

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-323

NOVEMBER TERM, 2017

In re R.D.C., Juvenile	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Family Division
	}	
	}	DOCKET NO. 156-5-16 Cnjv
		Trial Judge: Nancy J. Waples

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

Mother appeals termination of her parental rights to her daughter R.D.C., born in May 2016. On appeal, mother argues that the court's termination order lacks a rational basis because it did not afford mother additional time to improve her ability to parent her child while affording father more time. We affirm.

R.D.C. was taken into the custody of the Department for Children and Families (DCF) at birth based on concerns about mother's substance abuse, mental health, and history of abuse and neglect of her other children. In August 2016, the court adjudicated R.D.C. as a child in need of care or supervision (CHINS) due to lack of proper parental care. Based on clear and convincing evidence, the court found that mother had used cocaine during her pregnancy, that R.D.C. was born addicted, and that this behavior put the child at risk. The court also found that mother had engaged in assaultive behavior on several occasions, exhibiting a volatility and lack of self-regulation that put any child in her care at risk of harm.*

DCF placed R.D.C. in an initial foster home. She was moved to a second placement at mother's request. In November 2016, R.D.C. was moved to a third placement. The foster mother was R.D.C.'s daycare provider and had known her most of her life. At the time of the termination hearing, the court found that R.D.C. was well bonded to her foster family, who were willing to adopt her.

Father was identified in July 2016. The initial disposition, adopted in October 2016, had concurrent goals of adoption and transfer of custody to father. The goals for father included obtaining safe and appropriate housing, participating in parent education, and obtaining employment that would allow him to meet R.D.C.'s needs. Father's relatives in Connecticut were a possible placement for R.D.C., but the court denied a request for placement with that family due to difficulties in having mother visit R.D.C. there.

The State filed a petition to terminate parental rights in January 2017. Following a hearing, the court found that the State had not proven by clear and convincing evidence that there was a

* The court at termination adopted the merits findings and conclusions.

change of circumstances due to stagnation as to father. Although the court had concerns about father's living situation and his use of marijuana, the court found that father had found daytime employment, had consistent visits with R.D.C., and that these visits had expanded to unsupervised visits in the community. He was well bonded to R.D.C. and had progressed in his ability to care for her. Having determined that father's progress had not stagnated and therefore that there was no change of circumstances relative to father, the court did not evaluate whether termination of father's parental rights was in R.D.C.'s best interests.

The court found the following relative to mother. Mother failed to make any progress in addressing the long-standing issues that had made her unable to parent in the past, including her mental health, drug abuse, violent behavior, and lack of stable housing. Mother tested positive for cocaine after R.D.C.'s birth and mother lacked insight into how her drug use impacted her ability to parent. Mother had not obtained safe, stable housing. Mother had stable employment and her visits with R.D.C. had generally gone well. Mother did not, however, progress past supervised visits due to her history of explosive behavior. The court found that this stagnation was a change of circumstances.

The court then evaluated whether termination of mother's parental rights was in the child's best interests and found the following. R.D.C. was connected to her current foster family and had formed a bond with them. R.D.C. also had a bond with father and had a visit with father's brother and his family, with whom placement could be possible in Connecticut if mother's rights were terminated. Although mother was attentive during visits, she would not be able to resume parenting within a reasonable period of time. Mother had not made efforts to address her long-standing and serious issues and, as a result, there were significant concerns as to whether mother was capable of ensuring the safety of a child given her mental health issues, and lack of stability and ability to self-regulate. Therefore, the court concluded that termination of mother's parental rights was in R.D.C.'s best interests. Mother timely appealed.

On appeal, mother argues that there is no rational basis for terminating her parental rights. Mother asserts that because father will be afforded more time to improve his parenting skills, the child will not be harmed by also allowing mother additional time to progress, and therefore terminating her rights was not reasonable. We conclude there was no error. When, as here, there is an existing disposition order, termination of parental rights requires a two-step analysis. In re S.M., 163 Vt. 136, 138 (1994). First, the court must find there has been a change of circumstances since the prior order, and then the court must determine whether termination is in the child's best interests. 33 V.S.A. §§ 5113(b) (requiring "change in circumstances" to modify existing disposition order), 5114(a) (listing best-interests factors). A change of 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." In re S.W., 2003 VT 90, ¶4, 176 Vt. 517 (mem.) (quotation omitted). "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).

Mother contends that her parental rights should be preserved because this would not place the child at risk of physical or emotional harm. This is not the standard; once the court determines there is a change of circumstances and that termination is in the child's best interests, the court can terminate that parent's rights. The family court is not required to separately show either that preserving the parent's rights would put the child at risk of harm or that it is reasonable to terminate one parent's rights while preserving the other parent's rights. See In re C.F., 2015 VT 45, ¶ 14, 198 Vt. 504 ("The fact that father retains residual parental rights as the result of the family division's second order did not prevent the court from terminating mother's rights after examining the applicable statutory criteria."); In re A.D.T., 174 Vt. 369, 376-77 (2002) (explaining that

analysis of determining whether termination of one parent was in child's best interest was not altered because status of other parent's rights had not yet been determined). In this case, the court's findings, which are unchallenged by mother, support its conclusions that mother's stagnation was a change of circumstances and that termination was in the child's best interests.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Karen R. Carroll, Associate Justice