

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-076

JUNE TERM, 2007

In re D.H., Juvenile	}	APPEALED FROM:
	}	
	}	
	}	Windham Family Court
	}	
	}	
	}	DOCKET NO. 151-11-04 Wmjv
	}	
	}	Trial Judge: Karen R. Carroll

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

Mother appeals a decision of the family court denying her request to modify D.H.'s long-term foster-care-permanency plan to a plan with the goal of reunification. D.H. joins in mother's brief. We affirm.

The family court found the following facts. D.H. was taken into custody by court order on November 30, 2004, due to violent and threatening behavior expressed toward his mother, with whom he was living at the time. In connection with this incident, mother had told the police she could no longer control D.H. This incident was the latest in a series of calls to police regarding D.H.'s violent, out-of-control behavior. Following the hearing on the emergency detention order, D.H. was continued in the custody of the Department for Children and Families (DCF). D.H. was found to be a child in need of care and supervision on December 30, 2004. At the March 31, 2005 disposition hearing, the parties agreed that D.H. should remain in DCF custody. On November 21, 2005, the court held a permanency hearing at which DCF recommended long-term foster care. In its report, DCF noted that reunification was no longer feasible as family therapy had been discontinued and neither D.H. nor mother had followed through on efforts to improve their relationship. By agreement of the parties, D.H. was placed in a residential program for adolescents while a long-term foster-care situation was being investigated. The October 12, 2006 case plan continued to recommend long-term foster care. Although she had previously assented to this goal, mother contested this plan. Mother sought to have the case plan modified to seek reunification.

The court noted that, because it was mother who sought a change in the existing case plan, she bore the burden of proving that there had been a substantial change in material circumstances warranting a modification. The court concluded that she had failed to do so. The court evaluated mother's testimony regarding her relationship with D.H. "as lacking in any insight into her issues and the needs of her child at this time." In particular, although mother claimed substantial improvement in her relationship with D.H., they continued to have a conflict-riddled relationship, with neither being able to adopt the proper role in a parent-child relationship. Mother continued to have to call police on occasion when D.H. had unsupervised visitation with her. Ultimately, the

evidence did not indicate that there had been any change in the relationship between D.H. and mother since the November 2005 case plan. Significantly, mother had been advised repeatedly that her own mental-health treatment was critical to establishing a better relationship with D.H., but had refused to seek such treatment. Accordingly, the court ordered that the plan for long-term foster care continue.

On appeal, mother contests the family court's conclusion that there were no changed circumstances. We will affirm the findings and disposition order of the family court absent an abuse of discretion. In re L.R.R., 143 Vt. 560, 562 (1983). We will uphold the family court's decision following a modification hearing if its findings are not clearly erroneous and the conclusions are supported by the findings. In Re A.G., 2004 VT 125, ¶ 17, 178 Vt. 7.

Mother argues that the threshold for determining changed circumstances in this case is low because the modification mother seeks—from long-term foster care to potential reunification—would not necessitate a change in custody, visitation, or any other arrangement, and as such would not negatively affect the stability of D.H.'s life. This does not alter the fact, however, that the court found no evidence indicating that there had been any change in the relationship between mother and D.H. that would prompt reconsideration of the observations and goals of the 2005 case plan. Mother argues that the bare fact that she stipulated to the 2005 case plan, but now opposes it, is sufficient to constitute changed circumstances. Further, she emphasizes that D.H. also opposes long-term foster care and wishes to return home. Mother does not indicate, however, how these factors affect the objective analysis of the quality and progress, or lack thereof, in her relationship with D.H. Finally, mother points to some evidence tending to support the conclusion that her relationship with her son has improved in the past six months. This, however, is insufficient to create error where there is ample evidence supporting the family court's conclusion that there has not been a substantial change.

To the extent mother argues in the abstract that continued foster care is not in D.H.'s best interests, this argument is premature. The best-interests analysis should only be engaged once changed circumstances have been shown, thereby justifying reconsideration of the disposition.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice