

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

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-327

JAN 15 2010

JANUARY TERM, 2010

In re B.M., Juvenile

} APPEALED FROM:

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Chittenden Family Court

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DOCKET NO. 96-3-08 Cnjv

Trial Judge: Amy M. Davenport

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

Mother appeals the termination of her parental rights with respect to her daughter, B.M. We affirm.

Mother has not challenged any of the family court's findings, which reveal the following. B.M. was born in February 2008 addicted to the opiate Buprenorphine as the result of mother's use of the drug during her pregnancy and had to be put on methadone to control the withdrawal symptoms. The child was also born with THC in her system because of mother's daily marijuana use. Mother had been abusing substances from an early age. She began by experimenting with Oxycontin and eventually became dependent on opiates. Mother's first serious relationship was with B.M.'s father, who encouraged her drug use, was abusive towards her, and was addicted to drugs himself. When mother became pregnant, she was placed on suboxone maintenance, but was dropped from the treatment program after she tested positive for cocaine. She then began to take "street Bupe" on a daily basis during her pregnancy. One week after B.M.'s birth, the Department for Children and Families (DCF) filed a petition alleging that B.M. was a child in need of care and supervision (CHINS) because of mother's drug use. By agreement of the parties, B.M. was placed in the custody of her parents, who were living in a motel at the time. The family court issued a protective order with conditions of custody that, among other things, required abstinence from any substance abuse.

In late March 2008, less than one month after B.M.'s birth, the family court placed the child in DCF custody after mother was arrested and charged with attempting to elude police and violating conditions of probation. DCF, in turn, placed B.M. with the foster couple with whom she currently lives. In May 2008, mother and father entered admissions to the CHINS petition, including that mother used street "Bupe" and marijuana on a daily basis during her pregnancy with B.M. Following a June 2008 disposition hearing, the family court maintained DCF custody and accepted an uncontested disposition report that called for reunification with the parents within three-to-six months, with a concurrent plan of termination of parental rights if the parents did not make significant progress toward reunification within that time period. The disposition plan required mother, among other things, to participate in a mental-health assessment and recommended treatment, to work actively towards finding safe and stable housing, to seek and maintain employment, to attend and be on time for all scheduled visits with B.M., to participate

in a parent-education program at the Lund Family Center, to participate in a substance-abuse assessment and follow all treatment recommendations, and to remain substance-free. The six-month permanency review case plan continued to articulate a concurrent goal of reunification or adoption, but the one-year permanency review case plan, which was prepared in February 2009, set the goal as adoption, and DCF filed a petition to terminate mother's and father's parental rights. At a July 2009 termination hearing, father voluntarily relinquished his parental rights. Following an August 2009 hearing, the family court granted the petition with respect to mother.

DCF changed its case-plan goal to adoption as the result of mother's lack of progress in fulfilling the requirements of the case plan aimed at placing her in a position to assume responsibility for B.M. When the court transferred custody of B.M. to DCF in March 2008, mother went to Valley Vista, a residential substance-abuse program, which was required as a condition of probation. She lasted only one month before she was discharged from the program. During her brief stay, she never seriously engaged in treatment. By the time of the disposition hearing in June 2008, mother decided to enroll at Synergy, an outpatient substance-abuse treatment program. With the exception of two short breaks, she participated in treatment at Synergy for about a year, during which time she took Buprenorphine as prescribed by Synergy. Shortly before the scheduled termination hearing, mother ended her treatment with Synergy and went to live in a cabin owned by her uncle. The court found credible mother's testimony that she went through an intense period of withdrawal from opiates and began working for her father.

Between the time mother lost custody of B.M. and the termination hearing, mother's visits with the child were inconsistent. From May through December 2008, mother and father attended visits together, but were often late and missed a number of visits. Visits were briefly suspended in August 2008 because of mother's outburst, and were reduced in frequency and duration after they restarted in September 2008. Mother's attendance continued to be erratic, and in January 2009 her visits were reduced to once a week because of irregular attendance. That same month, mother finally signed up for a parent-education program at the Lund Family Center. For the first few months, during which mother missed numerous sessions, her stated goal was to work on developing B.M.'s attachment to her. In April 2009, mother informed the parent educator that she was thinking of voluntarily relinquishing her parental rights so that B.M. could be adopted by her foster mother. The focus of the program then shifted to developing a stronger bond between B.M. and her foster mother. In June 2009, mother stopped coming to the Lund Family Center, and she was dropped from the program.

Based on these findings and its review of the statutory best-interests criteria set forth in 33 V.S.A. § 5114, the family court granted DCF's petition and terminated mother's parental rights. The court first determined that although mother had made some progress in accomplishing the goals for reunification, that progress had been slow and erratic; thus, given B.M.'s tender age, the late, limited, and uncertain progress amounted to stagnation and a substantial change in circumstances. See 33 V.S.A. § 5113(b) (providing that family court may modify previous order on grounds that "a change in circumstances requires such action to serve the best interests of the child"). As for the first best-interests criterion, the court concluded that (1) B.M.'s level of attachment to her mother was not clear; (2) mother's visits with B.M. were still supervised and had been inconsistent and reduced by the court over the previous sixteen months; and (3) B.M. had formed a primary attachment to her foster mother. See *id.* § 5114(a)(1) (requiring court to examine interrelationship of child with parents and others who may significantly affect the child's best interests). Regarding the second criterion—the child's adjustment to home, school, and community, see *id.* § 5114(a)(2)—the court noted that the foster home was the only home B.M. had ever known. With respect to the third, and most important, criterion—whether mother was likely to be able to resume parental duties within a reasonable

period of time, see *id.* § 5114(a)(3)—the court stated that (1) the potential duration of the progress mother had made towards reunification was uncertain, given mother’s history, her continued admitted marijuana use, and her current lack of participation in substance-abuse treatment; (2) mother had obtained stable housing recently, but it was uncertain how long it was going to last; (3) for the first nine months that B.M. was in DCF custody, mother was in denial regarding the abusive relationship with father that fostered her drug use and prevented her from making significant progress toward reuniting with B.M.; and (4) mother had failed to visit B.M. consistently over the past sixteen months even though she knew that consistent visitation was critical to her reuniting with a child that had spent her entire life in foster care. Finally, as for the fourth criterion, see *id.* § 5114(a)(4), the court noted mother’s love for B.M., but concluded that she did not have a primary attachment with the child, as the result of her past drug addiction, the long-term instability in her life, and her inconsistent visitation over the past sixteen months. Based on its review of the evidence and these criteria, the court concluded that mother would be incapable in the foreseeable future of providing B.M. with the stability and consistency that the child needed.

On appeal, mother argues that neither the evidence nor the court’s findings support its conclusions that mother failed to make substantial progress toward reunification and would not be able to resume her parental duties within a reasonable period of time. According to mother, the “real issue” is whether she is able to parent, not whether she complied with the service plan. She further contends that her failure to participate successfully in parent-education services is not critical because she did not lose custody of B.M. due to a parent-education deficiency and there is no evidence of a history of inadequate parenting on her part. In mother’s view, the court’s uncertainty over how long her stable housing or freedom from opiate-addiction will endure does not satisfy DCF’s burden to demonstrate that she will not be able to resume parental duties within a reasonable period of time. Mother emphasizes that the question of whether she is likely to be able to resume parental duties within a reasonable period of time “is forward-looking,” *In re B.M.*, 165 Vt. 331, 337 (1996), but that the court made no attempt to estimate how much time mother would need to be ready to parent B.M.

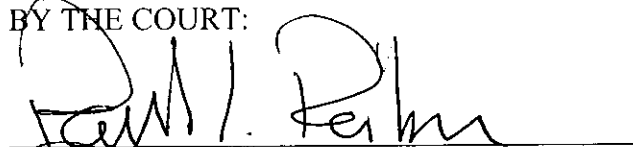
We find no merit to these arguments. The evidence and findings support the family court’s conclusion that changed circumstances exist, insofar as sixteen months had passed—in a case involving an infant placed in foster care nearly at birth—before mother began to make significant progress toward addressing the conditions that led to the removal of B.M. from her custody. *In re A.F.*, 160 Vt. 175, 181 (1993) (“[T]he mere fact that a parent has shown some progress in some aspects of his or her life does not preclude a finding of changed circumstances warranting modification of a previous disposition order.”); see also *B.M.*, 165 Vt. at 336 (“From the child’s perspective, at least, the earlier period of stagnation is not necessarily wiped out by the later improvement.”).

The evidence and findings also support the family court’s conclusion that mother will not be able to resume parental duties within a reasonable period of time. As the court stated, mother was aware that it was critical for her to make substantial progress towards reunification in a relatively short period of time because of the fact that B.M. had been removed from her custody practically at birth and had spent almost her entire life in foster care. Indeed, the case-plan goal anticipated reunification within three-to-six months. Visitation was particularly important to assure that the bonds between mother and child were strengthened at a critical time in the child’s life. Unfortunately, mother did not begin to make substantial progress toward addressing the conditions that led to the removal of B.M. until many months passed beyond the anticipated time period for reunification. By the time mother began to make substantial progress toward finding stable housing and addressing her drug addictions, she had not engaged in visitation to the point

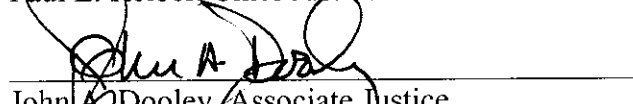
where she had developed a significant relationship with B.M., and the child's primary attachments were with her foster family, with whom she had spent her entire life. See B.M., 165 Vt. at 337 (stating that reasonable period of time must be measured in terms of child's needs). It was only shortly before the termination hearing that mother overcame her opiate addiction and obtained stable housing. The court was justified in examining mother's long history of drug dependence and instability, as well as her continued drug use and lack of treatment, in concluding that it was questionable how long mother would keep her addiction at bay and remain in stable housing. Moreover, notwithstanding mother's argument to the contrary, her conduct that led to the removal of B.M. from her custody demonstrated inadequate parenting that required the assistance of an education program, which she did not successfully complete. In short, we discern no reason to overturn the family court's conclusion, based on clear and convincing evidence, that termination of mother's parental rights is in B.M.'s best interests. Cf. In re J.S. & S.S., 168 Vt. 572, 574 (1998) (mem.) (upholding family court's conclusion that time for reunification had already passed, considering tender age of children, length of time children had been separated from parents, and children's need for stability and permanence).

Affirmed.

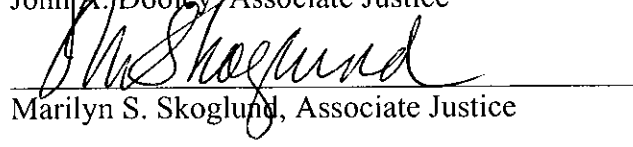
BY THE COURT:



Paul L. Reiber, Chief Justice



John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice