services, neither assisted the family appropriately nor fostered a positive relationship between parents and the children. We find no merit to parents' arguments and, therefore, we affirm.

Mother and father were married in 1991. Their daughter, J.M., and three sons, Jesse M., C.M., and T.M., are now approximately thirteen-, twelve-, eleven-, and seven-years old respectively. Both mother and father had children from previous relationships. Mother' s rights in her two other children were terminated by the State of New York due to mother' s neglect of the children and her alcohol abuse. Father, a native of Poland, has an adopted daughter who came to the United States to live with him and mother when she was about twelve-years old.

In 2000, mother began using heroin. Father' s heroin use began the following year. The parents' drug use led to a chaotic household. Drug paraphernalia, including hypodermic needles, spoons, and razor blades, littered the family' s home. The children witnessed their parents' drug use. At times, the children were asked to urinate in cups for both of their parents and their parents' friends, presumably to help them pass drug screens. The children sometimes found adult strangers sleeping in their beds with them. In July 2001, the police executed a search warrant at the home. They found old food strewn around the kitchen, moldy food in the refrigerator, and bottles of prescription drugs within easy reach of the children. The toilets were full of feces and toilet paper, and needles were found in nearly every room of the house. Three of the children were found unsupervised by the river in the back of the family' s residence. Both parents have criminal records relating to their drug use, and both have tested positive for illicit drugs while on probation.

After father' s adopted daughter left for college, J.M., who was seven-years old at the time, became the children' s caretaker when her parents went out. On occasion, parents would leave J.M. in charge of her siblings for periods as long as two or three days. Parents compounded that problem by not supplying sufficient food for the children while they were gone.

Parents verbally and physically abused the three older children. They were hit with a metal tipped belt, and were pushed, and slapped. T.M., the youngest child was not hit, but parents kept him in a room that the other children referred to as " the cage." Parents created " the cage" by blocking the entrance to T.M.' s room with two child gates stacked on top of one another. The room contained peeling lead-based paint, which T.M. ingested. The lead levels in T.M.' s room were as high as 13,400 micrograms per square foot.\* T.M. became severely lead poisoned as a result.

T.M.'s lead poisoning presented a significant additional risk to his healthy growth and development. High lead levels in a young child can cause low intelligence, loss of fine motor skills, attention deficits, and even death. T.M. had a blood lead level of twenty-five micrograms per deciliter when he was tested. A blood lead level of ten micrograms per deciliter is considered safe. A child testing over twenty micrograms per deciliter is considered severely lead poisoned. Despite the test results, mother denied that lead was present in the family's home.

Parents attended to the children's medical and educational needs inconsistently before the State intervened. The children sometimes went hungry. Even before mother and father's addiction to heroin, parents failed to keep doctor's appointments and missed some of the children's immunizations. T.M. was born premature, which caused an eye condition that requires him to wear glasses or risk losing sight in one or both of his eyes. Notwithstanding the gravity of T.M.'s situation, it took a long period of time before T.M. got glasses, and when he did, neither father nor mother made consistent efforts to ensure that he wore them.

Parents' mistreatment and neglect of J.M., Jesse M., C.M., T.M. caused the State to petition the juvenile court for custody, alleging the children were in need of care and supervision (CHINS). The first petition, which related to C.M. and T.M., was filed in April 2001, and the second petition alleging J.M. and Jesse M. were CHINS was filed in July 2001. The court transferred custodial rights in the four children to DCF. DCF placed the children in foster care, where all four have thrived. In March 2003, DCF moved to terminate parents' residual rights in the children. The court heard eleven days of testimony between October 2003 and March 2004. In April 2004, the court granted DCF's petition to terminate mother and father's residual parental rights. A timely appeal to this Court followed.

Parents raise three arguments on appeal: (1) the court erroneously found a change of circumstances due to parents' stagnation; (2) parents' due process rights were violated by the court's failure to expressly rule on their defense; and (3) the court failed to consider DCF's lack of assistance to parents when it concluded that parents could not resume their parental duties within a reasonable period of time. There is no merit to any of parents' arguments.

The juvenile court has discretion to terminate the residual rights of a parent if clear and convincing evidence establishes the existence of a substantial change of circumstances since the children came into state custody, and the court determines that the children's best interests require termination. *In re D.B.*, 161 Vt. 217, 219 (1993). The court may find a change of circumstances where the parent's efforts to regain custody have stagnated. *Id.* "Stagnation" is "the failure of the expectation that parental ability to care for a child will improve within a reasonable time after the CHINS adjudication." *Id.* The reasonableness of the time period depends upon the child's circumstances. See *In re B.S.*, 166 Vt. 345, 353 (1997) (discussing the reasonable time period for resumption of parental duties under 33 V.S.A. § 5540(3)). When reviewing a termination decision, we uphold the findings of fact if they are supported by the evidence, and we will affirm the court's conclusions if they are soundly based on the findings. *In re A.E.*, 160 Vt. 175, 178 (1993). We leave questions about evidentiary weight and credibility for the juvenile court's determination. *Id.*

Parents claim error in the court's finding that circumstances had changed because it focused too much on parents' predisposition conduct rather than examining what parents did after the children were taken into custody. We disagree. The court found a change of circumstances based on the fact that the children had been in foster care for over two years. Despite the services DCF referred parents to and the services they attempted to engage in themselves, the record shows that parents did not make sufficient progress towards eliminating the conditions that led to the court's initial CHINS finding. Even in cases where a parent has made improvements in his or her parenting abilities, if those improvements come too late, stagnation may still be found. *Id.*

Parents seem to believe that the children were removed from their home because of their drug addiction, and that once they resolved the addiction, they also resolved the reason for state intervention. There is little doubt that drug addiction played a role in parents' abuse and neglect of all four children. But the court's findings indicate that it was not drug addiction alone that led to the children's removal. The court's findings establish that parents abused their children both physically and verbally. They treated their youngest child as if he were an animal by putting him in a cage and allowing him to eat lead-based paint chips. They left their oldest daughter in the role of caretaker overnight when she was just seven-years old. Even if parents have resolved their drug problem, they were still required to demonstrate that they knew how to parent the children without harming them. The court was not persuaded that they could, and we have no basis to disturb the court's finding that parents had stagnated.

Parents' next argument is related to the first. Parents claim that the court denied them due process by not addressing their defense - that DCF failed to provide adequate services and intentionally thwarted the children's relationship with parents by not telling them about parents' rehabilitation efforts. Parents relied on the testimony of two witnesses, who offered opinions about how DCF could have done better with the family. Parents' witnesses testified that DCF made reunification more difficult because agency officials refused their recommendation to keep the children informed of their parents' progress in addressing their drug addiction. Contrary to parents' reading of the order, the court indeed addressed their defense and acknowledged the recommendations of the therapist and psychologist who testified on parents' behalf:

[Mother] and [father] have indicated that [DCF] and the treatment teams are at fault for their lack of success. [Mother] and [father] claim that the testimony of therapist Karen Shearer, and psychologist Maggie Maguire, is persuasive that [DCF] did not provide them with appropriate assistance. . . . However, this Court concludes that [DCF] has provided or offered appropriate services to [mother] and [father] to help them resume their parenting abilities. [Mother] and [father] have failed to work constructively with members of their children's treatment teams. [They] at times, have acted in an intimidating manner. The Court disagrees with [parents'] assessment of [DCF]'s efforts to assist them. [DCF] and the treatment teams are not at fault for [parents'] failure to engage in sufficient programming in order meet their children's needs presently or in the future.

The court's discussion reflects that it accorded little weight to the testimony of parents' two expert witnesses, a determination soundly within the court's discretion. *Id.* at 178. The court was not persuaded that DCF was responsible for parents' strained relationship with J.M., Jesse M., C.M. and T.M. Mother and father's claim that the court failed to address their defense is without support in the record.

Finally, parents argue that the State did not prove by clear and convincing evidence that parents were unable to resume their parental duties within a reasonable period of time. See 33 V.S.A. § 5540(3) (requiring juvenile court to consider whether parents will be able to resume their parental duties within a reasonable amount of time when addressing children's best interests). Parents claim that reunification was rendered unlikely because DCF's actions alienated the children from them. Thus, parents argue, they are not responsible for their inability to resume their duties as parents within a reasonable amount of time. Like the previous argument, parents base this claim on alleged misconduct and misguided efforts by DCF. As we already explained, the juvenile court was not persuaded by parents' evidence on DCF's alleged inadequacies or misconduct in handling the family's case. The court in this case was persuaded by DCF's evidence that parents still have not acknowledged the harm their actions caused the four children. Implicit in that finding is the recognition that until parents appreciate what their children experienced at the hands of parents - the verbal and physical abuse, lack of adequate food, caging young T.M. and allowing him to become severely lead poisoned, witnessing drug use, sleeping with strange adults, lack of consistent and appropriate medical care and educational direction, being left for periods of time including overnights with no adult supervision - parents will not have the skills necessary to ensure their children's future well being. In the end, it is parents' responsibility to fix the problems that led to State intervention in the first place notwithstanding the nature of their relationship with officials at DCF. Parents have failed to demonstrate error in the court's determination that they cannot resume parenting within a reasonable period of time.

Affirmed.

BY THE COURT:

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.),

Specially Assigned

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### **Footnote**

\* According to the Department of Housing and Urban Development, acceptable lead levels are 40 micrograms per square foot for floors, 250 for window sills, and 400 for window wells. 24 C.F.R. § 35.1320(b)(2)(i) (2004).