

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2010-038

JUNE TERM, 2010

In re S.L., Juvenile

} APPEALED FROM:  
}  
} Bennington Family Court  
}  
} DOCKET NO. 66-5-08 Bnjv

Trial Judge: David A. Howard

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

Father appeals termination of his parental rights to his daughter, S.L. On appeal, father argues that the court's conclusion that father would not be able to parent within a reasonable period of time is not supported by the court's findings or the evidence. We affirm.

The court found the following facts by clear and convincing evidence. S.L. was born February 4, 2008. In May 2008, the Department for Children and Families (DCF) filed a petition alleging that S.L. was a child in need of care or supervision (CHINS) for failure to thrive. At the time, S.L. was under her mother's care. Father was not living with them and had minimal involvement in S.L.'s life. DCF obtained an emergency order and placed S.L. in a foster home. In September 2008, the parents agreed to the CHINS adjudication, but mother contested the disposition. The subsequent disposition hearing resulted in continued DCF custody with parent-child contact.

From the beginning, father had a difficult relationship with DCF. He felt he had no responsibility for the circumstances that resulted in S.L. being in DCF custody and therefore did not understand why he was required to participate in programs or counseling. He was verbally aggressive and angry with the DCF caseworker. He also inappropriately vented these frustrations during visits with S.L.

The initial disposition had a goal of reunification. It required parents to regularly visit with S.L., obtain stable housing, get their finances in order, obtain counseling, cooperate with DCF, and understand and address S.L.'s medical and developmental needs. A parent educator worked with parents beginning in October 2008. She explained S.L.'s failure-to-thrive condition and helped with transportation and housing. The parent educator found the parents made limited progress in some areas but discontinued efforts in mid-2009 due to lack of progress. Father attended a parenting program, but was unable to put the elements of the program into practice. Father was also resistant to personal counseling. Following a domestic assault conviction against mother in June 2009, father was ordered to engage in domestic violence counseling as part of his probation. He had not done so by the time of the final hearing in December 2009.

Initially, visits occurred at S.L.'s grandmother's house, but the visits were relocated to DCF's offices after DCF found a convicted sex offender present in the home despite clear requirements otherwise. Parents were sporadic in attending visits. The frequency of the visits was reduced because of the number of cancellations. Once visits were moved to DCF, father did not use the time effectively and would often be lying or sitting on a couch. Father refused to change diapers during visits. Father did not attend visits alone if mother had to cancel. Parents brought inappropriate snacks to visits and did not understand the importance of nutrition, especially given S.L.'s failure-to-thrive diagnosis.

In May 2009, DCF filed petitions to terminate parents' residual parental rights. Mother agreed to termination contingent on father's rights being terminated. Father contested termination, and the court held a two-day hearing.

The court concluded that there were changed circumstances based on father's stagnation. The court further concluded that termination was in S.L.'s best interests. Father appeals, and argues that the court's conclusion is not supported by its findings or the evidence.

When the termination of parental rights is sought, the family court must first find that there has been a substantial change in material circumstances, and second, that termination of parental rights is in the child's best interests. 33 V.S.A. § 5113(b); In re B.W., 162 Vt. 287, 291 (1994). A substantial change in material 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 B.W., 162 Vt. at 291 (quotation omitted). If changed circumstances are found, the court must assess the child's best interests, as enumerated in the statutory criteria. 33 V.S.A. § 5114. The most important factor is whether the parent will be able to resume parenting duties within a reasonable period of time. In re J.B., 167 Vt. 637, 639 (1998) (mem.). A reasonable period of time is measured from the perspective of the child's needs. In re B.M., 165 Vt. 331, 337 (1996).

On appeal, father contends that the court's conclusion that he will not be able to resume parenting within a reasonable period of time is not supported by the court's findings or the evidence. Father presents his current inability to resume parenting as simply a financial problem. He explains that he was unable to follow through with required counseling because he could not pay an outstanding debt to the counseling service and that by January 2010 he would receive funds to do so. Therefore, he argues that the court should have granted him another month to demonstrate an ability to resume parenting. Father argues that this additional time would not be harmful to S.L. because the court found that she is doing well in her foster home.

On appeal, we will uphold the family court's conclusions if supported by the findings and affirm the findings unless clearly erroneous. In re J.B., 167 Vt. at 639. We conclude that the evidence supports the court's finding that father will not be able to resume parenting within a reasonable period of time. Father's portrayal of his lack of progress as simply a financial barrier is contrary to the evidence and the court's findings. The trial court discounted this excuse, finding that father had the ability to finance the counseling and "there has been time that [father] could have paid much or this entire bill and did not do so." In any event, the court based its conclusion on many factors, not just father's failure to obtain counseling. The court considered father's "modest role" in S.L.'s life, father's failure to consistently attend and actively participate in visits with S.L., and father's failure to exhibit an understanding of S.L.'s failure-to-thrive diagnosis and consequent needs. Given S.L.'s young age, the number of issues father still needs

to address, as well as the limited role father plays in S.L.'s life, the evidence supports the court's conclusion that father will not be able to resume parenting within a reasonable time, as measured from the child's perspective. We find no error.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice