

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2005-093

AUGUST TERM, 2005

In re D.B., Juvenile	}	APPEALED FROM:
	}	
	}	
	}	Chittenden Family Court
	}	
	}	DOCKET NO. 243-5-03 Cnjv
	}	
	}	Trial Judge: Christina Reiss

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

Mother appeals the termination of her parental rights with respect to her daughter, D.B. We affirm.

D.B. was born in March 2001. Shortly after D.B.'s birth, mother began leaving the infant in another woman's care, often for weeks at a time and with limited communication. The other woman was willing to care for the infant because of her concerns about mother's drug and alcohol abuse and mother's relationship with an abusive boyfriend. Those concerns ultimately prompted the woman to contact the Department for Families and Children (DCF), and thereafter her contact with D.B. ceased. In May 2003, after D.B. and her sister were found walking alone on a Burlington street while mother slept at home, DCF filed a petition alleging that D.B. was a child in need of care and supervision (CHINS). D.B. remained in mother's custody, but subject to a series of protective orders. In July 2003, D.B. was placed in DCF custody because mother had violated the protective orders by allowing contact between D.B. and individuals who posed a threat to the child. In September 2003, D.B. was adjudicated CHINS based, in part, on mother's admission that her substance-abuse problems adversely affected her ability to care for her daughter. The October 2003 disposition report set forth the steps that mother needed to follow to reunite with her daughter, including (1) consistent visitation, (2) substance-abuse treatment, (3) parent education, (4) participation in specified family-based services, and (5) completion of a psychological evaluation and mental-health counseling. In its January 2004 case plan, DCF required mother to continue substance-abuse treatment, to provide urine samples for drug screening, and to successfully complete mental-health and substance-abuse counseling.

In June 2004, the case plan was changed to recommend termination of parental rights. The case plan also called for mother to secure stable and adequate housing, to gain consistent employment, to maintain safe relationships, and to continue substance-abuse and mental-health counseling. In July 2004, DCF filed its TPR petition. On February 2, 2005, after two days of hearings in December 2004, the family court terminated mother's parental rights. Mother appeals, arguing that (1) the State failed to prove changed circumstances; (2) the family court misunderstood the importance of the mother-child bond between herself and her daughter; and (3) the court made two findings that were clearly erroneous.

Mother first argues that the evidence did not support the family court's conclusion that her ability to parent D.B. had stagnated, resulting in changed circumstances. See In re D.B., 161 Vt. 217, 219 (1993) (AA court may terminate parental rights at a modification hearing if it finds that there has been a substantial change in material circumstances since the disposition order and that termination is in child's best interests.@). According to mother, because the basis

of the CHINS adjudication was her substance-abuse problems, and there was no evidence of her continuing substance abuse at the time of the TPR hearing, the family court wrongly found stagnation. Mother contends that the court should not have focused on other issues such as her lack of stable housing and inconsistent employment that were not addressed in the case plan until June 2004.

Mother's argument is flawed in several respects. First, the CHINS adjudication was not based solely on mother's substance-abuse problems, but also on questions surrounding her mental health, chaotic lifestyle, lack of parental judgment, and unsafe relationships with men. Second, the record does not demonstrate that mother had overcome her substance-abuse problems. The family court found that mother had voluntarily discontinued mental-health counseling and participation in a substance-abuse program. Although the court found that mother, who had longstanding drug addictions, had made significant progress in addressing her substance-abuse problems, the court also found that she had tested positive for various drugs on different occasions through July 2004, that she was not credible when she claimed that she had not used drugs since February 2004, and that she had not been tested for drug use since September 2004, when she refused to be tested during a visit with D.B. Further, the court found that, in addition to her lack of stable housing and her inconsistent employment, mother continued to demonstrate the lack of judgment that had led to her losing custody of D.B. nearly eighteen months earlier by engaging in relationships with individuals who posed a significant threat to her and her daughter. In short, the evidence amply supports the family court's finding of stagnation in mother's parenting ability.

Mother next argues that the family court misunderstood the importance of the mother-child bond in determining D.B.'s best interests. In making this argument, mother focuses on a single statement made by the court that although it was reluctant to interrupt the bond between mother and child, the applicable standard is the best interests of the child rather than the mother. According to mother, the court failed to recognize that the statutory factors in 33 V.S.A. ' 5540 pertaining to the relationship between mother and child concern the child's best interests. We find no misunderstanding on the part of the family court. Indeed, the court recognized that, in determining the best interests of D.B., it had to weigh the criteria set forth in ' 5540, including the two factors having to do with the relationship between the child and the natural parents. Further, the court found that, on balance, those two factors weighed in favor of denying the TPR petition. Nevertheless, the court concluded that termination was in D.B.'s best interests because, nearly one and one-half years after D.B. had been taken into state custody at the age of two, mother had failed to adequately address the issues that led to the child's removal from her custody, despite having had ample opportunity to do so. The court found that mother was either unable or unwilling to do what was necessary to reunite with her daughter. Meanwhile, in the intervening time, D.B. had made significant progress in overcoming her problems and had formed a bond with a foster family that was willing to adopt her. The court refused to deprive D.B. of the opportunity for much-needed stability and permanence in her life when mother had demonstrated little likelihood of being able to resume parental duties within a reasonable period of time.

We find unavailing mother's complaint that there is no need for termination, given that her contact with D.B. is not harming the child, and that D.B. is already in a stable relationship with her foster parents. The question before the court was not how long D.B. could wait to reunite with her mother before suffering physical or emotional harm, but rather whether mother could be expected to resume her parental role within a reasonable period of time, as measured from D.B.'s perspective, considering the particular facts of the case. In re B.M., 165 Vt. 331, 337 (1996). Here, mother had spent only sporadic time with her daughter before the child was taken from her and placed with a foster family with whom she had spent nearly half of her life at the time of the termination hearing. After reviewing the relevant statutory criteria, the court found that termination would be in D.B.'s best interests. We discern no basis for overturning the family court's judgment. See In re S.B., 174 Vt. 427, 429 (2002) (mem.) (family court has broad discretion in deciding whether to terminate parental rights).

Finally, mother challenges as clearly erroneous two of the family court's findings that mother's extensive time away from D.B. when the child was an infant undercuts her claim that D.B. suffered no neglect or abuse while outside her care, and that mother admitted lying to the court about the status of her continuing relationship with her husband, who was on parole and who posed a threat to mother and D.B., and the pendency of her divorce action against him. Again, we find these arguments unavailing. First, the findings were supported by the evidence. Mother's relinquishment of the care of her infant daughter to another person, followed by her limited communication with that

person, belies her claim that she did not neglect the child. Mother also misled the court about her ongoing contact with her husband and about whether she was actively pursuing a divorce from him. Second, even if we disregarded these findings, the court=s remaining findings and conclusions, which are supported by the evidence, support its termination order. See In re A.F., 160 Vt. 175, 178-79 (1993) (erroneous findings do not require reversal when other evidence and findings support termination order).

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice