

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-163

JULY TERM, 2017

In re A.M., Juveniles	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Family Division
	}	
	}	DOCKET NO. 304-10-14 Cnjv
		Trial Judge: Alison S. Arms

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

Father appeals the court's order terminating his parental rights to his son A.M., born in February 2014. On appeal, father argues that the court used the incorrect time frame to measure whether father had made progress with the case plan and that stagnation was caused by factors beyond father's control. We affirm.

The court found the following by clear and convincing evidence. Prior to A.M.'s birth, mother was working with the Department for Children and Families (DCF) due to concerns around mother's drug and alcohol use during pregnancy. At birth, A.M. tested positive for benzodiazepines. After his release from the hospital, he stayed with mother at the Lund Home. Mother struggled to meet the requirements of the program, and based on her lack of progress and pending departure, in October 2014 the court granted custody to DCF. Mother stipulated A.M. was CHINS in January 2015. A.M. was returned to mother under a conditional custody order, but after mother's relapse A.M. went back to DCF custody in March 2015. DCF placed A.M. first in a temporary foster home and then moved him to a long-term placement in July 2015. Mother struggled to remain sober and free from an unhealthy relationship and the case plan in September 2015 had concurrent goals of reunification and adoption. In October 2015, DCF filed a petition to terminate mother's parental rights. A.M. was moved to a new foster home in December 2015 due to failure to bond with the foster father in the prior placement. At his new foster home, A.M. quickly bonded with his foster family and was meeting all of his physical and developmental milestones.

Meanwhile, DCF engaged in efforts to identify A.M.'s biological father. When A.M. was born, mother identified a putative father, who was incarcerated at that time on domestic violence charges. He was excluded as A.M.'s biological father in February 2015 based on genetic tests. In August 2015, DCF was still unaware of the identity of A.M.'s biological father. Mother provided the names of two possible biological fathers and genetic tests were ordered for those individuals. A genetic test identified father in January 2016, when A.M. was almost two years old. Father is a refugee, who had a difficult childhood. Father's first language is French, but he speaks some English. He has a history of assaultive behavior and domestic violence. He has a regular job and lives with his girlfriend.

The case plan in February 2016 had a goal of termination, but it included a plan of services for father. Father met with a DCF social worker and began visits with A.M. in March 2016. A.M. was

reluctant to have father feed, touch, or hold him. A.M. began having negative behaviors, waking in the night and having nightmares. A.M.'s foster parents attended visits with father to attempt to make A.M. comfortable, but A.M. remained reluctant to engage with father and was distressed when his foster father left. In July 2016, the court granted DCF and A.M.'s motion for a family forensic evaluation and to allow visits to be terminated early if A.M. showed signs of distress. The court also approved a modified case plan which contained concurrent goals of reunification with father and adoption in July 2016. In August 2016, visits did not improve and A.M. continued to exhibit negative behaviors in the night before and after visits. Father became frustrated and perceived that coaches and DCF were attempting to sabotage his visits, and father's negative demeanor affected A.M. The court accepted the findings of the family forensic evaluator. The evaluator found that father had trouble reading A.M.'s verbal and nonverbal cues and in setting limits. The evaluator expressed that given father's lack of progress, he would not be able to meet all of A.M.'s needs in a real-world setting. The evaluator was very concerned about A.M.'s behavior of dissociating or freezing before and during visits with father, explaining that this put A.M. at risk of sensitization and indicated that A.M. required a higher level of reassurance, safety, and predictability. The evaluator further explained that A.M.'s needs, particularly for security and safety, would be compromised without access to a permanent caregiver. The evaluator opined that A.M. had a secure attachment to his foster family and showed a healthy and stable relationship with them. In November 2016, A.M. refused to go to visits with father. At that time, DCF filed a petition to terminate father's parental rights. In February 2017, at A.M.'s counsel's request, the court suspended visits with father pending the termination hearing.

Following a termination hearing, the court concluded that there was a change of circumstances due to stagnation. During the year since visits had begun with father, little progress had been made. Father had not completed a parenting class, had to develop skills related to discipline and child development, and had to address issues related to relationships, especially with women. A.M.'s relationship with father was stressful and visits caused A.M. to exhibit dissociation and aggressive behavior. Father did not earn A.M.'s trust or develop the skills to read and understand A.M.'s cues and would not be able to parent A.M. within a reasonable period of time. The court thus concluded that termination of father's parental rights was in A.M.'s best interests.¹ Father appeals.

Father raises two arguments related to the court's conclusion that there was a change in circumstances due to stagnation. An existing disposition order may be modified based on a change in circumstances. 33 V.S.A. § 5113(b). A change of circumstances most often occurs when a parent's progress has stagnated. In re D.M., 2004 VT 41, ¶ 5, 176 Vt. 639 (mem.). "Stagnation can be shown either by the passage of time with no improvement in parental capacity to care properly for the child or where the improvement is so insignificant that it is unlikely the parent will be able to resume parental duties in a reasonable time." In re J.G., 2010 VT 61, ¶ 10, 188 Vt. 562 (mem.) (quotations omitted).

Father first contends that his stagnation should be measured only since February 2016 when he was informed of his paternity. We need not address this argument because even if measured from February 2016, there was ample evidence to support the court's conclusion that father's progress had stagnated. After a year of visitation, father's relationship with A.M. had not improved and in fact had worsened. Father's visits continued to be difficult and A.M. experienced stress and anxiety related to the visits. A.M. refused to go to visits with father and did not connect with father. Father had not gained A.M.'s trust, and had not learned the necessary skills to allow him to parent the child. These facts support the court's conclusion that there was a change in circumstances due to stagnation.

¹ The court also terminated mother's parental rights. Mother passed away shortly after the court's order was issued.

Father next argues that his lack of progress in this case was caused by factors outside his control. See *In re D.S.*, 2016 VT 130, ¶ 7 (recognizing that “stagnation caused by factors beyond the parents’ control could not support termination of parental rights” (quotation omitted)). Father contends that the facts outside his control that caused the inability to progress were that father was not identified until after A.M. had been in DCF custody for a year² and that A.M. had moved into a new permanent foster placement shortly before beginning visits with father.

The trial court acknowledged that there were some circumstances that put father at a disadvantage, but specifically found that stagnation was due to factors within father’s control. The court recognized that father had not known of his paternity until A.M. was almost two. The court also accepted the opinion of the evaluator that it was likely overwhelming to A.M. to be introduced to father soon after adjusting to a new foster home. Nonetheless, the court explained that it had been a year since father had begun visiting with A.M. and father had not made progress in addressing the factors within his control. The court found that father had not successfully completed a parenting class, had let his frustration with the parent coaches and DCF harm his relationship with A.M., and still had to develop “knowledge and skills in the areas of emotional attunement, effective discipline, child development and his own demeanor and interactions with others, especially women.” “Individual findings of fact will stand unless clearly erroneous, and conclusions of law will be upheld if supported by the findings.” *In re A.F.*, 160 Vt. 175, 178 (1993). Here, the evidence supports these findings, and indeed, father has not challenged these findings on appeal. These findings in turn support the court’s conclusion that father’s lack of progress was caused by factors within his control.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

² Related to this, father asserts that DCF persisted with an adoption goal after father’s paternity was established, did not change the goal to a concurrent plan of reunification and adoption until July 2016, and did not provide a realistic time frame for father to make progress towards reunification. While the first two facts are certainly true, father fails to explain how this demonstrates that his lack of progress was due to factors outside his control. DCF provided father with services and facilitated visits for a year prior to the termination hearing. Further, while father claims that he was not provided with enough time to make progress, it is important to remember that “[t]he essential point of requiring that a parent progress in meeting his or her goals toward reunification within a reasonable period of time is to provide permanence and stability in the life of a child.” *In re J.G.*, 2010 VT 61, ¶ 11. The year provided to father was reasonable in light of the time A.M. had been in custody, A.M.’s young age, and A.M.’s need for stability.