

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-318

JANUARY TERM, 2018

In re A.K. & D.T., Juveniles	}	APPEALED FROM:
	}	
	}	Superior Court, Washington Unit,
	}	Family Division
	}	
	}	DOCKET NO. 11/13-1-15 Wnjv
		Trial Judge: Kevin W. Griffin

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

Mother appeals from the trial court’s order terminating her parental rights in A.K. and D.T. She argues that the court failed to adequately address her relationship with D.T., it misapprehended the evidence with respect to A.K., and it should have made findings about the suitability of the children’s preadoptive home. We affirm.

A.K. was born in 2009; D.T. was born in May 2013. They have different fathers. In January 2015, the Department for Children and Families (DCF) filed a petition alleging that the children were in need of care and supervision (CHINS) due to parental abuse and neglect. The petitions alleged that A.K.’s father physically abused A.K., notwithstanding mother’s agreement not to allow him to care for the children based on concerns regarding his treatment of children. Mother admitted that the children were CHINS in February 2015. Following a hearing in late March 2015, the court adopted a disposition plan that required mother to engage in numerous services and take certain actions. The focus of the service plan was to assist mother with her substance use recovery efforts while ensuring the children’s safety and wellbeing. Mother was given custody of the children pursuant to conditional custody order. Mother continued to struggle with opiate use. In May 2015, the children were removed from her care and placed with A.K.’s paternal grandmother and her partner.

In April 2016, DCF moved to terminate mother’s rights based on her inability to maintain a prolonged period of sobriety and her noncompliance with other aspects of the case plan. A three-day termination hearing was held in February and March 2017, resulting in the termination of mother’s parental rights. During the termination hearing, both fathers voluntarily relinquished their parental rights to their respective children. In its termination decision, the court recounted mother’s inability to comply with the case plan and her continued struggle with substance abuse, including several positive drug tests between September 2016 and January 2017. It found that mother neither took responsibility for her shortcomings, nor had any understanding of the damage her chaotic parenting had caused the children. The court also described various altercations between mother and A.K.’s father during December 2016 and January 2017. In one incident, mother called police to report that A.K.’s father had broken into her apartment, was armed with a gun, and was taking her belongings; she feared that he would kill her. Mother nonetheless continued living with A.K.’s father until at least March 2017. As noted above, the children were

living together with A.K.'s paternal grandmother. That home was secure, safe, and stable and the children were doing well there.

Based on these and other findings, the court concluded that mother had stagnated in her ability to parent and that the statutory best-interest factors supported termination of her rights. As to the most important statutory factor, the court found little likelihood that mother could resume parenting duties within a reasonable time. In fact, given her multiple challenges, the court could not envision a scenario where, even with support services, mother could safely parent the children, let alone meet their daily physical, emotional, and developmental needs. Mother appealed from the court's order.

Mother asserts that the court failed to properly consider her "interaction and interrelationship" with D.T. beyond finding that she loves D.T. Mother asserts that the evidence shows that D.T. loves mother and has a growing bond with her. According to mother, the court failed to consider that the bond between the two would be severed by terminating mother's rights. Mother also contends that the court mischaracterized her testimony concerning her relationship with A.K. She maintains that the relationship ran "hot and cold" in the past but not currently. Finally, mother argues that the existence of an alternate placement for the children played a central role in the termination decision and the court failed to make material findings regarding whether the placement truly was a suitable alternative.

To determine a child's best interests, the court must consider four statutory factors. See 33 V.S.A. § 5114. The most important factor is the likelihood that the natural parent will be able to resume his or her parental duties within a reasonable time. See In re B.M., 165 Vt. 331, 336 (1996) ("The critical factor is whether the natural parent will be able to resume parental duties within a reasonable period of time."). As long as the court applied the proper standard, we will not disturb its findings on appeal unless they are clearly erroneous; we will affirm its conclusions if they are supported by the findings. In re G.S., 153 Vt. 651, 652 (1990) (mem.).

We find no error here. First, the court adequately considered the first statutory best-interest factor, "the interaction and interrelationship of the child with his or her parents, siblings, foster parents, if any, and any other person who may significantly affect the child's best interests." 33 V.S.A. § 5114(a)(1). D.T. was two years old when he was removed from mother's care. He is now four years old. His contact with mother has been limited to two supervised visits per week and it had not progressed beyond that. The court found that mother loved D.T. and that despite her "ongoing struggles, she ha[d] remained connected to [her children] through her supervised contact." It also determined that D.T. was strongly bonded to A.K. and to his foster mother. Because of the stability provided by the foster parents, moreover, he had a strong bond with his extended family, school, and community. The court found that mother had no insight or understanding of the damage her chaotic parenting had caused both children. It is evident from the record and the court's findings that it was well aware that terminating mother's rights would sever mother's relationship with D.T. It is equally evident that this is not a case where mother's bond with D.T. was so strong as to override the remaining best-interest criteria. Cf. In re J.F., 2006 VT 45, ¶ 13, 180 Vt. 583 (mem.) (recognizing that "in some cases a loving parental bond will override other factors in determining whether termination of parental rights is the appropriate remedy," but that "[p]ublic policy . . . does not dictate that the parent-child bond be maintained regardless of the cost to the child" (citation and quotation omitted)); see also In re J.M., 2015 VT 94, ¶ 14, 199 Vt. 627 (recognizing that it "will undoubtedly be the unusual case" where a loving parent-child bond would override most important statutory best-interest factor, which is parent's ability to resume parenting within reasonable time). Indeed, as mother recognized, D.T. was "still a toddler," and while he knew she was his mother, she was still in the process of forming a bond

with him. The evidence here overwhelmingly shows that mother cannot parent D.T. within a reasonable time; that she has not played a constructive role in his life; that D.T. has formed close bonds to his foster family and to A.K.; and that he has adjusted well to his new home. Its termination decision is amply supported by its findings.

The court did not commit clear error in finding that mother's relationship with A.K. runs "hot and cold." This finding is supported by mother's testimony. Even if, as mother asserts, the relationship is now "hot" again and mother and A.K. share a bond, that does not undermine the court's finding of an inconsistent relationship.

Finally, the court had no obligation to make any findings regarding the suitability of the children's prospective adoptive home beyond those relevant to the statutory best-interest factors. It properly considered the children's relationship with their foster parents and their adjustment to their present home, school, and community. See 33 V.S.A. § 5114(a)(1), (2). No additional findings were required. We find no error in the court's decision to terminate mother's rights.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Harold E. Eaton, Jr., Associate Justice