



at least three months before he might find an apartment of his own, provided that he could maintain steady employment. The court found that father was not currently able to parent B.W.

The court turned next to the larger question of whether father would be able to parent B.W. within a reasonable time. The court found that in the week before the hearing, father had begun training for a part-time job, and he had refrained from using marijuana for the prior three months. The court found that father's testimony was largely undermined, however, by his insistence that there had never been much need for DCF to become involved in the first place. The court found that father seemed reluctant to confront the facts and circumstances that had led to the matter coming before the court, and he seemed unable to acknowledge any responsibility for the crises that had occurred in the early part of 2003. The court was also troubled by father's testimony that mother was mainly to blame for his predicament, and that she had "ruined his life;" the court noted that father seemed fixated on this point.

The court found that, to his credit, father had been able to put B.W.'s needs ahead of his own by seeking help in February 2003. He had made a far more comprehensive attempt than mother to engage in services to achieve reunification. He had tended to consistently visit B.W., he had demonstrated a real interest in the child's well-being and he loved playing with his son. The court found, however, that father continued to struggle with basic issues such as stable housing and steady employment. The court explained that these two issues were part of the disposition report and he had made strides toward either only within the few days before the hearing. Father acknowledged that as he moved from a shelter into a rooming house, it would still take months before he could secure an apartment, assuming that he maintained steady work. The court found that steady work had been an elusive proposition for father from the start, explaining that father had been unemployed or marginally employed for almost two years despite the assistance of numerous caseworkers. The court stated that time would tell if his current part-time position would develop into a permanent, steady position, but the court needed to weigh that time against B.W.'s need for permanency and stability.

On balance, in considering the statutory factors, the court concluded that father's obvious love and affection for B.W. did not outweigh the risks that father would need an extended period of time beyond what had already elapsed to get into a situation where he could resume parental duties. The court found that B.W. had become well-adjusted to his home with the foster family. B.W.'s material needs were being met; and he also had stability, love and guidance. The child's adjustment to the home had been positive, and having spent almost half of his life there, the court found that it was also entrenched. The court concluded that it would be harmful to uproot B.W. from this oasis of stability at some as yet undeterminable point down the road when father had finally stabilized and become ready for B.W.'s return. It therefore concluded that termination of father's parental rights was in B.W.'s best interests. Father appealed.

Father first argues that the family court erred because its findings do not show that it weighed the amount of time that father needed to improve against the amount of time that B.W. could wait. Father asserts that the court could not predict at what point father would be able to resume parenting, and it speculated that, at whatever point that was, B.W. would be harmed by the removal from his foster home. According to father, there was no evidence as to the prospect of such harm, and without such evidence, the court's ultimate conclusion regarding a "reasonable period of time" is unsupported.

When the termination of parental rights is sought, the family court must conduct a two-step analysis. In re B.W., 162 Vt. 287, 291 (1994); see 33 V.S.A. § 5532(a). It must first find that there has been a substantial change in material circumstances; second, the court must find that termination of parental rights is in the child's best interests. In re B.W., 162 Vt. at 291. In determining a child's best interests, the court must consider the factors set forth in 33 V.S.A. § 5540. 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 (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.).

We find father's first claim of error without merit. The court's findings reflect that it properly considered whether father would be able to resume his parenting duties within a reasonable period of time. The court concluded that father would require an extended period of time beyond what had already elapsed before he could be in a position to parent B.W. This conclusion is supported by the court's findings, which are in turn supported by the record. We need not

reiterate all of the court's findings here. The court also found that B.W. was doing well with his foster family, and he had been in their care for more than half of his life. The court recognized that father loved B.W., and B.W. was happy and excited to see father during their visits. The court concluded that on balance, however, father's love for B.W. did not outweigh the risks associated with further delay. Given B.W.'s young age, and his need for permanence and stability, along with father's failure to make any significant progress in meeting the goals of the case plan, as well as father's current situation and his future prospects, the court did not err in concluding that father would not be able to resume parenting within a reasonable period of time as measured from B.W.'s perspective. See In re J.S., 168 Vt. 572, 574 (1998) (mem.) (upholding family court's conclusion that a reasonable time had passed for reunification based on family court's findings as to age of children, length of time that they had been separated from parents, and their need for stability and permanence).

Father next asserts that the family court failed to properly consider whether the severance of the father-child bond would be harmful to B.W. Relying primarily on out-of-state case law, father argues that the family court must assess whether the disruption of the parent-child bond would be less harmful to the child than the disruption of the foster parent-child bond. Father maintains that, in this case, the strong bond between B.W. and father was acknowledged by the court, but there was insufficient evidence presented regarding the consequences of severing that bond. Father relies on In re E.M., 620 A.2d 481 (Pa. 1993), in support of his argument.

We find no error. The family court properly considered the relationship between father and B.W. in reaching its conclusion that termination of father's parental rights was in B.W.'s best interests. As previously discussed, the court recognized the bond that father shared with the child, but it concluded that father's love and affection for B.W. did not outweigh the risks associated with further delay. The court's analysis reflects its consideration of the factors set forth in 33 V.S.A. § 5540, and its findings are supported by the record.

Father's reliance on In re E.M. is misplaced. First, that decision is not binding on this Court. The decision also reflects the application of a different legal standard than that employed in Vermont, and it is factually distinguishable. In In re E.M., the Pennsylvania Supreme Court reversed and remanded a termination order based on its conclusion that an important element relating to the "needs and welfare" of the children had not been adequately considered in the proceeding below. See 620 A.2d at 483-84 (noting that in considering what situation would best serve a child's needs and welfare, a court "must examine the status of the natural parental bond to consider whether terminating the natural parents' rights would destroy something in existence that is necessary and beneficial" (parentheses and quotations omitted)). As the court explained, in the proceedings below, the trial court had recognized that the question of the bond between the children and their natural mother had not been fully considered, but it had nonetheless concluded that once a parent had been judged incompetent, there was no need to ascertain whether a beneficial bond existed between the natural parent and the child, nor whether additional factors counsel that continuing the relationship might otherwise serve the needs and welfare of the child. Id. at 485. The court rejected this reasoning, stating that it was clearly conceivable that a beneficial bonding could exist between a parent and child, such that, if the bond were broken, the child could suffer extreme emotional consequences. Significantly, the State's expert had testified at the hearing that a better assessment of the relevant emotional factors could have been made if an evaluation had been conducted of the children's interactions with their natural mother and with their foster father. Thus, the court concluded that "[t]o render a decision that termination serves the needs and welfare of the child without consideration of emotional bonds, in a case such as this where a bond, to some extent at least, obviously exists and where the expert witness for the party seeking termination indicates that the factor has not been adequately studied, is not proper." Id.

Unlike E.M., and notwithstanding the different legal standard employed therein, the family court in this case did consider the bond that father shared with B.W. in reaching its conclusion. It evaluated the relationship in terms of the factors set forth in 33 V.S.A. § 5540, and concluded that termination of the relationship was in B.W.'s best interests. We find no error in the family court's order.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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<sup>\*</sup> Mother did not appeal from the family court's order.