

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-026

JUNE TERM, 2004

In re S.M. and S.M., Juveniles

}	APPEALED FROM:
}	
}	Chittenden Family Court
}	
}	DOCKET No. F79/80-2-02 Cnjv
}	
}	Trial Judge: Hon. David Jenkins
}	
}	
}	

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

Mother appeals from the family court's order terminating her residual parental rights over S.M. and S.M.* She argues that the court erred because: (1) the evidence does not support a finding that she had stagnated in her ability to care for the children; and (2) the evidence does not show that termination was in the children's best interests. We affirm.

Mother and father are the parents of S.M., born in 1997, and S.M., born in 2000. The Department of Social and Rehabilitation Services became involved with the family in November 2001 after receiving a report that the children were at risk. In February 2002, during an unannounced visit, SRS found mother's home to be filthy and the children were placed in SRS custody. The house was declared uninhabitable by the city code enforcement officer and mother was evicted and became homeless. At a March 2002 merits hearing, the children were adjudicated as children in need of care and supervision based on the parties' stipulation that mother's " medical needs, housing problems and a lack of required assistance" had caused her home to fall into a condition that was " unhealthy and unsafe for the children."

At a May 2002 disposition hearing, the court adopted SRS' s case plan, which sought reunification with mother within three to six months. The case plan required that mother engage in substance abuse counseling, abstain from drugs and alcohol, participate in urine screens, maintain employment, and obtain safe and appropriate housing. Mother did not object to the case plan. In October 2002, the court suspended mother's visits with the children, noting that she had " dropped out of sight." The court explained that mother had not been in contact with SRS or the children, and she had failed to appear at a scheduled hearing on visitation. In March 2003, SRS filed a motion to terminate mother's residual parental rights.

After a three-day hearing that concluded on November 20, 2003, the court issued its order terminating mother's residual parental rights. The court explained that mother had been receiving support services from the Visiting Nurse Association for approximately four years before the children were placed in SRS custody. Mother had a substance abuse problem; she used marijuana almost every day and frequently drank. She also had some health issues and depression after St.M.' s birth. After Sa.M.' s birth, mother experienced problems in caring for the children. At times she would fall asleep and leave the children unattended. She did not maintain a clean residence; there was rotting food, small objects, dirty clothes, and garbage strewn throughout her home. There was not enough food in the home for the children, and she was not meeting the children's medical needs. The children were placed in custody due to mother's inability to maintain a safe home and meet her children's basic needs.

The court found that, since the children had been taken into custody, mother had failed to comply with the case plan

developed by SRS. She had not addressed her substance abuse and mental health issues. She continued to use drugs and have positive urine screens. She was not maintaining stable housing or employment. Mother indicated that she camped in the woods during the summer of 2003, but that she was currently residing in a trailer. Her current boyfriend, who visited her at her home, had a criminal record, although she was unsure what it was. The court found that mother had not informed SRS of changes in her address or telephone number, and SRS had had a difficult time contacting her. Mother missed visits with the children, and she had not seen them since October 2002 when the family court suspended her visitation rights. Mother had not requested a hearing to reestablish visitation although she had been informed by her caseworker that she could do so.

Based on its findings, the court concluded that mother's inconsistent contact with her children and with the SRS caseworker demonstrated that she was not committed to parenting her children or meeting the goals of the SRS case plan. The court found that mother was unprepared to care for the children or meet their needs; she had not attained stability in her own life or demonstrated that she could safely parent her children. The court concluded that mother had not played a constructive role in the children's lives during their first year in custody, and it was unlikely that she could resume parenting them in the foreseeable future. The children were in need of stability and a nurturing environment where their needs would be consistently met, and they were thriving in their foster homes. The court thus concluded that termination of mother's residual parental rights was in the children's best interests. Mother appealed.

Mother first argues that the court erred in finding that she had stagnated in her ability to properly care for the children. She asserts that the causes and conditions that led to the children's placement in SRS custody have been rectified. In support of this assertion, she points to her improved health, consistent employment, her discharge from probation, and her ability to save the money necessary to secure housing for herself and her children.

When the termination of parental rights is sought, the trial court must conduct a two-step analysis. In re B.W., 162 Vt. 287, 291 (1994); 33 V.S.A. § 5532(a). The court must first find that there has been a substantial change in material circumstances; second, the court must find that termination of parental rights is in the child's best interests. In re B.W., 162 Vt. at 291. A substantial change in material circumstances is most often found when a parent's ability to care for a child has either stagnated or deteriorated over the passage of time. Id. " [T]he mere fact that a parent has shown some progress in some aspects of his or her life does not preclude a finding of changed circumstances warranting modification of a previous disposition order." Id. (internal quotation marks and citations omitted). Instead, " the question is whether the improvement substantially conformed with the expectations at the time of the CHINS adjudication and with SRS's case plan." In re D.B., 161 Vt. 217, 220 (1993). On appeal, we will affirm the trial court's findings unless they are clearly erroneous, and we will affirm its conclusion if supported by the findings. In re B.S., 166 Vt. 345, 350 (1997).

In this case, although the family court did not explicitly find that there had been a material change in circumstances, it is evident from the record that a material change in circumstances had occurred since the initial disposition order. See In re H.A., 153 Vt. 504, 514 (1990) (" the changed circumstances test is met when the findings in the case are replete with facts sufficient to meet the required standard") (internal quotation marks and citation omitted). Mother, with whom reunification had been sought, failed to meet the expectations of the case plan. As the court found, mother had not addressed her substance abuse and mental health problems; she continued to test positive for marijuana. She had not achieved stability in her life. Her visits with the children were sporadic, or non-existent. As of the date of the court's December 2003 termination order, mother had not seen her children since October 2002, when visitation was suspended, and she had not requested a hearing to reestablish visitation even though she could do so. She failed to maintain consistent contact with SRS while the children were in custody. Mother does not assert that these findings are clearly erroneous. Her argument that she has made progress in some areas of her life does not undermine the court's conclusion. The court's findings are supported by the evidence, and they support the court's conclusion that mother had stagnated in her ability to adequately parent her children.

Mother next argues that court erred in assessing the children's best interests. She asserts that the evidence does not show that she would be unable to resume a parental role within a reasonable time, nor that an attempt at reunification would be harmful to the children. According to mother, the court failed to consider her present ability to parent the children, and the evidence shows that the children have a strong relationship with her, and with one another. Mother also argues that SRS did not make reasonable efforts to communicate with her nor did it make the referrals that she needed.

When there has been a substantial change in material circumstances, the court must assess whether termination of parental rights is in a child's best interests. To determine the best interests of the child, the court must consider four statutory factors. See 33 V.S.A. § 5540. The most important factor in the court's analysis is the likelihood that the natural parent will be able to resume his or her parental duties within a reasonable period of 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 family court considered the statutory factors in arriving at its conclusion, and its findings are supported by the evidence. We need not reiterate all of the court's findings here. Essentially, the court found that mother continued to use drugs, failed to maintain contact with the children, and had not achieved the level of stability that would enable her to adequately parent her children. Her behavior demonstrated that she was not prepared or committed to the task of parenting. Mother does not challenge any of the court's findings as clearly erroneous, and the findings support the court's conclusion that mother would be unable to resume parenting within the foreseeable future. The court's findings clearly demonstrate that it considered mother's present inability to parent in reaching its conclusion. Moreover, as the court found, the children were in need of stability and nurturing. Given the age of the children, the amount of time that they had been out of mother's care, and their need for stability, the evidence supports a finding that a reasonable amount of time for reunification had passed. See In re J.S., 168 Vt. 572, 574 (1998) (mem.) (family court's findings as to children's ages, length of time that they had been separated from parents, and their need for stability and permanence, supported conclusion that reasonable amount of time for reunification had passed).

We have considered all of mother's remaining arguments, and find them without merit. None undermine the court's conclusion that termination was in the children's best interests. SRS's efforts to communicate with mother, while of importance, is not one of the statutory factors that the family court must consider in conducting its analysis of the children's best interests. In addition, contrary to mother's assertion, the court found that mother had failed to apprise SRS of her whereabouts, which made it difficult for SRS to contact her. This finding is supported by the evidence. Finally, mother has not demonstrated that SRS is responsible for her parental shortcomings by failing to provide her with appropriate referrals. SRS did make referrals for mother, and mother bears the responsibility for her continued drug use, sporadic visits with the children, and the instability in her life. The family court's findings support its conclusion that the termination of mother's residual parental rights was in the children's best interests.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

Marilyn S. Skoglund, Associate Justice

Paul L. Reiber, Associate Justice

Footnote

* The family court also terminated father's residual parental rights over S.M. and S.M.; he did not appeal.