

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-073

JUNE TERM, 2008

In re T.C., Juvenile

} APPEALED FROM:
}
} Chittenden Family Court
}
} DOCKET NO. 163-3-06 Cnjv

Trial Judge: Linda Levitt

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

Mother appeals from the family court's order terminating her residual parental rights in T.C. She argues that the court erred by: (1) failing to specifically find that she would be unable to resume parenting within a reasonable period of time from T.C.'s standpoint; (2) inaccurately assessing the parent-child bond; and (3) denying her post-hearing emergency motion to return T.C. to her custody without holding a hearing. We affirm.

The family court found as follows. Mother has a long history of drug abuse and association with drug dealers. She started using drugs at age thirteen, and started using crack cocaine, supplied by T.C.'s biological father, at age twenty. Mother used drugs every day, cutting back slightly when she was pregnant with T.C. Mother received no prenatal care, and she was physically abused by father during her pregnancy. T.C. was born to mother in October 2004, and he had cocaine and THC in his system. Mother continued to use drugs after T.C. was born, and she was lackadaisical in her care of T.C. She frequently left him in the care of others, including drug dealers; she did not take him to the doctor for check-ups. In March 2006, mother intentionally overdosed on drugs in the presence of T.C. She obtained the drugs from her new boyfriend, who was also a drug dealer. T.C. was taken into the custody of the Department for Children and Families, and in April 2006, mother admitted that T.C. was a child in need of care or supervision.

Mother continued to use drugs after T.C. was taken into custody. In November 2006, she entered a residential treatment program where she gradually improved in her ability to care for T.C. In March 2007, mother was given a weekend pass to visit her mother with T.C. Mother instead visited her friends and used cocaine and other drugs; her whereabouts were unknown to the residential treatment facility for three days. Mother did not understand how her actions endangered T.C. Shortly thereafter, mother was unsuccessfully discharged from the treatment facility, and T.C. was placed in a foster home. In October 2007, DCF moved to terminate mother's parental rights, and after a hearing, the court granted its request in a February 2008 order.

As set forth above, the court found that mother had made no progress toward achieving the goals of sobriety, responsibility, and stability. She did not have a permanent home. She continued to use drugs, and she continued to associate with people involved with drugs, violence, and crime. Mother was not receiving any counseling to address her mental health and substance abuse issues, despite numerous efforts to engage her in such services. Mother was unable to work with any service providers, and she resented people who had authority over her. She blamed DCF and other providers for her own failures. While mother claimed to be drug-free and attending Alcoholics Anonymous, the court found mother not credible given that she refused to be tested for drugs. The court found that T.C. was doing well in his foster placement, and that his foster mother was able to meet his needs for love, stability, learning, and structure. Based on these and other findings, the court concluded that mother had stagnated in her ability to parent T.C., and that termination of her rights was in T.C.'s best interests. This appeal followed.

As we have often explained, in considering whether the termination of a parent's rights is in a child's best interests, the court must consider four statutory factors. See 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. 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.).

Mother first argues that the court erred by failing to specifically find that she would be unable to parent within a reasonable period of time from the child's standpoint. This claim of error is without merit. The trial court found that mother was "in no position to resume parenting T.C. in the near future," and it is evident from the court's opinion that it evaluated mother's ability to parent within a reasonable period of time from T.C.'s standpoint. As the trial court explained, mother was required by the case plans to engage in drug counseling, mental health counseling, and parenting courses. She had done so on a sporadic basis, with little progress toward meeting the goals of the case plans. Mother had no stable home. She continued to use drugs and associate with drug dealers, and she showed no understanding of the danger that such individuals posed to herself and to T.C. She continued to pose a threat to T.C.'s health and well-being. T.C. had been in DCF custody for a large portion of his life, and he had adjusted well to his new family and he wanted to remain there. The court found that he was entitled to permanency. The evidence amply supports the court's conclusion that mother would not be able to parent T.C. within a reasonable period of time as measured from his perspective.

Mother next asserts that the court failed to properly evaluate whether T.C.'s need for adoption outweighed the benefits of continued parent-child contact, or whether the benefits of continued contact argued against termination and for a different permanency alternative. The statute does not require the family court to engage in such analysis. See 33 V.S.A. § 5540. Instead, as set forth above, the court must consider four statutory factors in determining a child's best interests, which the court did in this case. As to the child's relationship with mother, which is a statutory factor, the court found that while mother may love T.C., her parenting had ranged from dangerous to indifferent. See *In re M.B.*, 162 Vt. 229, 237 (1994) (evidence of parent's love for child and desire to have custody did not controvert evidence that termination was appropriate based on other statutory best-interest factors). This finding is supported by the evidence, and we reject mother's assertion that the court failed to accurately assess her relationship with T.C. Moreover, as we have often stated, it is for the family court, not this Court, to determine the credibility of witnesses and weigh the evidence. *Kanaan v. Kanaan*, 163 Vt. 402, 405 (1995).

We similarly reject mother's related challenges to the court's assessment of the child's bond with his foster family. Mother takes issue with the court's statement that while T.C. might initially miss his mother, the court was confident that the benefits of remaining in his loving and stable foster home far outweighed any temporary feeling of loss he might experience. This is essentially another way of stating the court's conclusion that T.C.'s best interests were served by a termination of mother's rights, and as discussed above, this conclusion is amply supported by the evidence. The court's finding that the foster mother is in a stable, long-term relationship is similarly supported by the record. Certainly, the foster mother does not need to be married to her boyfriend in order to provide T.C. with a loving, stable home, as mother suggests. Finally, we reject mother's assertion that reversible error occurred when the guardian ad litem indicated to the court that her post-hearing visit to the foster home "only reinforced [her] impression of a happy, nurturing family situation." Even if this statement was offered in error, it was cumulative to other evidence offered at the hearing, and any error was harmless.

Finally, mother asserts that the court erred in denying her post-hearing "emergency motion to return custody of the juvenile to mother" without first holding an evidentiary hearing. Mother asserted in her motion that T.C. was being physically abused in his foster home and that his safety was being neglected. She argues that these facts, if proven, would be relevant to a more accurate assessment of the value of the mother-child bond since the family court originally viewed the child's attachment to his foster home to be of greater value than his attachment to mother. Thus, she maintains, it could change the result.

This argument is without merit. As mother acknowledges, "where there has been a trial on the merits the decision to hold an evidentiary hearing on a posttrial motion is within the discretion of the trial court." *In re D.B.*, 161 Vt. 217, 222 (1993). Our review of the court's decision "is narrow and depends on an affirmative showing that the court abused or withheld its discretion." *Id.* Moreover, no hearing is required "when what is alleged, even if proven, would not change the result." *Id.* Mother fails to demonstrate that the court abused its discretion here. First, the court is not required to weigh the child's bond with his mother against his bond with a foster parent to determine if a petition to terminate mother's parental rights should be granted. As the State points out in its brief, the issue before the family court in such a proceeding was whether termination of mother's rights was in T.C.'s best interests. While the court must consider the child's relationship with his foster parent in conducting this analysis, any question of whether T.C. should be removed from a particular foster home would not warrant a return of custody to mother, nor would it undermine the court's conclusion, based on the evidence discussed above, that termination of mother's rights was in T.C.'s best interests. We find no error.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice