ENTRY ORDER

VERMONT SUPREME COURT FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2009-010

MAY 2 9 2009

MAY TERM, 2009

In re y D.B., M.B. and N.B., Juveniles	}	APPEALED FROM:
	}	Franklin Family Court
	}	DOCKET NOS. 65-5-05, 55-4-06 & 56-4-06 Frjv
		J

Trial Judge: Mark J. Keller

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

Mother appeals from the termination of her residual parental rights in D.B., M.B., and N.B. She argues that the court made inadequate findings regarding certain statutory factors. We affirm.

Mother is the parent of sons, D.B., born in November 1995, N.B., born in April 1998, and M.B., born in July 2000. The Department for Children and Families (DCF) first became involved with the family in January 2003 because the children lacked proper care. In 2005, D.B. began to display disturbing behavior at school. That same year, mother went to Kentucky to marry a man who was incarcerated. Mother left N.B. and M.B. with their grandparents, but she made no arrangements for D.B., who was nine years old. D.B. was taken into DCF custody and he was adjudicated as a child in need of care or supervision (CHINS). In April 2006, N.B. and M.B., as well as an older son T.B., were removed from mother's care and adjudicated CHINS. The children were later returned to mother's care, but they returned to foster care in November 2007. In July 2008, DCF filed a petition to terminate mother's residual parental rights. Following a hearing, the court granted its request.

Mother does not challenge any of the court's findings as clearly erroneous, and thus, we summarize them here. Mother has consistently struggled to maintain appropriate housing and sanitary living conditions; she has engaged in inappropriate romantic relationships that have had a detrimental effect on the children; and she has consistently demonstrated poor parenting skills. Mother has allowed her various residences to deteriorate into a filthy condition. She married a man serving four life sentences, and told her children to refer to this man, whom they had never met, as "Daddy Eric." Mother then met another inmate, also serving a long sentence, and began a relationship with him. She divorced the first man and married the second, Billy Currier, in 2005. She made her children write letters to Mr. Currier, whom they had similarly never met, and call him "Daddy Billy." During this time, mother was also having an affair with another man, who would stay overnight at her house. She instructed the children to call him "Uncle Paul." Mother also carried on a "letter relationship" with six or seven other men. Mother indicated that she intended to live with Mr. Currier when he was released from jail. The court

found that mother's romantic life was confusing to the children, and that D.B. responded very negatively to "Uncle Paul's" presence in the home.

While DCF provided mother with numerous services, mother made no progress in her ability to parent. In fact, her parenting ability deteriorated over time and she was unable to manage the children. At one point, she told the boys that she did not want them any more. Mother did not follow through with plans developed by the intensive family-based services, and as a result, the children's behavior worsened. In contrast to the unstable and chaotic living environment with mother, the court found that the children had been placed in a loving foster home, where they were doing very well. D.B., for example, had been so successful that he was allowed to move from an alternative school for children with behavior issues to a regular school. He no longer was considered clinically withdrawn and depressed and his one-on-one school aide and depression medication were discontinued.

Based on these and other findings, the court concluded that mother had stagnated in her ability to parent, she would not be able to parent within a reasonable period of time, and that termination of her residual parental rights was in the children's best interests. Despite hundreds of hours of parenting instruction, guidance, and observation, the court explained, mother was no closer to being able to parent the children than she was at the beginning of the case. Her inconsistent behavior and chaotic lifestyle remained firmly intact. Mother lacked a stable home, and despite months in counseling, she still had no insight whatsoever into how her romantic relationships affected the children. While mother had the desire to provide the children with love, affection and proper parental guidance, she could only do so for short periods of time. Her inability to provide for the children's needs over a long period of time adversely affected the children and caused them great harm. The children were now receiving, in their foster home, the love, affection, guidance, and stability that they needed. The court thus concluded that termination of mother's residual rights was in the children's best interests. Mother appealed from this order.

Mother argues that the court failed to adequately consider two statutory factors in reaching its conclusion, namely "[t]he interaction and interrelationship of the child with his or her parents, siblings, foster parents, if any, and any other person who may significantly affect the child's best interests"; and "[w]hether the parent has played and continues to play a constructive role, including personal contact and demonstrated emotional support and affection, in the child's welfare." 33 V.S.A. §§ 5114(a)(1), (4) (these are the slightly amended and recodified criteria, effective January 1, 2009, that were previously codified at 33 V.S.A. § 5540 (2001)). She suggests that the family court was obligated to weigh the children's need for adoption against the benefits of continued parent-child contact in reaching its conclusion. Mother also asserts that the court's findings about her poor parenting skills are not relevant to whether she played a constructive role in the children's lives.

These arguments are without merit. As we have often repeated, 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). The court 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. Id. To determine the best interests of the 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 parental duties within a reasonable period of time." <u>In re B.M.</u>, 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. <u>In re G.S.</u>, 153 Vt. 651, 652 (1990) (mem.).

The court applied the proper statutory standard here and its findings support its conclusion. Mother does not challenge the court's evaluation of the most important statutory factor, nor its conclusion that she cannot parent the children within a reasonable period of time. Her suggestion that the court failed to adequately consider two of the remaining statutory factors is without merit. With respect to the children's relationship and interaction with mother, the court found that while mother loved the children, she was unable to put their needs before her own. She continued to engage in behavior that was injurious to the children, and she lacked insight into her destructive actions. The court could fairly rely on these findings as support, not only for its evaluation of the first statutory factor, but also as support for its conclusion that mother has not played a constructive role in the children's lives. The evidence is necessarily overlapping. With respect to the latter statutory factor, we note that the court also found, among other things, that the children's behavior worsened due to mother's inconsistent behavior and her failure to follow through with various parenting programs. The court's findings plainly demonstrate that she did not play a constructive role in the children's lives. Finally, we reject mother's assertion that the court was obligated to make a finding that "the children's need for adoption outweighs the benefits of continued parent-child contact." The statute imposes no such requirement. See 33 V.S.A. § 5114 (setting forth statutory factors); see also In re T.M. & E.S., No. 2008-225, slip op. at 3-4 (Vt. Oct. 2, 2008) (unreported mem.) (rejecting same argument). The court's decision is amply supported by its findings, which are in turn supported by the record, and we find no error.

Affirmed.

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THE COURT:

Paul L. Reiber, Chief Justice

Brian L Burgess, Associate Justice

Johnson, Associate Justice

Denise R