



Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

AUGUST TERM, 2022

In re R.B., Juvenile	}	APPEALED FROM:
(S.B., Father*)	}	
	}	Superior Court, Chittenden Unit,
	}	Family Division
	}	CASE NO. 296-7-19 Cnjv
		Trial Judge: A. Gregory Rainville

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

Father appeals from the termination of his parental rights in R.B. We affirm.

R.B. was born in June 2019. Father was incarcerated at the time and mother was under the supervision of the Department of Corrections (DOC). Mother was reincarcerated in mid-July 2019 and R.B. was placed in the custody of the Department for Children and Families (DCF). R.B. was adjudicated as a child in need of care or supervision and the court adopted a case plan that had a goal of reunification with parents.

In August 2021, DCF moved to terminate parents' rights. Following a hearing on the petitions in December 2021 and March 2022, the court granted DCF's request. It made the following findings. Father began visiting R.B. in late November 2019 when he was released from jail. Mother was released from jail in late January 2020 and parents began attending visits together. Parents have substance-abuse issues, and both suffered relapses while R.B. was in DCF custody. Parents were homeless after March 2020, largely living in hotels paid for by the State. Father testified at the March 2022 hearing that parents had secured an apartment paid for by the State.

While parents made some progress, mother's second relapse in four months caused DCF to stop parents' unsupervised overnight visits with R.B. As of July 2021, visits were returned to the DCF office. Parents requested less visitation than proposed by DCF and they failed to consistently attend visits. In August 2021, DCF worked with parents to develop a visitation plan that parents could commit to; parents indicated that they could realistically visit R.B. twice per week. At the end of August 2021, parents stopped visiting R.B. altogether. They also stopped communicating with DCF. By the March 2022 termination hearing, parents had not seen R.B. for almost seven months. Because parents ceased contact with DCF, DCF had no information regarding parents' housing situation, sobriety, or their progress on other case plan goals. Father

acknowledged at the hearing that he had pending felony charges and that he remained under DOC supervision.

R.B. has been in the same foster home since she was six weeks old. She has a close, loving relationship with her foster family and they were meeting her needs. R.B. is happy, healthy, and fully adjusted to her foster home.

Based on these and other findings, the court concluded that parents had stagnated in their ability to parent and that termination of their rights was in R.B.'s best interests. The court cited parents' failure to visit R.B. for over six months and their failure to communicate with DCF, causing DCF to have no information about parents' current circumstances. It found that parents continued to lack stable long-term housing. The court concluded that these factors constituted a change in circumstances sufficient to modify the disposition order. The court further concluded that the statutory best-interests factors supported termination. It found that parents had no relationship with R.B. while R.B. had a close relationship with her foster parents. Parents did not play a constructive role in R.B.'s life and after August 2021, they played no role.

The court also concluded that neither mother nor father could parent R.B. within a reasonable time. It emphasized that R.B. was almost three years old and had been in DCF custody almost all her life. She needed stability and permanency. The court rejected as not credible parents' assertion that they were ready to parent R.B. immediately. It found that parents failed to show that they were maintaining sobriety or otherwise complying with the case plan goals. Even if there was proof of sobriety, the court continued, parents would need to rebuild a relationship with R.B. and R.B. would need time to transition from her long-term foster home. The court determined that it was not reasonable from R.B.'s perspective to afford parents more time to build a relationship with her given that parents had chosen not to visit her for more than six months; continued delay was not in R.B.'s best interests. Father appeals from the court's termination order.

Father challenges the court's conclusion that there was a change of circumstances sufficient to modify the disposition order. He argues that he did not stagnate in his ability to parent. He cites his own testimony regarding his housing situation and contends that, to the extent that he was required to obtain private housing, his failure to find such housing was not his fault. With respect to visitation, father states that the evidence was not clear that the breakdown in communication with DCF was his fault and he asserts that this breakdown in communication prevented him from visiting R.B.

When the termination of parental rights is sought, the trial court must conduct a two-step analysis. In re B.W., 162 Vt. 287, 291 (1994); 33 V.S.A. § 5114. It must first find a change in circumstances warranting modification of the existing disposition order; it must then consider if termination of parental rights is in a child's best interests. In re B.W., 162 Vt. at 291. A change in circumstances is most often found when a parent's ability to care for a child "has either stagnated or deteriorated over the passage of time." Id. (quotation omitted). On appeal, we will affirm the trial court's findings unless they are clearly erroneous, and we will affirm its conclusions if supported by the findings. In re B.S., 166 Vt. 345, 350 (1997). We leave it to the trial court to weigh the evidence and assess the credibility of witnesses. In re A.F., 160 Vt. 175, 178 (1993).

The court's conclusion as to a change in circumstances is well supported by its findings and by the record. As set forth above, parents stopped visiting R.B. in August 2021 and they had not seen her for almost seven months at the time of the termination hearing. They did not communicate with DCF or respond to DCF's efforts to contact them. DCF tried to create a workable visitation schedule for parents, to no avail. Because of parents' decisions, DCF had no information as to their housing situation, sobriety, or their progress on other case plan goals. The DCF case worker testified at the March 2022 hearing that she had no idea where either parent was living. Father testified that they were living at Harbor Place, which he described as temporary housing. The court did not err in finding that parents had not secured long-term housing. The court did not find that DCF was to blame for parents' decisions to cut off contact and communication. To the contrary, it described the case worker's attempts to contact parents without success. While father argues that he was making progress, we leave it to the trial court to weigh the evidence and assess the credibility of witnesses. See In re S.B., 174 Vt. 427, 429 (2002) (mem.) ("Our role is not to second-guess the family court or to reweigh the evidence, but rather to determine whether the court abused its discretion in terminating . . . parental rights . . ."). We find no basis to disturb the court's conclusion as to changed circumstances.

Father next asserts that the court erred in concluding that he could not parent R.B. within a reasonable time. According to father, the court skimmed over this factor and convoluted the evidence and its analysis. He maintains that he made considerable progress in meeting the case plan goals and that there was uncontroverted testimony that he was able to begin parenting R.B. immediately. He further asserts that there was no evidence to show that a transition from R.B.'s foster home to parents' care would take time and no evidence to show exactly how long it would take for father to build a relationship with R.B. He argues that his failure to have any contact with R.B. for more than six months is insufficient in itself to support the termination of his rights.

We reject these arguments. To determine the best interests of a child, the court must consider four statutory factors. 33 V.S.A. § 5114. The most important factor is the likelihood that the natural parent will be able to resume his or her parental duties within a reasonable time. See In re B.M., 165 Vt. 331, 336 (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 (1990) (mem.).

The court applied the appropriate standard here and its conclusions are supported by the findings and the evidence. As previously discussed, the court did not find that father was making progress in addressing the case plan goals. It rejected as not credible parents' assertion that they were ready to parent R.B. immediately. R.B. had been in DCF custody for almost three years and she was in need of permanency and stability. Parents had no contact with R.B. for almost seven months leading up to the termination hearing and R.B. could not wait for parents to reengage with DCF and attempt to build a relationship with her. The court could reasonably conclude that any transition from R.B.'s long-term foster home to a new placement would take time, as would building a relationship with parents. It did not err in concluding that it would take more time than was reasonable from R.B.'s perspective. The court found that all the other statutory factors similarly supported termination of father's rights. He had no relationship with R.B.; he did not play a constructive role in her life; R.B. was well-adjusted to her foster home; and she had a close loving relationship with her foster family. Father fails to show that the court abused its discretion in terminating his parental rights.

Affirmed.

BY THE COURT:

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice