

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

**ENTRY ORDER**

**SUPREME COURT DOCKET NO. 2002-300**

**NOVEMBER TERM, 2002**

In re A.B., Juvenile

}	APPEALED FROM:
}	
}	Bennington Family Court
}	
}	DOCKET NO. 205-11-99 Bnjv
}	
}	Trial Judge: Karen R. Carroll
}	
}	
}	

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

Mother appeals the termination of her residual parental rights to her daughter A.B., claiming the court (1) used the wrong period of time to measure mother' s stagnation when determining the existence of changed circumstances; (2) erred in finding that mother would never welcome assistance with her parenting deficiencies; and (3) erroneously concluded that mother could not resume her parental duties within a reasonable period of time. We find no error, and therefore affirm.\*

In December 1999, when she was approximately five months old, the juvenile court found A.B. to be a child in need of care and supervision (CHINS) after she was diagnosed with a skull fracture the previous month. A.B. was initially placed in mother' s home under a protective supervision order. She remained in mother' s care after the court' s first disposition order in May 2000, although custody of A.B. was transferred to Commissioner of the Department of Social and Rehabilitation Services (SRS). The disposition report, which the court adopted with some modifications, outlined a plan of services for mother. The plan called for protective daycare services for A.B., SRS parent education sessions twice weekly, continued mental health counseling, home health visiting nurse services for A.B., and home services to address nutrition and housekeeping issues. The report also required mother to promise not to allow her older daughter to care for A.B. The plan of services was designed to address mother' s affliction with borderline personality disorder, her failure to provide a hygienic and safe environment for A.B., and her inability to consistently provide for A.B.' s medical needs, among other issues.

The day after the disposition hearing, A.B. suffered another skull fracture. Mother gave differing accounts to explain the child' s injury just as she had after A.B.' s first skull fracture in November 1999. SRS' s investigation of the second incident concluded that mother did not strap A.B. into her high chair, and as a result, A.B. fell out of the chair and hit her head. After the hospital discharged A.B., SRS placed the child in foster care.

Mother participated in SRS' s plan of services for her, but she had difficulty benefitting from them because she did not always follow through on the recommendations of her service providers. She tended to blame others for her issues, and she would not accept responsibility for her own actions. Visitation between mother and A.B. did not always go well. There was little evidence of a bond between them. During visits, A.B. would cry, scream, and run away from mother; sometimes A.B. would hit mother. At times, A.B. would not allow mother to touch her or change her diaper. Consequently, by November 2000, SRS changed the goal of A.B.' s case plan from reunification with mother to adoption. A.B. required permanency, and the reasons for her separation from mother had not been adequately remedied by that time.

When SRS changed the case plan goal to adoption, the family's SRS caseworker explained to mother its expectations for her and indicated that SRS would follow through with its plan for A.B. if mother did not meet the agency's expectations. The agency petitioned to terminate mother's rights in A.B. in February 2001. In June 2002, the juvenile court granted the petition, concluding that A.B.'s best interests required that she be freed for adoption. Mother timely appealed.

Mother first claims that the juvenile court erroneously failed to consider her progress on the case plan from February 2001 to the date of the hearings, which began in December 2001, when determining whether mother's efforts at reunification had stagnated. She claims her therapist reported that mother had made "really good progress" in her treatment for borderline personality disorder during that ten month period, and therefore the court's oversight was not harmless.

When considering a petition to modify a prior disposition order and terminate parental rights, the juvenile court must first find the existence of changed circumstances, and then it must consider whether the child's best interests require termination. In re D.B., 161 Vt. 217, 219 (1993). A parent's stagnation in addressing the reasons for the child's removal from the home is a change of circumstances warranting evaluation of what disposition will meet the child's best interests. Id. Although mother is correct that the court must consider a parent's current circumstances in deciding whether termination is appropriate, In re C.B., 162 Vt. 614, 614 (1994) (mem.), the court may find stagnation if the parent's improvement falls short of the expectations set at the time the child was adjudicated CHINS. In re D.B., 161 Vt. at 219-220. Moreover, the court may find stagnation even where the evidence shows some improvement in parenting skills. Id. at 220.

We reject mother's argument that the court's change-of-circumstances decision was flawed for two reasons. First, contrary to mother's assertion, the court's findings reflect that it did consider mother's circumstances after SRS filed the termination petition in February 2001. The court began its change-of-circumstances analysis by stating that it "will not reiterate all of the above findings which relate to the inability of the mother to properly accept and benefit from the services offered to her." The only area of meaningful improvement since the initial case plan was mother's progress in therapy. The court's order is replete with findings that although mother participated in the plan of services, she failed to benefit from them in any meaningful way. Indeed, based on mother's own testimony in the termination hearing, the court found that she continued to minimize her responsibility for A.B.'s skull fractures. Second, as set forth above, the court may find a change of circumstances based on stagnation even where the parent has made some progress on the case plan. Thus, mother's progress in dealing with her borderline personality disorder is not as dispositive of the stagnation question as mother suggests. Notably, mother's therapist testified that he could not comment on mother's fitness to parent A.B. because he was not acquainted with her parenting skills even though he could opine about the improvement in her mental illness. We therefore find no error in the court's decision that mother's progress towards reunification had stagnated.

Mother next asserts that the record lacks evidence to support the court's finding that she would never welcome assistance with her problems. Mother argues that her mental illness is the primary impediment to her ability to benefit from services, and that therapy has helped her in this regard. We will uphold the challenged finding if the record shows that credible evidence supports it. In re A.F., 160 Vt. 175, 178 (1993). Weighing the evidence and making credibility determinations about the witnesses are the responsibilities of the family court, however. Id.

The record in this case refutes mother's claim. The finding she challenges states that mother "continues to be aggravated by outside assistance and it is unlikely that she will ever welcome it." There was abundant evidentiary support for that finding. Nearly all of the service providers who worked with mother on her parenting deficiencies acknowledged mother's willingness to let them into her home to fulfill their duties, but they also uniformly described her demonstrated unwillingness to heed their advice. Although mother made some progress in therapy, the evidence showed that mother sometimes acknowledges her own problems, and other times feels that she does not need treatment and can deal with her issues on her own. Her therapist indicated that mother feels defensive when issues regarding A.B. are discussed, and that treatment for mother's disorder must be continuous and ongoing into the distant future. Based on the evidence, it was reasonable for the court to find that it was unlikely mother would ever welcome assistance.

Finally, mother contests the court's conclusion that she would not be able to resume her parental duties within a

reasonable period of time. See 33 V.S.A. § 5540(3). Mother bases her challenge to that conclusion on her previous claim that the record does not support the court' s finding that she was unlikely to ever accept assistance with her problems. Without the challenged finding, mother argues, there was no other evidence or findings to support the court' s conclusion. Considering our decision that the record supports the finding mother challenges, we reject mother' s claim that the court' s conclusion has no support in the findings. Because the court' s finding supports its conclusion, the order must stand. See In re A.F., 160 Vt. at 178 (court' s conclusions will be

upheld if the findings support them).

Affirmed.

BY THE COURT:

---

Jeffrey L. Amestoy, Chief Justice

---

John A. Dooley, Associate Justice

---

James L. Morse, Associate Justice