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

## **ENTRY ORDER**

## SUPREME COURT DOCKET NO. 2005-007

MAY TERM, 2005

In re L.P., Juvenile	}	APPEALED FROM:
	} }	Orleans Family Court
	}	DOCKET NO. 18-3-03 Osjv
		Trial Indge: Alan W. Cheeve

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

Father appeals from a family court judgment terminating his residual parental rights to the minor, L.P. Father contends the trial court abused its discretion by entering a termination order "based on conclusions clouded by confusion and extraneous factors." We affirm.

As found by the trial court, the underlying facts may be summarized as follows. Father met mother in April 2000, and soon thereafter began living with her and her child, O.P., who was then about three and a half years old. L.P. was born in June 2001. Father was physically abusive to both mother and the two children. Observations of bruises on O.P. at school led to a report to the Department of Children and Families, and ultimately a nolo contendere plea to domestic assault by father. DCF filed CHINS petitions on both children. L.P. was adjudicated CHINS in May 2003, and placed with a foster family, where she has since remained.

The original case plan called for father to engage in a variety of programs and services. These included engaging in mental health counseling; attending and completing parenting classes; undergoing drug and alcohol screening and remaining drug free; and completing anger management classes. The case plan also required father to demonstrate that he could place the needs of the child ahead of his own. Based on father's substantial failure to comply with the original plan, DCF changed the goal to termination of parental rights in February 2004, and filed a TPR petition the following month. A two day evidentiary hearing was held in December 2004. Mother had earlier voluntarily relinquished her parental rights.

The court issued a written decision, containing extensive findings of fact and conclusions of law, in January 2005. The court found that, prior to the removal of the child, father had provided almost no child care or other assistance to mother, and had physically abused both mother and the two children. As to the requirements of the case plan, the court noted that although father had located a therapist, he had failed to engage in any meaningful therapy to address his abusive behavior. Father failed to complete parenting classes dealing with issues of appropriate discipline and child development. He attended a Nurturing Father's Program but did not accept or understand the material presented in the class. He engaged in inappropriate behavior in front of the child during supervised visits, missed visits, and had virtually no contact with the child from August through October 2004, when he left for Florida leaving no contact information. Father attended a batterer's intervention program but failed to obtain a satisfactory discharge. The court found that father had failed to develop anger management skills; indeed, on several occasions he became angry and hostile toward social service workers.

Based on these findings, the court found that a substantial change in circumstances had occurred based on stagnation. See In re D.M., 2004 VT 41, ¶ 5, 176 Vt. 639 (stagnation may be found if the parent has not made the progress expected in the plan of services despite the passage of time). The court further concluded that termination was in the best interests of the child, noting that any bond between father and child was limited; and that L.P. had been abused, had observed domestic violence, and had been virtually abandoned for several months when father left for Florida. With respect to the most important criterion, father's ability to resume parental responsibilities within a reasonable period of time, the court noted that father had failed to pursue services to develop any parenting abilities or effect any meaningful progress in the areas of domestic abuse and anger management, so that he could provide a safe and secure home. Father had played no constructive role in the child's life, and continued to put his own needs ahead of the child's. The court thus concluded that there was no reasonable likelihood father could resume parental responsibilities within a reasonable period of time. Finally, the court noted that L.P. was three and a half years old at the time of the hearing, and had spent more than half of her life in DCF custody, with a foster family with whom she was closely bonded. Accordingly, the court concluded that termination of father's parental rights was in the best interests of the child, and granted the State's petition. This appeal follows.

Father challenges none of the factual findings set forth above. Rather, he contends the court's analysis was "clouded by confusion" and "consideration of extraneous factors" in three respects. First, he cites the court's statement that father's ability to parent "has deteriorated and stagnated," arguing that it is unclear from the statement whether his parenting abilities had worsened or merely remained the same or improved slightly, thus "engender[ing] confusion" as to how long father would need to improve. The court's ultimate conclusion was that "[t]he State has proven by clear and convincing evidence that stagnation exists and that therefore there has been a substantial change in material circumstances." Furthermore, the court's overall findings make it clear that, although father had engaged in some services, he had made little or no progress in acquiring the abilities and insight expected in the case plan of services. Accordingly, we perceive no confusion or uncertainty in the court's findings and conclusions.

Next father contends that the court's findings concerning the child's bonding to her foster parents, who hoped to adopt L.P., raise a question as to whether its decision was clouded by an improper "sense of urgency that may result when [DCF] places children in need of care and supervision in a potential adoptive home." In re M.M., 159 Vt. 517, 524 (1993). The child's positive relationship with her foster family was a proper consideration in determining the child's best interests, however, and nothing in the court's findings or conclusions suggests that it was improperly influenced by the foster parents' interest in adoption. See id. at 525 (holding that court did not err in considering positive relationship with foster parents while cautioning that intent of statutes was not "societal restructuring"). Accordingly, we discern no error.

Finally, father contends that in citing federal law requiring permanency placements for children in lengthy foster care placements, the trial court did not focus on the individual child in question. Nothing in the court's passing reference to federal law supports such an inference, which is otherwise completely inconsistent with court's detailed and extensive findings concerning L.P.'s specific history, relationships, and circumstances. We perceive no error that would warrant disturbing the court's judgment.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John	Α.	Dooley,	Associate	Justice	
Denis	se F	R. Johns	son, Associ	ate Justice	