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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-179

AUGUST TERM, 2010

In re T.C., Juvenile	}	APPEALED FROM:
	}	
	}	
	}	Windham Family Court
	}	
	}	
	}	DOCKET NO. 25-3-09 Wmjv
		Trial Judge: Katherine A. Hayes

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

Father appeals from a family court order terminating his parental rights to the minor T.C. He contends the evidence does not support the trial court's finding that he could not resume parental responsibilities within a reasonable time. We affirm.

Father and mother met in 2007, and their child, T.C., was born in July 2008. Mother also has three older sons who lived with her at the time. Both parents have a lengthy history of alcohol and substance abuse. In October 2008, when T.C. was three months old, mother was incarcerated and subsequently admitted to the Tapestry Program, a residential substance-abuse program. Mother voluntarily placed T.C. and his older brothers in the care of the Department for Children and Families. T.C. and an older brother were placed in a foster home, but returned to mother in December 2008, when she was discharged from Tapestry.

Father, in the meantime, had initiated a parentage action as to T.C., which was established in December 2008. Father acknowledged that he drank heavily, used illegal drugs, and saw little of T.C. from October to December 2008, allegedly because he was severely depressed by the child's absence. In January 2009, father was arraigned on a charge of domestic assault against his sister and released on conditions. A few months later, in March 2009, father overdosed on medications and entered a detox program. Later that month, father physically assaulted mother, resulting in additional charges of domestic assault and violation of conditions of release. Because of the chaos in the home, DCF initiated a CHINS proceeding and the court transferred custody of the children to DCF. T.C. and an older brother were placed in another foster home, where they have since remained.

In April 2009, father was convicted of domestic assault and violations of conditions of release and sentenced to nine to twelve months, all suspended. His probation conditions required that he attend and complete the Batterers Intervention Program. The initial case plan, filed in May 2009, included provisions requiring father to comply with all probation conditions, work with DCF to develop parenting skills, participate in substance abuse and mental health counseling, and demonstrate progress in his ability to safely parent T.C. Father worked with a parent educator and regularly attended supervised visits with T.C. for several months. In late July 2009, however, he again physically assaulted mother, resulting in charges of aggravated

domestic assault and violations of conditions of probation. Father was re-incarcerated and terminated from the parent-education program, where he had made some progress.

T.C. was adjudicated CHINS in August 2009, and the following month the State filed a petition to terminate the parental rights of both parents. In November 2009, father pled guilty to aggravated domestic assault stemming from the incident in July, was sentenced to 18 months to three years, and admitted to a pre-approved furlough intensive domestic abuse program (IDAP). In December 2009, father entered a residential treatment program operated by Phoenix House in Brattleboro, where he remained at the time of the TPR hearing in March 2010. Mother voluntarily relinquished her parental rights prior to the hearing.

The court issued its decision in April 2010. In its findings, the court acknowledged that father had completed the first three months of the IDAP program and had made progress toward understanding and changing his violent behavior. The court also noted the testimony of father's individual counselors that he was motivated to change and had made strides toward improving his self-understanding and parenting skills. The court concluded, however, that father's short-term progress was insufficient to demonstrate that he could safely and reliably resume full-time parental responsibilities within a reasonable time. The court observed that the case plan goals were established in May 2009 but, as a result of father's acts of violence, abuse of drugs, and resulting incarceration, he had not begun to work effectively on the plan until his admission to the Phoenix program in December 2009, some seven months later. The court also noted that father's sentences will run, at a minimum, to January 2011 and potentially to July 2012, and expose him to a constant risk of re-incarceration for any violation. The court further observed that, at the time of hearing, father had completed only three months of the IDAP programming, which would require at least an additional eight to ten months, and perhaps longer, to complete. Father also had no job, and no housing suitable for a child.

The trial court thus found that father could not assume full-time parenting of T.C or provide him with the basic requirements of food, housing, and a safe and stable home free from domestic violence and substance abuse any sooner than a year from the date of the proceedings, and that it would be unsafe to place the child in father's care until he had completed all of his programming. From the perspective of a young child in need of permanence and stability, the court concluded that this was not a reasonable period of time to wait. The court also found that T.C. had become fully integrated into his foster home, which he shared with an older brother, that he was thriving, and that he had a close and loving relationship with his foster parents, who were interested in adoption. The court thus concluded that termination was in T.C.'s best interests, and granted the State's petition. This appeal followed.

Father contends the evidence and findings do not support the trial court's conclusion that he could not resume parental responsibilities within a reasonable period of time. Whether termination occurs at the initial disposition or later, our review is deferential. We will not disturb the trial court's findings unless clearly erroneous, nor its conclusions if reasonably supported by the findings. In re J.B., 167 Vt. 637, 639 (1998) (mem.). As the trial court here acknowledged, the "most important" of the statutory factors for determining the best interests of the child is whether the parent will be able to resume parental responsibilities within a reasonable time. Id. The reasonable period of time must be measured from the child's perspective, In re B.M., 165 Vt. 331, 337 (1996), and may take account of the child's young age or special needs. In re J.S. & S.S., 168 Vt. 572, 574 (1998) (mem.).

Father asserts that the evidence does not support the court's finding that it would be at least a year before he could resume parental responsibilities. On the contrary, Melissa Barton, a

Department of Corrections probation and parole officer, testified that it could take up to eighteen months to complete an IDAP program, and father himself testified that his program could run from thirteen to fourteen months. In light of father's extensive history of domestic violence and substance abuse, the court's finding that it would not be safe to place the child with father until he completed all programming, including substance-abuse counseling and parenting education was reasonable, and thus its finding that father could not resume parental responsibilities within at least a year was amply supported. Father cites the testimony of another DOC official that he could transition through IDAP and even begin cohabitation with T.C. in as little as six months, but the same official also testified that completion of IDAP generally required at least a year, and noted that any contact with the child would also require DCF approval, which in turn would require additional parent-education and other programming. Father also cites a DCF caseworker's testimony that a reunification plan could take between six and ten months to be fully realized, but this assumed that father had already completed all of the case plan requirements, including substance and domestic abuse counseling, which would require additional time. We thus discern no merit to father's claim that the trial court's findings in this regard were unsupported or clearly erroneous.

Father also cites evidence that he had begun to make progress in residential treatment during the three months preceding the termination hearing. The trial court here fully recognized father's recent progress, but concluded "with regret" that it was "too little, too late" and that it had not brought him to the point where he could safely resume parenting within a reasonable time. Again, we find no basis to fault this conclusion. See In re J.B., 167 Vt. at 640 (rejecting claim that the family court may not terminate parental rights where the evidence demonstrated that the parent had made recent progress in meeting the case plan goals).

Father also faults the trial court's conclusion that a year was the appropriate measure of a reasonable period of time. The child's DCF caseworkers testified to the need to establish permanency for T.C. as early as possible because of his young age, and we have recognized that the trial court may consider a child's "tender age" in measuring the need for permanency. In re J.S. & S.S., 168 Vt. at 574. Accordingly, we find no error in the court's measure of a reasonable period of time. Father also appears to suggest that the trial court's decision to terminate at initial disposition must be measured by a more stringent standard, but father cites no authority to support the claim and we have drawn no such distinction in evaluating the best interests of the child. See In re J.T., 166 Vt. 173, 177 (1997) (observing that parental rights may be terminated "at the initial disposition hearing if the court finds it to be in the best interests of the child to do so"). Accordingly, we find no basis to disturb the judgment.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice