

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-008

JULY TERM, 2003

	}	APPEALED FROM:
	}	
	}	Windham Family Court
	}	
In re E.S., A.S., and D.S.,	}	DOCKET NO. 11/12/13-1-00 Wmjv
Juveniles	}	
	}	Trial Judge: Robert Grussing, Ret.
	}	
	}	
	}	
	}	

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

Mother appeals the court's order terminating her residual parental rights over E.S., A.S. and D.S. She contends that the court erred in concluding that she would not able to resume parenting within a reasonable period of time. We affirm.

In July 2000, E.S., A.S. and D.S. were adjudicated children in need of care and supervision based on mother's neglect. The court adopted the initial disposition recommendation that the children remain in SRS custody subject to a plan of reunification. SRS subsequently filed a petition to terminate mother's residual parental rights. After a three-day hearing, the court granted SRS's petition in December 2002. The court found a substantial change in material circumstances had occurred because mother had stagnated in her ability to care for the children, and termination of parental rights was in the children's best interests. This appeal followed.

Mother argues that the trial court erred in terminating her residual parental rights because it incorrectly assessed her prospects of improving as a parent. Mother argues that, because SRS failed to provide her with "well-tailored" mental health services to facilitate improvement in her parenting ability, the trial court erred in concluding that she had stagnated. She also maintains that the trial court failed to assess, from the children's standpoint, what constituted a "reasonable period of time" for improving her parenting skills.

"A court may terminate parental rights at a modification hearing if it finds that there has been a substantial change in material circumstances since the disposition order and that termination is in the child's best interests." In re D.B., 161 Vt. 217, 219 (1993). We have explained that "stagnation" of parental ability is often the change in material circumstances that occurs. Id. at 220. "Stagnation" occurs when a person's parenting ability does not substantially conform to the expectations at the time of the CHINS adjudication and fails to conform with SRS's case plan. Id. The trial court's findings in support of changed circumstances will be affirmed unless they are clearly erroneous, and its conclusion will be affirmed if supported by the findings. In re B.S., 166 Vt. 345, 350 (1997).

We reject mother's first argument that the court erred in concluding that a substantial change in material circumstances had occurred. Based on evidence presented at trial, the court found that mother had made "little or no positive progress" in the areas identified for improvement at the time of the CHINS proceeding, including expectations that she would secure stable housing, obtain parenting education and valid driving privileges, maintain employment, and be able to support herself and the children. In addition to other concerns, the court also found that mother had "completely failed" to address her acute mental health needs. The court explained that mother's "anger, denial, and externalization of her present situation" had been a major roadblock to improving her ability to parent, and she showed no improvement in this area. Based on these findings, the court found "no difficulty" in concluding that there had been little or no significant improvement in the mother's ability to adequately parent the children, and that this constituted a change of

circumstances in the nature of stagnation.

These findings are supported by the record. Additionally, contrary to mother's argument, the court was not obligated to consider what services SRS might have provided, and the possible effect they might have had on mother's parenting ability, in arriving at its conclusion that mother had stagnated. See In re B.S., 166 Vt. at 353 (" The Legislature has not called for an open-ended inquiry into how the parents might respond to alternative SRS services and why those services have not been provided"). We therefore reject mother's claim that the trial court erred in finding that she had stagnated, and that her stagnation was a substantial change in material circumstances.

Mother next argues that the court erred in terminating her parental rights by failing to assess a " reasonable time for improvement" based on the needs of the children. She argues that the court did not state that the children were being adversely affected by maintaining legal ties with her, or would be adversely affected within a certain time period. Thus, mother argues, the court's findings do not support its conclusion that termination was in the children's best interests. We disagree.

Once the court has determined that a substantial change in material circumstances has occurred, it must next 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. We have stated that 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.).

In this case, the court considered the factors set out in 33 V.S.A. § 5540, and concluded that termination was in the children's best interests. As to the most important factor, the court found that mother would not be able resume her parenting duties within a reasonable period of time because it had been almost three years since the children had been taken into custody, and mother's ability to care for the children had not improved in any measurable degree. The court thus found " little or no evidence" that mother could or would improve as a parent. As the court explained, mother's " lack of improvement over almost a three year period coupled with the prognosis for change as a result of her mental health status, and in particular her distrust and denial, presents a dim prospect for accomplishing the needed improvement within any period of time, nonetheless within a reasonably foreseeable period of time."

The court's findings are not clearly erroneous, and they support its conclusion that termination of mother's parental rights is in the children's best interests. We have stated that when determining whether a parent will be able to resume parental duties within a reasonable period of time, the court must examine the period of time from the perspective of the child's needs. In re B.S., 166 Vt. at 353. While the court did not specifically state that it was assessing a reasonable period of time from the children's perspective, it is clear from the court's findings, and its conclusion, that it conducted its assessment based on the children's needs. Cf. In re C.L., 151 Vt. 480, 488-89 (1989) (trial court's failure to explicitly state that it used clear and convincing standard of proof did not require reversal where findings indicated that correct standard had been applied). The court found that the children had a positive relationship with their foster parents, mother had played a destructive role in their life at times, and, during the three year period between the CHINS and termination proceedings, mother's ability to parent had not improved to any measurable degree. The court concluded that, given mother's lack of progress, it was unlikely that her ability to parent would improve " within any period of time." These findings support the court's conclusion that termination was in the children's best interests.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

Marilyn S. Skoglund, Associate Justice

Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned