

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. 2020-075

JULY TERM, 2020

In re J.N.-A., Juvenile	}	APPEALED FROM:
(P.W., Mother*)	}	
	}	Superior Court, Washington Unit,
	}	Family Division
	}	
	}	DOCKET NO. 95-8-17 Wnjv
		Trial Judge: Kirstin K. Schoonover

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

Mother appeals from the termination of her rights in J.N.-A.* She challenges the court's conclusion that termination of her rights was in J.N.-A.'s best interests. We affirm.

J.N.-A. was born in May 2008. In August 2017, she was taken into emergency custody of the Department for Children and Families (DCF) and later adjudicated as a child in need of care or supervision (CHINS). The CHINS determination was based on mother's mental-health crisis, including threats to kill herself and others; her substance abuse, including use while the child was in her care, resulting in slurred speech, extreme agitation, and threats to harm others; and the threat of domestic violence in the home. On the date of the scheduled disposition hearing, DCF moved to terminate mother's rights. It noted that J.N.-A. had been in DCF custody three times in her young life and permanency for her was a priority. DCF nonetheless added action steps to see if mother could follow the case plan, including, among other things, requirements that mother engage in substance abuse counseling and adhere to recommendations; engage in therapy to address her mental health and emotional issues; refrain from threatening behaviors; and maintain open and collaborative communication with service providers.

The court heard evidence on the termination petition over six days between November 2018 and December 2019. It made numerous findings, including the following. J.N.-A. is eleven years old and has Down Syndrome. Mother has long struggled with substance abuse, domestic violence in the home, and mental-health issues, among other concerns. DCF has long worked with mother and provided her with support services. As indicated above, the child has been placed in DCF custody three separate times. Mother's mental health and substance abuse remained a concern throughout the lengthy TPR proceedings. She sought residential treatment in July 2018 and July 2019; she had suicidal ideations and was hospitalized in March 2019. She overdosed in April 2019. In November 2019, mother admitted herself to the hospital, decided to leave, and then readmitted herself several days later. Mother was not forthcoming about her substance abuse

* Father voluntarily relinquished his rights and has not appealed.

issues. The court found it unlikely that she could maintain sobriety long term given her ongoing and chronic pattern of denial and use of illicit substances.

The court further found that mother minimized her struggles and she lacked insight into J.N.-A.'s needs and her own inability to provide for J.N.-A. Instead, she blamed others and minimized her role in J.N.-A. coming into DCF custody. As the case progressed, J.N.-A.'s relationship with mother deteriorated. Mother missed visits with J.N.-A. and often failed to call her. Mother's addiction had a negative impact on the visits she did attend. Mother was unstable on her feet and her speech was often slurred. Mother would become angry and argumentative. Mother provided fifteen out of thirty-three requested UAs, ten of which tested positive for cocaine. Mother admitted using cocaine to numb her pain. J.N.-A. became more reluctant to have visits and mother began to miss more visits. Mother last visited J.N.-A. in Fall 2019.

J.N.-A. was doing very well in her foster home, where she had been since August 2017. Her bond with her foster family had grown as her bond with mother waned. The foster parents loved and cared for J.N.-A. and ensured that her needs were met.

Based on these and numerous other findings, the court concluded that termination of mother's rights was in J.N.-A.'s best interests. It recognized that mother loved J.N.-A. very much. It found that when the child was young, and with the significant help of others, mother had a strong loving bond with her. Mother could not, however, maintain a steady, safe, and predictable environment for J.N.-A. When J.N.-A. entered DCF custody, her relationship with mother weakened and her bond with her foster family deepened.

The court also concluded that mother could not parent J.N.-A. within a reasonable time despite her deep love for J.N.-A. J.N.-A. had entered DCF custody three times during her young life and DCF had had concerns since 2010 that mother abused drugs, failed to adequately supervise J.N.-A., and exposed her to unsafe situations and unstable housing. These concerns remained. While mother could demonstrate safe parenting for short periods of time with the help of community members, she had not been able to demonstrate any level of success long-term. She needed the assistance of various care providers throughout J.N.-A.'s life. She could not maintain stable housing and had not maintained her sobriety. She continued to abuse substances, including marijuana and cocaine throughout the lengthy TPR process. She was, and remained, in denial about the level of her substance abuse. The court explained that after mother moved into new housing in December 2018, she argued for a chance to demonstrate to the court that she could maintain stable housing, maintain her sobriety, visit her daughter, and with the help of a team, parent J.N.-A. The court set the matter off for a period of months to give mother this opportunity. Despite mother's intentions, she could not maintain this period of stability. She was evicted, partly because she allowed known drug users to enter her home. She no longer had permanent housing suitable for J.N.-A., she continued to abuse substances, and her mental health remained extremely fragile. Mother had not participated in substance abuse counseling consistently and she continued to lash out and threaten others in anger and despair. She continued to deny that she had substance abuse issues, despite her admitted and continued use of cocaine in the past and throughout the juvenile proceedings.

The court found that J.N.-A. needed constant supervision with clear expectations and a consistent and predictable routine. She had special needs due to Down Syndrome and cognitive delays. She was in remission from Leukemia. She had complex developmental and medical needs that required a variety of services. Mother could not provide J.N.-A. the stability she required. For these and other reasons, the court concluded that termination of mother's rights was in the child's best interests. This appeal followed.

Mother challenges the court's assessment of the weight of the evidence on appeal. She argues that the court failed to give sufficient weight to the bond she shares with J.N.-A. and the role she played before J.N.-A. was taken into DCF custody. She suggests that DCF is to blame for creating a "toxic environment," she complains about the experience level of one of her assigned social workers, and she suggests that DCF intended to terminate her rights from the outset. Additionally, mother takes issue with the court's characterization of certain events, such as her decision to post online a video of her interacting with J.N.-A. while the child's behavior escalated. She also argues that the court misstated the level of DCF's involvement around the time of the child's birth and at other earlier stages of the child's life.

We find no error. When termination of parental rights is sought at initial disposition, the court must evaluate if termination is in a child's best interests based on the criteria set forth in 33 V.S.A. § 5114. In re C.P., 2012 VT 100, ¶ 30, 193 Vt. 29. The most important statutory factor is the likelihood that a parent can resume their 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 not disturb its findings on appeal unless they are clearly erroneous; we will affirm its conclusions if they are supported by the findings. In re G.S., 153 Vt. 651, 652 (1990) (mem.).

The court applied the appropriate standard here and its findings—essentially unchallenged by mother—are supported by the evidence. The court made extensive findings about mother's care for J.N.-A. before she came into custody, her relationship with J.N.-A., and the history of this case. It recognized that mother loved the child but ultimately concluded that their bond diminished during the time that J.N.-A. was in custody. While mother disagrees with the court's conclusions, she does not demonstrate any error. See, e.g., Meyncke v. Meyncke, 2009 VT 84, ¶ 15, 186 Vt. 571 (explaining that arguments which amount to nothing more than a disagreement with court's reasoning and conclusion do not make out a case for an abuse of discretion). She simply asks us to reweigh the evidence, which is not our role on appeal. See In re S.B., 174 Vt. 427, 429 (2002) (mem.) ("Our 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 mother's parental rights.").

We find mother's remaining arguments equally without merit. The court acted within its discretion, as the factfinder, in characterizing a video that mother posted on her Facebook account as disturbing. It found that the video showed J.N.-A. crying and acting out while mother teased and yelled at her. The court acknowledged mother's assertion that she posted the video to show the Family Time Coach the child's poor behaviors at home. It did not err in finding that the video—depicting both mother and child as upset and out of control—raised significant concerns about mother's ability to care for the child. See In re A.F., 160 Vt. 175, 178 (1993) (explaining that it is exclusive role of trial court to assess witness credibility and weigh evidence).

The court similarly did not err in finding that DCF was extensively involved with mother following the birth of J.N.-A. The court recounted DCF's post-birth involvement in detail. Again, mother challenges the court's characterization of the evidence, a matter reserved exclusively for the trial court.

Finally, we reject mother's assertion that DCF bears responsibility for the termination of her rights. As reflected above, the court's termination decision was based on mother's continued substance abuse, mental health issues, missed visitation, and unstable housing, all of which were matters within her control. We note, moreover, that the court specifically found that mother was hostile toward the social workers assigned to her case, including threatening them with harm. It was mother, not DCF, who frequently refused to cooperate and who rebuffed DCF's offers of

assistance. The court did not err in concluding that termination of mother's rights was in J.N.-A.'s best interests.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice