

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2017-012

MAY TERM, 2017

In re G.B., Juvenile

} APPEALED FROM:  
}  
} Superior Court, Windham Unit,  
} Family Division  
}  
} DOCKET NO. 13-2-15 Wmjv

Trial Judge: Karen R. Carroll

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

Father appeals from a family court judgment terminating his parental rights to minor G.B. Father contends that the trial court improperly shifted the burden of proof to him on the issue of termination. We affirm.

G.B. was born in December 2012 and was just over two years old when proceedings in this case began. At that time, G.B. lived with mother, mother's male partner, and mother's other minor child. Father spent at least every other weekend with G.B. pursuant to a family court order.

In February 2015, the Department for Children and Families (DCF) took G.B. into emergency custody because mother's male partner allegedly had physically abused G.B.'s half-brother. Following the temporary care hearing, G.B. was returned to mother's care pursuant to a conditional custody order. In April 2015, DCF again took G.B. into custody due to mother's failure to comply with the custody order. At that time, father was trying to satisfy the terms of the initial case plan and was making progress towards reunification. Father began spending significant amounts of time with G.B. In June 2015, G.B. was placed in father's care.

One week later, G.B. was removed from father's care after father assaulted his girlfriend. Father pleaded guilty to domestic assault and was sentenced to serve one to eighteen months in custody. He remained incarcerated from the time he was charged in June 2015 until August 2016. Father has a prior conviction for assault as well as convictions for disorderly conduct. He also has a history of mental illness. During his incarceration, he received a disciplinary report for possession of a controlled substance. After being removed from father's care in June 2015, G.B. was placed with foster parents with whom she has lived continuously ever since.

The court ruled that G.B. was a child in need of care or supervision in July 2015. The court issued a disposition order in September 2015 with a primary goal of reunification with a parent. The case plan called for father to demonstrate that he could consistently meet all of G.B.'s physical and emotional needs; complete domestic violence and parenting courses; participate in mental health and substance abuse evaluations and follow recommended treatment; maintain safe and stable housing; sign releases for treatment providers; and notify DCF of his address and phone number.

After his arrest, father contacted DCF only once, while he was incarcerated. He expressed a desire to have contact with G.B. DCF encouraged father to send letters to G.B. as a first step towards reestablishing direct contact with her. Father sent two letters to G.B. during the fifteen months he was incarcerated. Father had no further contact with DCF or G.B., either during his incarceration or after he was released in August 2016. Father's aunt testified that father called her and her husband frequently while he was incarcerated, indicating that father had the ability to communicate outside the facility.

In January 2016, DCF moved to terminate mother's and father's parental rights. Mother voluntarily relinquished her rights in July 2016. Father appeared but did not testify at the termination hearing in December 2016.

Following that hearing, the court issued a written decision. The court found that it would be unsafe for G.B. to be with father unless there was evidence that he had worked on his issues with unstable housing, mental illness, and criminal and abusive behavior. The court saw no evidence that he had addressed these issues or that he had made any progress on his case plan during his incarceration or after his release. While it acknowledged that father had been moving in a positive direction prior to the June 2015 assault, the court concluded that father's ability to care for G.B. had since stagnated, requiring a modification of the existing case plan and disposition order.

Proceeding to the best-interests analysis, the court found that G.B. had no current relationship with her father and had not had any meaningful relationship with him for more than a year-and-a-half. Meanwhile, G.B. was thriving in her foster home and community and had strong bonds with her foster family. The court determined that father was unlikely to be able to resume parental responsibilities within a reasonable period of time given the utter lack of evidence that he was working on the issues identified in the case plan. The court found that father had played a significant role in G.B.'s early life but had provided no emotional support for her since June 2015 due to his incarceration and his failure to communicate with her as allowed by DCF. The court concluded that termination of father's parental rights was in G.B.'s best interests and granted the petition. This appeal followed.

In a termination of parental rights proceeding, the State has the burden of proving by clear and convincing evidence that termination is in the best interests of the child. 33 V.S.A. § 5317(c); In re R.W., 2011 VT 124, ¶ 15, 191 Vt. 108. Father contends that the trial court improperly shifted the burden of proof to him to demonstrate that that he was a fit parent. He argues that the court blamed him for the lack of evidence about his circumstances when it was DCF's burden to investigate and obtain such evidence. He maintains that in the absence of such an investigation, the record was insufficient to support termination.

We disagree with father's characterization of the record and decision in this case. By observing that father had failed or refused to pursue the case plan or to provide any information about his current circumstances or ability to care for G.B., the court was commenting on the state of the record, not placing the burden on father to prove that he was a fit parent. See In re B.C., 169 Vt. 1, 14 (1999) ("In noting the absence of any credible evidence that grandmother could assume the role of parent, the court was merely commenting on the state of the evidence, not signaling that it was grandmother's burden to prove her fitness."), abrogated on other grounds by In re C.P., 2012 VT 100, 193 Vt. 29. As the court noted, its and DCF's ignorance of father's circumstances were due to father's own decision not to stay in contact with DCF even though he was required to do so by the case plan. Likewise, he was offered the opportunity to communicate

with G.B., yet he chose not to do so. Father's lack of contact with G.B. since June 2015 and failure to follow through with recommended services or maintain contact with DCF, coupled with his history of unstable housing, mental illness, and domestic violence, were sufficient to support the State's burden of proving that father had stagnated in his parenting ability and would not be able to resume his parental duties within a reasonable period of time. Accordingly, we find no error.

Affirmed.

BY THE COURT:

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Marilyn S. Skoglund, Associate Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice