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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-049

JUNE TERM, 2008

In re S.S., Juvenile	}	APPEALED FROM:
	}	
	}	
	}	Bennington Family Court
	}	
	}	
	}	DOCKET NO. 80-6-05 Bnjv
		Trial Judge: David Howard

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

Mother and father appeal separately from a family court order terminating their residual parental rights. Father contends the evidence and findings do not support the court's conclusions that: (1) there had been a material change of circumstances; and (2) father could not resume parental responsibilities within a reasonable period of time. Mother contends the court "seriously misapprehended" the evidence in finding a lack of progress in moving forward the case plan and an inability to resume parental responsibilities within a reasonable period of time. We affirm.

The record evidence may be summarized as follows. S.S. is the middle of three children of mother and father. The family has a history of domestic violence. Before the instant proceeding, father had two prior domestic assault convictions, one from April 1997 and another from October 1999 that resulted from an assault against S.S., who was then four years old. In June 2005, father again assaulted S.S., picking her up and throwing her to the ground during a dispute over the care of a pet. S.S. reported the incident to school officials, and she was taken into emergency custody by the Department for Children and Families (DCF). Father was charged with aggravated domestic assault and released on conditions, including one stating that he would have no contact with S.S.. Nevertheless, upon his release, father returned to live with mother, and S.S. remained in state custody. Mother maintained that she was not present at the assault and that S.S. could be lying. S.S. was placed in a series of foster homes, and later, in two residential centers in Brattleboro, the Community House, Inc. and the Abigail Rockwell Children's Center

S.S. was adjudicated CHINS in late June 2005, and the court adopted a case plan at the initial disposition hearing in August 2005, calling for reunification and setting forth a number of goals and expectations for the parents. These goals remained in place through five subsequent

case plans over the next two years. In January 2006, father pled guilty to the felony assault charge and was sentenced to a term of eight months to ten years. While incarcerated, father completed a cognitive self-change program. After his release on parole in December 2006, father completed a batterer's intervention program, began individual counseling, maintained employment, and was not charged with any further crimes. Despite his progress, father has had no contact with S.S. since the assault in June 2005. The court recognized that a condition of father's release prohibited contact with S.S., but also noted that father had made no effort to modify the condition and initiate contact. Indeed, the record showed that the Department of Corrections, with DCF approval, had authorized father to open communication with his daughter in April 2007, by writing her a letter, with the prospect that it could lead to further contact, but father failed to do so.

After June 2005, mother had some sporadic visits with S.S., which were supervised because of mother's open reluctance to believe that the assault had occurred and anger about father's incarceration. The court found that mother disliked DCF and particularly disliked S.S.'s case worker, which led to difficult and confrontational interactions, although the court expressly found that this was not the fault of DCF. The court further found that mother continued to doubt S.S. and did not believe that the offense had occurred, and consequently was uninterested in any of the goals or tasks in the case plan that relied on the fact of abuse and the need to protect S.S. Mother started but did not complete a parenting class, attended only two or three sessions with a counselor, and would not allow a community services worker to come to her home. The court acknowledged that DCF had not accommodated mother's busy work schedule particularly well, but noted that mother had made no real effort to seek relief or accommodation from DCF because she did not trust them to help her. For a period of several months in late 2006, after she filed for divorce, mother made a more concerted effort to visit the minor and engage in services, but this ended after father's release from prison, when mother and father reconciled and he moved back home. At the time of the termination hearing in January 2008, mother had not had any contact with S.S. since April 2007.

In May 2007, DCF changed the case-plan goal from reunification to placement in a kinship home, and when this option fell through, DCF amended the goal to adoption and filed for termination of parental rights. Following a merits hearing in December 2007 and January 2008, the court issued a written decision, granting the petition. While acknowledging that father had made strong efforts to complete the programming called for in the case plan, the court found that he had made no effort to establish communication with S.S. and that his relationship and ability to parent her had therefore stagnated. The court reached the same conclusion as to mother, finding that she had made little or no progress over the past two years, had failed to achieve the case plan goals relating to treatment and education, and had gained no insight into the needs of S.S.

Applying the best-interests criteria of 33 V.S.A. § 5540, the court further concluded that S.S. had almost no positive relationship with either parent, who had played no constructive role in her life for several years in mother's case, and for far longer in father's. Nor was there any possibility that either parent could resume parental responsibilities within a reasonable period of time. The virtual absence of any contact between father and S.S. for the last two and a half years and a total lack of effort by father to maintain any personal relationship convinced the court that it would require an unreasonably lengthy period for father to resume responsibilities, if it could

occur at all. As to mother, the court noted that she had had no contact with S.S. since April 2007; that their relationship had, if anything, deteriorated since the assault; and that mother's unchanging views "on the core issue of abuse and [its] effects on [S.S.]" and her unwillingness to engage in services resulted in no realistic possibility of her resuming parental responsibilities for many years to come. Although observing that S.S.'s many foster placements made it difficult to judge her adjustment to school and community, the court also found that she had recently made good progress in the residential programs in Brattleboro, as evidenced by the fact that she was scheduled to transition to the Kurin Hatton School, and had developed a good relationship with two potential adoptive families who would support her in the future. Accordingly, the court concluded that termination of parental rights was in the best interests of S.S., and granted the petition. These separate appeals followed.

In reviewing the family court's decision, "[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.). We will uphold the court's findings of fact unless they are clearly erroneous, and its conclusions if supported by the findings. In re K.F., 2004 VT 40, ¶ 8, 176 Vt. 636 (mem.). Father claims that the record does not support the court's conclusions that there had been a material change of circumstances or that he could not resume parental responsibilities within a reasonable period of time. Both claims are premised on the same argument, to wit, that his inability to establish any constructive relationship with S.S. was the result of the parole condition prohibiting contact with the minor and that he is being "punished" for circumstances beyond his control. Father notes, and the court readily acknowledged, that he had made a strong effort to complete programming both while incarcerated and after his release.

The record also shows, however, that he made no effort during the two and half years from the date of the assault in June 2005, up to and including the termination hearing in January 2008, to establish any contact or relationship with S.S., to express any apology or remorse to the minor, or to attempt to re-establish any semblance of trust, much less a parental relationship, after years of abuse and two assaults on the minor. Despite the non-contact order, father was granted the opportunity to re-establish communication with the minor and a basis for further contact, and failed to take it. Moreover, father was responsible for the imposition of the no-contact order because of his violence toward S.S. Under the circumstances, we find no merit to the claim that he was not responsible for the stagnation in his relationship with S.S. or the lack of any realistic possibility of resuming parental responsibility within a reasonable time. See In re J.L., 2007 VT 32, ¶16, (mem.) (concluding that father's lack of relationship with minor resulting from his incarceration "alone supports the court's ruling terminating his parental rights"); In re K.F., 2004 VT 40, ¶ 12 (holding that father bore "sole responsibility" for his incarceration, lack of contact, and failure to play constructive role in minor's life, which supported finding that he could not resume parental responsibilities within a reasonable time); In re A.D.T., 174 Vt. 369, 376 (2002) (finding in termination proceeding that court properly relied on mother's lack of contact with the minor where it "resulted first and foremost from her own conduct" including "repeated imprisonment and her consequent estrangement from" the children). Accordingly, we find no basis to disturb the order terminating father's parental rights.

Mother's sole claim on appeal is that her failure to make progress under the case plan or re-establish a close relationship with the child, and her resulting inability to resume parental

responsibilities within a reasonable time, were caused by a poor relationship with the minor's case worker and that it was DCF's responsibility to substitute a different case worker. The claim finds no support in the facts or law. Initially we note that the provision of reasonable services is not one of the statutory factors under 33 V.S.A. § 5540 and the court need not make findings to that effect, although it is a factor that may be considered in determining whether the State has met its burden of showing that a parent is unlikely to be able to resume parental responsibilities within a reasonable time. In re J.T., 166 Vt. 173, 180 (1997). Hence, mother's reliance on In re Eden F., 710 A.2d 771 (Conn. App. Ct. 1998), which turned on a Connecticut statute establishing a duty on the part of the State to establish that it has made reasonable reunification efforts, is misplaced.

Additionally, we note that the court expressly found that the DCF worker had done nothing "to justify anything near [mother's] confrontational attitude," and that it was mother's "overall attitude" of denying father's abuse, anger, and resentment toward the minor and resisting the need for education and counseling "that prevented progress, not these issues" involving the DCF worker. These findings, which mother has not challenged, place responsibility for her inability to progress under the case plan and resume parental responsibilities squarely on mother, not on the DCF case worker or the State. Accordingly, we find no basis to disturb the court's order terminating mother's parental rights.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice