

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-001

APRIL TERM, 2017

In re B.G., Juvenile

} APPEALED FROM:
}
} Superior Court, Addison Unit,
} Family Division
}
} DOCKET NO. 1-1-15 Anjv

Trial Judge: Samuel Hoar, Jr.

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

Mother appeals termination of her parental rights to her son B.G., born in September 2006. On appeal, mother argues that the evidence does not support the court's finding that mother does not play a constructive role in B.G.'s life. We affirm.

Mother and father separated when B.G. was eleven months old. Mother was in two subsequent relationships. All three relationships were abusive. In 2010, mother was prescribed Percocet, became addicted, and eventually began using heroin. She used ten to fifty bags a day and at times was under the influence when the children were in her care. In 2011, mother moved to New York and left B.G. with his grandfather and step-grandmother. The step-grandmother took responsibility for B.G.'s school and medical needs and mother did not participate in his care. Although B.G. had limited time with mother after 2011, he witnessed domestic violence and suffered from anxiety as a result. In January 2014, the court granted the Department for Children and Families (DCF) custody of B.G.'s half-sister. B.G. remained with his grandparents. DCF did not immediately seek a custody order, but the parties agreed that if mother attempted to remove B.G. from his grandparents' care, then DCF would seek an order granting conditional custody to grandparents. Between January 2014 and October 2014, mother had three failed attempts at residential drug treatment. She continued to use marijuana while in a medication assisted treatment program. The State filed a petition alleging B.G. was a child in need of care or supervision (CHINS) in January 2015. Based on the evidence, the court found, by clear and convincing evidence, that B.G. was CHINS for lack of proper parental care or abandonment. This Court affirmed, holding that B.G. was CHINS due to abandonment. In re B.G., 2016 VT 107, __ Vt. __.

Termination was sought at the initial disposition. Mother was provided notice of the termination hearing, but did not attend. The court adopted the findings from the CHINS order and made further findings on the record. The court noted that although termination was being sought at the initial disposition, the evidence demonstrated there was a change of circumstances due to stagnation. The court made the following findings related to the child's best interests. B.G. had

virtually had no relationship with his mother and had not seen her since at least December 2015. B.G. had a healthy relationship with his foster parents, who are his grandfather and step-grandmother. They have provided him with a healthy, happy, supportive home and met his physical, educational, and social needs. Since living with them, B.G.'s behaviors have improved and his need for services has diminished. There was no evidence that mother will be able to resume parental duties within a reasonable period of time. She discontinued her substance-abuse treatment, lacked a stable living situation, and has played no meaningful role in B.G.'s life over the previous year. Further, mother does not play a constructive role in B.G.'s life. The court concluded that termination was in B.G.'s best interests. Mother filed this appeal.

The family court may terminate parental rights at the initial disposition proceeding if the court finds by clear and convincing evidence that termination is in the child's best interests. In re J.T., 166 Vt. 173, 177, 179 (1997). In assessing the child's best interests, the court must consider 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.). The reasonableness of the time period must be measured from the child's perspective. In re B.M., 165 Vt. 331, 337 (1996). On appeal, we will uphold the family court's conclusions if supported by the findings and affirm the findings unless clearly erroneous. In re A.F., 160 Vt. 175, 178 (1993).

On appeal, mother argues that the evidence does not support the court's finding that mother does not and cannot play a constructive role in B.G.'s life. In finding that mother had not played a constructive role in B.G.'s life, the court found, in part, that mother had not had contact with B.G. since December 2015 because contact was subject to B.G.'s agreement and he had not agreed to meeting mother "based on his belief that she was dishonest with him" about her anger towards him for declining visits in December 2015 and that visits with mother were not safe and healthy for him.

Mother claims that the court's finding that B.G. has not wanted contact with mother for a year because he believes mother is angry with him is not supported by competent evidence. She asserts that the finding is solely supported by double hearsay statements. Information about B.G.'s feelings towards visits with mother came out twice during the termination hearing. First, mother's DCF caseworker testified that B.G. was nervous and scared to have visits with mother. Second, B.G.'s step-grandmother testified that B.G. felt that mother had not been truthful with him and that he had a lot of anxiety about her visits. On both occasions, there was no objection to this testimony. Having failed to object to the testimony at trial, mother has not preserved this issue for appeal. In re C.L., 151 Vt. 480, 491 (1989) (declining to consider argument that finding was based on hearsay where no objection was made below).

Moreover, contrary to mother's assertion, the court's assessment that termination was in B.G.'s best interests was supported by other evidence in the record. "Hearsay evidence is admissible in termination proceedings as long as it is not the sole basis for termination of parental rights." In re A.F., 160 Vt. at 181. The remaining unchallenged findings are that mother discontinued her substance-abuse treatment, did not have appropriate housing, was not able to meet B.G.'s needs, and most importantly, would not be able to resume parenting within a

reasonable period of time. These findings all support the court's decision that termination was in B.G.'s best interests.

Affirmed.

BY THE COURT:

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Superior Judge,
Specially Assigned