

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-241

OCTOBER TERM, 2017

In re R.R. and K.H., Juveniles	}	APPEALED FROM:
	}	
	}	Superior Court, Washington Unit,
	}	Family Division
	}	
	}	DOCKET NOS. 3-1-15 Wnjv & 62-4-15 Wnjv

Trial Judge: Kevin W. Griffin

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

Father appeals the superior court's order terminating his parental rights with respect to his children, R.R. and K.H. We affirm.

The superior court's unchallenged findings reveal the following facts. R.R. was born in August 2013, and K.H. was born in April 2015. Father and mother, who voluntarily relinquished mother's parental rights at the outset of the termination hearing contingent upon father's rights being terminated, have known each other since 2011. They married in 2013 and separated in August 2014 shortly before R.R.'s first birthday, but they continued an off-and-on relationship. Father was emotionally and verbally abusive to mother throughout their relationship, and on several occasions father physically assaulted mother. The physical and emotional abuse would frequently occur in the presence of the children.* Mother was actively using heroin and cocaine. Father smoked marijuana but did not use other drugs and disapproved of mother's opiate use. Mother and father dealt drugs, primarily heroin and cocaine, throughout their relationship. For all practical purposes, the parties' sole source of income was through drug trafficking. During the summer of 2015, father, his girlfriend, and a third party were involved in a motor vehicle stop that led to the seizure of over 4000 bags of heroin.

After mother and father separated in August 2014, father had little contact with R.R. When K.H. was born, father denied paternity and refused to consider the possibility that K.H. was his son despite having been sexually active with mother at the time K.H. was conceived. Father's denial of paternity was based in part on mother's intimate relationships with other men, including his father. For a period of time, father claimed that K.H. was his brother, not his son.

In January 2015, the Department for Children and Families (DCF) filed a petition alleging that R.R. was a child in need of care or supervision (CHINS). Mother was R.R.'s sole caretaker when the petition was filed. R.R. was placed briefly with his maternal grandmother under a

* Mother had two other children by different fathers. They came into state custody at the same time as R.R. Parental rights and responsibilities were eventually transferred to the father of one of those children.

conditional custody order. Father was aware of the legal proceedings involving R.R., and later K.H., but he showed no interest in the proceedings. In March 2015, based on mother's admissions, R.R. was adjudicated CHINS.

When K.H. was born in April 2015, he screened positive for opiates. Shortly after his birth, he was adjudicated CHINS based on mother's admissions that her drug use placed him at risk of harm. A disposition hearing concerning both children was held in May 2015. The superior court approved a disposition plan with concurrent goals of reunification with mother or adoption. Although father had been appointed an attorney in April 2015, he did not participate in the proceedings. Reunification with father was not contemplated, but the case plan included conditions requiring him, among other things, to contact DCF by June 1, 2015, to clarify his intentions regarding his involvement in the children's lives, to maintain law-abiding behavior, to participate in family time coaching and demonstrate an ability to meet the children's needs, to complete a substance abuse assessment by July 1, 2015, and engage in treatment recommendations, to attend family meetings and court hearings, and to develop an understanding of the impact his behaviors had on the children's emotional and physical development by participating in individual and/or parent education programs approved by DCF by July 2015. Meanwhile, the children were placed with a foster family, with whom they have remained since the summer of 2015 and who want to adopt them.

Father first contacted DCF in September 2015, but he then missed a scheduled appointment with the DCF case worker. Another four months passed before father met with the DCF case worker and a DCF domestic violence specialist to review concerns about the children's exposure to violence. He was then referred to the "Parenting with Respect" program. He attended seven of the ten sessions, but he never completed the program.

In March 2016, DCF filed petitions to terminate mother's and father's parental rights to both children. Because father questioned his paternity of K.H., the superior court ordered genetic testing, which later confirmed father's paternity. A termination hearing was held over two days on September 2, 2016, and December 1, 2016. Mother voluntarily terminated her parental rights at the outset of the first day of the hearing. On June 13, 2017, the superior court issued an order terminating father's parental rights to both boys. The court first concluded that there were changed circumstances based on two distinct and alternate grounds: mother's voluntary relinquishment of her parental rights and stagnation in father's ability to care for the children, as demonstrated by his failure to accept responsibility for his actions and engage in counseling to address his violent behavior. See 33 V.S.A. § 5113(b) (requiring "change in circumstances" to modify existing disposition order). The court further found termination of father's parental rights to be in the children's best interests after considering the applicable statutory factors, including whether father would be able to resume parental duties within a reasonable period of time. See 33 V.S.A. § 5114(a) (listing best-interest factors).

On appeal, father first argues that the stagnation found by the superior court was caused by factors beyond his control and thus could not support the termination order. In re D.S., 2016 VT 130, ¶ 7 (recognizing "that stagnation caused by factors beyond the parents' control could not support termination of parental rights" (quotation omitted)). In support of this argument, father points to testimony of the DCF case worker that the Parenting with Respect program did not address the underlying issues of domestic violence and that the recommended counseling on domestic violence was not added as a case plan requirement until October 2016. Father asserts that he cannot be faulted for not engaging in recommended counseling that was not made part of the case plan until after the first day of the termination hearing.

Even if we were to assume that the stagnation the court found was beyond father’s control, father’s argument fails because the court found changed circumstances based not only on father’s stagnation in his ability to care for the children but also on the fact that mother—the only parent for whom reunification was a concurrent goal in the court-adopted disposition plan—had voluntarily relinquished her parental rights. This was a sufficient basis to find changed circumstances. Although the threshold change of circumstances “is most often met by showing stagnation in a parent’s ability to care for a child,” stagnation is not the only way to show changed circumstances, which may “arise independent of the subject parent’s actions.” *In re D.C.*, 2012 VT 108, ¶¶ 18-19, 193 Vt. 101. Here, the disposition plan called for reunification with mother or adoption, with no anticipation that father, who had not been part of the children’s lives, would assume care of the children. The threshold showing of changed circumstances was satisfied when the only parent subject to reunification efforts under the plan voluntarily relinquished her parental rights, thereby allowing the court to consider DCF’s termination petitions under the statutory best-interests criteria. Cf. *id.* ¶¶ 16-17 (concluding that any error in court’s failure to find changed circumstances was harmless because of voluntary relinquishment of parental rights by only parent for whom disposition plan sought reunification and death of grandmother after she had assumed custody of child).

In a related argument, father asserts that the termination order was premature because DCF did not address the issue of father’s taking responsibility for his abusive behavior until the counseling requirement was added to the case plan in October 2016. We find no merit to this argument. Although the individualized counseling requirement was not added to the case plan until October 2016, father was referred to the Parenting with Respect program after meeting with DCF’s domestic violence specialist to review concerns about the children’s exposure to domestic violence. Father also met with a new case worker in March 2016, who testified that he discussed with father the requirement to address the underlying issues of domestic violence through counseling at team meetings, several of which were held between March and December of 2016. The case worker urged father to participate in individual counseling to address domestic violence issues, but father refused to do so. The case worker offered to help father apply for insurance to defray the costs for counseling, but father never followed through with the paperwork. In terminating father’s parental rights, the superior court cited father’s delayed interest in the children, his refusal to acknowledge or take responsibility for his abusive behavior, his failure to retain stable housing, and the lack of any credible evidence indicating that he intended to lead a law-abiding life. Nothing in the record suggests that the court’s termination order was premature.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice