

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. 2019-176

OCTOBER TERM, 2019

In re L.J. & C.J., Juveniles
(H.F., Mother*)

} APPEALED FROM:
}
} Superior Court, Franklin Unit,
} Family Division
}
} DOCKET NO. 124/125-8-17 Frjv

Trial Judge: John L. Pacht

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

Mother appeals the termination of her parental rights to her minor daughter L.J. and son C.J. We affirm.

The trial court made the following findings. L.J. and C.J. are fifteen and three years old, respectively. L.J.'s father is deceased. C.J.'s father voluntarily relinquished parental rights in January 2019. Mother also has a one-year-old child with her husband. That child is not involved in this proceeding.

In 2017, after mother married husband, husband began accusing L.J. and her maternal grandmother of attempting to poison him by putting a narcotic in his coffee. Mother believed husband and cut off grandmother's contact with the children, with whom grandmother had a close relationship. Husband continued to accuse L.J. of trying to poison him by putting antifreeze in his inhaler and poisoning his food. The court concluded that the claims were unfounded.

Mother and husband began to believe that people were after them. Husband, a convicted felon, carried a gun with him at all times. In June 2017, he fired shots from the front porch of their home. He reported to police that people were trying to kill him and that he fired the gun at whoever they were. Mother stated that people had a "hit" out for her and husband. Mother and husband fought often. L.J. testified that husband hit her when she tried to intervene. On two occasions, L.J. called her grandmother in the early morning hours to ask for help escaping what was going on in the house.

During the summer of 2017, the family stayed at various campsites. L.J., who had been helping to feed C.J., was relieved of that job by husband. Some of the campsites lacked refrigeration, and C.J.'s milk would be warm or get old. As a result of being fed this milk, C.J. started vomiting and suffering from constipation.

The Department for Children and Families (DCF) filed petitions alleging that L.J. and C.J. were children were in need of care or supervision (CHINS) and obtained temporary custody of both children in August 2017. C.J. was placed with a foster mother and L.J. was eventually placed

with grandmother. Following a merits hearing in October and December 2017, the court found that L.J. and C.J. were CHINS because their physical needs were not being met and their physical safety was at risk. In April 2018, the court adopted a case plan for L.J. with concurrent goals of either reunification with mother or permanent guardianship with grandmother. It adopted a plan for C.J. with goals of reunification with mother or adoption. In July 2018, DCF moved to terminate mother's parental rights to both children. The termination hearing was held over three days, beginning in November 2018 and ending in January 2019.

Concerning mother's progress, the TPR court found that mother engaged in some of the action steps in the case plans. She signed releases, obtained stable housing, communicated with DCF, and engaged in a forensic psychological examination. She also participated in mental health counseling, which the court found had been somewhat effective. However, mother continued to harbor what the court considered to be a "delusional belief" that L.J. and grandmother had continually tried to kill husband, even after the court found no evidence to support mother's accusations. Mother had no contact with L.J. after the CHINS petition was filed. Mother made it clear that she did not want L.J. in her home, did not think her baby or C.J. would be safe around L.J., and did not support contact between L.J. and C.J.

As to C.J., mother's attendance at family time coaching was inconsistent until she and the coach worked out a more limited schedule of weekly visits. Mother consistently attended these visits but had not progressed to unsupervised contact with C.J. and had not requested more contact. The court found that mother had made progress in her parenting skills but her relationship with C.J. had not grown. C.J. looked to his foster family to meet his needs. He had a loving bond with the foster family and his aggressive tendencies and food issues had diminished. The court found that L.J. and C.J. saw each other regularly and that L.J. spent a lot of time caring for C.J. L.J. also had a close relationship with C.J.'s foster mother.

The court found changed circumstances warranting modification of the case plans as to both children. With respect to L.J., the court pointed to the significant deterioration in mother's relationship with L.J., including the fact that mother had made it clear that she did not trust L.J. to come back into her home. With respect to C.J., the court acknowledged that mother had made progress, but concluded that she still had a limited ability to understand the circumstances that led to C.J.'s coming into DCF custody, and had made little progress in attending to C.J.'s emotional, developmental, medical, psychological, educational and physical needs.

With respect to best interests, the court concluded that mother was still unable to be the primary caretaker for C.J. The court noted that mother's limited role in C.J.'s life was complicated by the fact that she had no relationship with L.J., who is "critical to [C.J.'s] day-to-day welfare." By contrast, both children have supportive and positive relationships with their pre-adoptive foster placements (the maternal grandmother in L.J.'s case). The court found that both children were well adjusted to their current living situations, and that there was no likelihood that mother would be able to resume parental duties within a reasonable period of time. Despite her progress, mother still supported her husband's paranoid beliefs, and had a "long way to go to develop the necessary sense of self to enable her to effectively evaluate statements and beliefs of her husband that put her children at risk of harm." Of relevance to this appeal, the court concluded that given mother's delusional beliefs about L.J., the relationship between L.J. and C.J. would either terminate or be so confusing for C.J. as to be unhealthy if he were placed in the care of her mother.

On appeal, mother argues that there was no change of circumstances to justify modification of the permanent guardianship goal with respect to L.J. She concedes that the circumstances warranted modification of the reunification goal, but argues that the court failed to assess whether

permanent guardianship was still in L.J.'s best interests. She further argues that the court improperly sacrificed mother's relationship with C.J. to protect C.J.'s relationship with L. J. based on erroneous findings as to L.J.'s role in C.J.'s life.

When considering whether to terminate parental rights after initial disposition, the trial court must engage in a two-step analysis. The court must first determine that a substantial "change in circumstances" requires modification of the existing disposition order. 33 V.S.A. § 5113(b). "A change in circumstances is most often found when the parent's ability to care properly for the child has either stagnated or deteriorated over the passage of time." In re H.A., 153 Vt. 504, 515 (1990). If the court concludes that a substantial change in circumstances exists, it must then determine whether termination of parental rights is in the best interests of the child in accordance with the factors set forth in 33 V.S.A. § 5114. See In re D.S., 2014 VT 38, ¶¶ 14-15, 22, 196 Vt. 325. We will affirm the family court's findings if supported by the evidence, and its conclusions if supported by the findings. In re D.M., 2004 VT 41, ¶ 5, 176 Vt. 639 (mem.) (citing In re A.F., 160 Vt. 175, 178 (1993)).

We conclude that the court's modification of the permanent guardianship goal for L.J. was supported by the evidence and its findings. The purpose of the permanent guardianship goal plainly was to facilitate some minimal ongoing relationship between L.J. and mother. The court found that mother had no contact or relationship with L.J. since the child entered DCF custody and persisted in her belief that L.J. had tried to poison husband and posed a threat to mother's other children. In short, mother had demonstrated no progress in her ability to care for, or even interact with, L.J. Moreover, the court found that L.J. "understandably wants no contact with" her mother. Under these circumstances, the court's conclusion that modifying the permanent guardianship goal in favor of termination (followed by adoption) was in L.J.'s best interests was well supported. See In re D.M., 2004 VT 41, ¶ 7 ("The key question for the court when considering whether stagnation has occurred is whether the parent has made progress in ameliorating the conditions that led to state intervention.").

We also reject mother's arguments concerning termination of parental rights as to C.J. Mother also argues that the court's findings that L.J. "spend[s] a lot of time caring for [C.J.]" and is "critical to [C.J.'s] day-to-day welfare" are unsupported by evidence, and therefore the court erred in "sacrificing" mother's relationship with C.J. to save the sibling relationship. "When findings are attacked on appeal, our role is limited to determining whether they are supported by credible evidence." In re A.F., 160 Vt. at 178. The challenged findings are not clearly erroneous. The evidence showed that L.J. visits C.J. every Tuesday and one or two weekends a month. C.J. also communicates by video chat with L.J. and grandmother during the week. He frequently asks his foster mother if he is going to see L.J. The foster mother testified that L.J. will play with C.J. during visits, although the foster mother is "calling the shots . . . and being the parent." C.J. also visits L.J. and grandmother from time to time. Grandmother testified that when C.J. visits, L.J. "does a lot with him" and will care for him until she gets overwhelmed. She stated that L.J. has difficulty when C.J. cries a lot, possibly because it brings back negative memories. This evidence supports the court's findings that L.J. cares for C.J. and is an important part of his daily life.

The court's findings regarding the closeness of the sibling relationship, along with ample other findings, support the court's conclusion that mother would not be able to parent C.J. within a reasonable time. The court also cited mother's lack of insight into the reasons the children entered DCF custody, her failure to progress to unsupervised contact or play any role in attending to C.J.'s daily needs, C.J.'s young age, and mother's persistent and unsupported beliefs about L.J. These findings are not challenged by mother, are supported by the record, and in turn support the

court's determination that mother was unlikely to be able to resume her parental role within a reasonable amount of time.

Finally, we reject mother's arguments that the trial court improperly sacrificed C.J.'s constitutionally protected relationship with mother for the relationship with L.J. We do not read the trial court's conclusions as reflecting such a trade-off divorced from a broader context. The driving factor underlying the court's analysis was mother's persistent support of her husband's delusional beliefs, including his delusional beliefs about L.J.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice