

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-066

JUNE TERM, 2017

In re A.D., Juvenile

} APPEALED FROM:

}

} Superior Court, Caledonia Unit,
} Family Division

}

} DOCKET NO. 42-5-14 Cajv

Trial Judge: Howard A. Kalfus
Acting Superior Judge, Specially
Assigned

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

Mother appeals the termination of her parental rights to the minor A.D. We affirm.

A.D. was born in August 2009 with a severe congenital condition that affects his joints and muscle development and limits his ability to move his arms and legs. This condition and other complications kept A.D. in the hospital for the first three months of his life. During A.D.'s first two years, mother spent all her time caring for A.D., adhering to strict feeding, therapy, and medication schedules. There were no local experts on A.D.'s condition, so mother arranged for medical consultations with specialists in Delaware and at the Shriners Hospital for Children in Philadelphia. A.D. had more than twelve appointments each week with medical professionals. Mother eventually arranged for personal care attendants to help A.D. and engaged him in equine therapy and aqua therapy.

Mother and father had a turbulent relationship that included verbal and physical abuse. Both engaged in substance abuse prior to A.D.'s conception, although mother stopped during the early stages of her pregnancy. In July 2011, mother and father's second child was born, and mother began to struggle to meet A.D.'s needs while also caring for an infant. Father's involvement with the children was minimal.

By May 2014, A.D. had missed 62 days of school, which was especially problematic because he received physical and occupational therapy for his mobility issues at the school. The Department for Children and Families (DCF) filed a petition to have A.D. adjudicated a child in need of care or supervision (CHINS). Following a preliminary hearing in June 2014, A.D. was transferred to DCF custody and placed in foster care with relatives. In October 2014, the parties stipulated to the merits of the CHINS petition. The court approved a case plan in January 2015 with concurrent goals of reunification with either parent or adoption. The plan called for mother to continue to address her substance abuse and mental health issues, to regulate her emotions so she could meet her own needs and those of A.D., and to continue to actively participate in A.D.'s care.

Mother initially made progress toward these goals, and A.D. was placed back in mother's care in June 2015. However, within weeks A.D.'s younger sister, who was then three years old, was found by police unsupervised outside the home at a nearby store on two separate occasions. Both children were removed from mother's care in July 2015 and placed with their paternal grandmother and her partner. A.D.'s sister was returned to mother's care in November 2015. A.D. has remained in his grandmother's home continuously since July 2015.

Mother has a significant criminal history including convictions for larceny, burglary, domestic assault, and drug possession. She has been in the custody of the Vermont Department of Corrections since 2009 and was on furlough at the time of the termination hearing. She has not always complied with her conditions, and she has received graduated sanctions including a four-day period of incarceration in September 2016. Under mother's current conditions of supervision, she is prohibited from driving a car or traveling outside of Vermont, so she is unable to take A.D. to his regular medical appointments at the Shriners Hospital in Philadelphia.

The termination of parental rights hearing was held over three days in December 2016. Both mother and father appeared and were represented by counsel. Father voluntarily relinquished his parental rights at the outset of the hearing.

The court issued a written decision after the hearing, which began by recognizing mother's love for her children and extraordinary advocacy for A.D. during his first years of life. The court found that mother continued to be a fierce advocate for her son, but that she had difficulty communicating effectively with and accepting feedback from A.D.'s foster parents, case workers, and medical professionals. The court found that A.D.'s progress depended on members of his team working well together, and mother's behavior hindered the progress that could be made. Further, mother's emotional dysregulation during visits with A.D. hampered her ability to help A.D. regulate his behavior. A.D.'s behavior escalated at school on days when he was to visit with mother, and during the visits he regularly swore, thrashed about, and spat at people. He did not exhibit these behaviors in his foster home. A.D. and his sister also had a tense relationship, with each competing for mother's attention during visits.

A.D. was preoccupied with the termination proceedings and made disparaging remarks about DCF, which indicated to the court that mother was having inappropriate conversations with or in the presence of A.D. This preoccupation with the court proceedings had interfered with A.D.'s academic progress, resulting in him having to repeat first grade. A.D.'s behaviors indicated that he felt loyal to his mother but felt more secure with his foster parents. The court found that mother's progress toward reunification had stalled due to her behavior towards A.D.'s other adult caregivers and the demands of caring for her younger child. It concluded that mother had stagnated in her ability to parent A.D., requiring a modification of the January 2015 disposition order.

Applying the best-interests criteria, the court found that A.D. had an excellent relationship with his foster family, who ably cared for A.D. and worked well with his other team members, and that A.D. had adjusted well to his foster home and school. In contrast, while mother and sister clearly loved A.D., these relationships were ultimately detrimental to A.D. The court found that mother would not be able to resume parental duties within a reasonable amount of time due to A.D.'s extraordinary needs, mother's difficulties in communicating with team members and regulating her emotions, and mother's conditions of release, which prohibited her from driving or leaving the state, rendering her unable to take A.D. to his necessary appointments. Finally, the court found that mother continued to play an active role in A.D.'s life and demonstrated love and

affection at every opportunity, although “[h]er behavior toward members of [A.D.]’s team and her inability to help regulate his emotions in the face of her own emotional dysregulation are clearly not constructive.” It found that this fourth factor slightly favored mother, but that the other criteria, particularly the third, favored termination. Accordingly, the court granted the petition.

We review the family court’s decision to terminate mother’s parental rights for abuse of discretion. In re S.B., 174 Vt. 427, 429 (2002). “We will uphold a termination order if the court’s findings are not clearly erroneous and support the court’s conclusions.” In re A.D.T., 174 Vt. 369, 375 (2002).

On appeal, mother argues that the court should have considered the potential negative impacts that termination will have on A.D. When the State seeks to terminate parental rights subsequent to an initial disposition order, the family court must conduct a two-step analysis. First, the court must find that there has been a substantial change of circumstances that justify modifying the disposition order. Second, the court must find that termination of parental rights is in the best interests of the child. 33 V.S.A. §§ 5113(b), 5114; In re B.W., 162 Vt. 287, 291 (1994).

In evaluating whether the best interests of the child require termination of parental rights, the court must consider four statutory criteria: (1) the child’s relationships with persons significantly affecting those interests; (2) the child’s adjustment to his home, school, and community; (3) the likelihood that the parent will be able to resume parental duties within a reasonable period of time; and (4) whether the parent has played and continues to play a constructive role in the child’s welfare. 33 V.S.A. § 5114(a). “Public policy . . . does not dictate that the parent-child bond be maintained regardless of the cost to the child; [§ 5114] recognizes that severance of that bond may be in the child’s best interest.” In re M.B., 162 Vt. 229, 238 (1994).

Here, the court considered mother’s relationship with A.D., and found that relationship, on balance, to be detrimental to A.D.’s welfare. The court also considered the loyalty A.D. feels toward mother and the effects it has had on his behavior. The court found this loyalty had a negative impact on A.D. and his ability to develop and maintain relationships with other caregivers. Though the court did not specifically frame its analysis in terms of the negative impacts of severing the parent-child bond, the court found that termination was in A.D.’s best interests. The record supports the court’s findings and conclusion.

Mother challenges the court’s statement that her behavior toward members of A.D.’s team and her inability to help A.D. regulate his emotions were “not constructive,” arguing that this is an unfair characterization of the record. She points to evidence that she made many valuable contributions to A.D.’s care and to the testimony of her new therapist, who stated that mother effectively helped regulate A.D. during their visits.

“As we have frequently observed, our role is not to second-guess the family court or to reweigh the evidence, but rather to determine whether the court abused its discretion in terminating parental rights.” In re J.M., 2015 VT 94, ¶ 8, 199 Vt. 627, 632 (quotation and alterations omitted). Viewed in this light, we see no basis to disturb the family court’s decision. There was conflicting testimony regarding mother’s behavior, much of which supported the court’s findings. A.D.’s foster mother testified that mother would frequently yell at her and other team members during team meetings and accuse them of providing inadequate care to A.D. Other team members testified that mother disrupted A.D.’s school days with unannounced visits; was difficult to reach by telephone; had a poor relationship with her first family coach, which resulted in her case being

transferred to another coach; did not accept feedback from her second family coach and therapeutic case manager; had tense verbal exchanges with team members; frequently arrived late to team meetings or left early; and would get angry and yell at team members. A.D.'s pediatrician testified that A.D.'s home health service provider stopped providing home care for A.D. for a period due to mother's behavior. Witnesses testified that A.D. would become angry and agitated during mother's visits and that mother was unable to effectively de-escalate his behavior. The above testimony supports the court's findings that mother's behavior toward A.D. and other adults was frequently not constructive and hindered A.D.'s progress.

Finally, mother claims that the court should have given greater weight to the fourth factor, whether she has played and continues to play a constructive role in A.D.'s welfare, in evaluating the best-interests criteria. The most important factor in the best-interests analysis is the likelihood that the parent will be able to resume parental duties within a reasonable period of time, as measured from the perspective of the child's needs. In re D.S., 2014 VT 38, ¶ 22, 196 Vt. 325, 333. Notably, mother does not challenge the court's assessment that this factor, as well as the first two, weighed in favor of termination. While "in some cases a loving parental bond will override other factors," In re J.F., 2006 VT 45, ¶ 13, 180 Vt. 583, 586, the court found that in A.D.'s case, the other factors outweighed the strength of the parental bond. The court acted within its discretion in so concluding.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice