

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-114

OCTOBER TERM, 2010

In re B.B., Juvenile	}	APPEALED FROM:
	}	
	}	
	}	Chittenden Family Court
	}	
	}	
	}	DOCKET NO. F433-11-08 Cnjv

Trial Judge: Matthew I. Katz

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

Mother appeals from a family court order terminating her parental rights to the minor B.B. Mother contends the evidence fails to support the findings underlying the trial court’s decision. We affirm.

Mother has an extensive history of involvement with the Department for Children and Families. She had her first child when she was fifteen years old and had two more children over the next several years. Reports that mother’s home was unsuitable for occupancy due to unsanitary living conditions led to CHINS petitions. Based on additional evidence of mother’s inability to provide safe or suitable housing, substance abuse, neglect, and unwillingness to take advantage of numerous services, the court granted a subsequent petition to terminate her parental rights as to these three children, and this Court affirmed. In re S.R.T., T.R.F. & J.R., No. 2007-287, 2007 WL 5313364 (Vt. Nov. 16, 2007) (unpub. mem.).

B.B. was born in November 2008 and immediately taken into DCF custody. The child was placed with a foster family and has remained there ever since. In February 2009, mother stipulated to an adjudication of CHINS. A petition to terminate parental rights was filed at the initial disposition in March 2009, and the court held a hearing over three days in December 2009 and January 2010. The court issued a written decision in March 2010, granting the petition.

The court found, in summary, that mother had rejected or ignored extensive efforts by social service workers to address a litany of problems, including domestic violence, depression and anxiety, and unsafe living conditions. She had failed to seek mental health counseling, been expelled from the Lund Center for aggressive behavior, rejected the advice of parental educators, been placed on probation for a drug conviction, and failed to alter her living situation with a “revolving” group of roommates, many of whom in the past had been involved with drugs and the police. Although the court acknowledged that mother’s supervised visits with the child had gone well, it also found that she had failed to take the necessary steps to address her problems and develop the skills and insight necessary to play a constructive role in the child’s life and to resume parental responsibilities within a reasonable time. The court also noted that the child had been thriving in her foster home, where she had lived her entire life, and was fully integrated into

her home and community. Accordingly, the court granted the petition to terminate parental rights. This appeal followed.¹

Our review is limited. We will uphold the trial court's factual findings if supported by credible evidence, and its conclusions if reasonably supported by the findings. *In re W.L.*, 2009 VT 41, ¶ 9, 185 Vt. 641 (mem.). Mother asserts that the findings underlying the court's decision are unsupported in four respects. First, she challenges the court's finding that mother had seen a number of service providers, that "[a]ll ha[d] told her to get mental health counseling," and that she had failed to follow-up on their suggestions. Mother claims that, in fact, she had been assessed at Howard Mental Health and told that further counseling was unnecessary. The record shows that four separate service providers testified that mother had ignored or rejected repeated recommendations to seek mental health counseling. No service provider testified otherwise. The evidence to which mother refers was her own testimony that an unnamed evaluator at Howard had told her that counseling was unnecessary. This testimony does not strictly contradict the court's finding, and the court was plainly entitled to give it no weight in any event. See *In re A.F.*, 160 Vt. 175, 178 (1993) ("We leave it to the sound discretion of the family court to determine the credibility of witnesses and to weigh the evidence.").

Mother next contends the evidence was insufficient to support the trial court's inference that mother had abused prescription drugs. The court acknowledged that there was no direct evidence of such abuse, but found the inference to be reasonable based upon evidence that mother had repeatedly visited the emergency room for back pain and medication without the supporting physical presentation, that she acknowledged taking Vicodin, and that her social worker and substance abuse clinician from the Lund Center believed she was at risk of dependency given her pattern of use of opiate-based pain killers and unresolved mental health issues involving anxiety and depression. The evidence, while not extensive, was sufficient to support the court's finding. Moreover, the finding was not central to the court's conclusion that mother could not resume parental responsibilities within a reasonable time, which was based principally on mother's nearly complete failure to seek or accept counseling and other services or maintain a safe and stable home environment. See *id.* (erroneous finding does not require reversal where other evidence and findings independently support decision to terminate parental rights).

Mother also faults the court's finding that she had not shown any likelihood of altering her circle of companions and social contacts, which for years had included persons involved in drugs, crime, and domestic violence. Mother suggests that the court improperly inverted the burden of proof in this regard, and asserts that there was no recent evidence of improper associations except for one occasion involving an altercation between two housemates when no children were present. We find no basis to conclude that the court applied an incorrect burden of proof; it was merely noting that DCF had identified mother's history of domestic abuse by a series of boyfriends and other questionable associates as a serious and longstanding problem, and that she had not addressed the issue or made any changes. There was also testimony from a number of service providers in this regard that mother refused to discuss her friends and roommates with them or acknowledge their importance in providing a safe and healthy environment for the child. Accordingly, we find no error.

Finally, mother criticizes the court's alleged indulgence in "amateur psychology" in finding that her visits with the child went well only because they were "fun" and that mother had

¹ The court also granted the petition to terminate father's rights, and he has not appealed.

“not progressed beyond the quest for immediate gratification.” These statements are contained in a broader context of evidence and findings that—despite the efforts of numerous social service providers—mother had developed no capacity for self-understanding and self-improvement or willingness to place the child’s needs over her own. The court recognized and found that mother loved the child and demonstrated affection and support during visits, but concluded—based on substantial evidence—that her failure to address multiple issues concerning her lifestyle, home environment, mental health, and compulsive and assaultive behavior rendered her unable to resume parental responsibilities within a reasonable time. We thus find no reason to disturb the findings or the judgment on this basis.

Mother also faults the court for failing to make an “explicit finding of unfitness.” As we have explained, in a termination proceeding “the court is required to weigh specified statutory factors” in determining whether termination is in the best interests of the child, In re S.B., 174 Vt. 427, 428 (2002) (mem.), the most important of which is the likelihood that the parent will be able to resume parental responsibilities within a reasonable period of time. In re B.M., 165 Vt. 331, 336 (1996). The record here shows that the court applied the requisite statutory criteria, finding that—although mother’s interaction with the child had recently been more positive—she had not played a constructive role in the child’s life, and could not resume parental responsibilities within a reasonable time. No further findings were necessary.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice