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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-457

MARCH TERM, 2010

In re C.S., Juvenile	}	APPEALED FROM:
	}	
	}	Caledonia Family Court
	}	
	}	DOCKET NO. 4-1-09 Cajv
		Trial Judge: Harold E. Eaton, Jr.

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

Father appeals from the termination of his parental rights in son C.S. He argues that the court erred in concluding that father would not be able to parent C.S. within a reasonable period of time. We affirm.

In a November hearing, the court made the following uncontested factual findings, which we summarize here. C.S. was born in May 2008 and he has been in the custody of the Department for Children and Families (DCF) since January 2009. C.S. was placed with his maternal grandparents, where he is doing very well. Father has seen C.S. approximately twelve times since his birth, and on only two occasions since C.S. was placed in DCF custody. Father was incarcerated during part of 2009, but since his release in October 2009, he has seen C.S. just once. Father has a history of prior convictions for possession of malt beverage, possession and sale of marijuana, petty larceny, possession of a regulated drug, resisting arrest, and burglary, among other crimes. The court found that due to the infrequent contact, there had been no bonding between father and C.S. The court also found that while father currently had stable housing, the housing was not suitable for a small child, given that it was located in an area frequented by transients and the site of numerous police calls due to drug activity and other problems. The court found father had had difficulty maintaining sobriety in the past, although he had been sober for the month prior to the hearing.

Based on these and other findings, the court concluded that father had stagnated in his ability to parent C.S., and that termination of father's rights was in the child's best interests. In reaching its conclusion, the court considered the factors set forth in 33 V.S.A. § 5114. As to the most important factor, the court found that father would not be able to parent within a reasonable period of time as measured from the child's perspective. It explained that C.S. had been in DCF custody for half of his life, and he had a great need for permanency. The court considered father's track record, noting that it included drug use, depression, anxiety, incarceration, and criminal convictions. The court also observed that father had been out of jail and able to maintain his sobriety for a relatively short period, his living conditions were uncertain, and there were unanswered questions surrounding a brain injury that father suffered as well as father's uncertain physical ability to raise a small child. This, coupled with the lack of any bonding with C.S. or any existing parental relationship with the child, led the court to conclude that father would not be able to resume his parental duties within a reasonable period of time. Father appealed.

On appeal, father argues that the court erred in concluding that he would not be able to parent C.S. within a reasonable period of time. Father maintains that by looking to the child's age and the amount of time that the child had been in DCF custody, the court failed to focus "on the individual child in question," In re C.L., 2005 VT 34, ¶ 20, 178 Vt. 558, 878 A.2d 207, and on this family's present circumstances. Father suggests that C.S. is not suffering any harm from being in the foster care system and that there is no evidence that father's contact with C.S. is harmful to the child.

These arguments are without merit. As we have often repeated, the family court must consider four statutory factors in evaluating whether termination of a parent's rights is in a child's best interests. See 33 V.S.A. § 5114. 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. In re B.M., 165 Vt. 331, 336, 682 A.2d 477, 479-80 (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, 572 A.2d 1350, 1351 (1990) (mem.).

The court applied the appropriate standard here, and its conclusion that father could not parent C.S. within a reasonable period of time is well-supported by its findings and the record. Certainly, the court did not err in considering the child's age and the length of time he had been in DCF custody in conducting its analysis. These were critical factors in determining if a reasonable period of time had elapsed from the perspective of the child. In fact, they demonstrate that the focus of the court's inquiry was properly "on the individual child in question." In re C.L., 2005 VT 34, ¶ 20. The court found that C.S. had a great need for permanency, and given father's track record, father would not be able to meet the child's needs within a reasonable period of time. In conducting its analysis, the court was not obligated to consider whether continued parent-child contact was harmful to C.S., nor was the proper focus whether C.S. was being harmed by continuing in foster care. To the extent father disagrees with the court's assessment of the evidence, we reiterate that it is exclusively the role of the family court, not this Court, to determine the credibility of the witnesses and weigh the evidence. In re A.F., 160 Vt. 175, 178, 624 A.2d 867, 869 (1993). We find no error.

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice