

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-043

MAY TERM, 2018

In re A.W., Juvenile (J.W., Father*)	}	APPEALED FROM:
	}	
	}	Superior Court, Windham Unit,
	}	Family Division
	}	
	}	DOCKET NO. 74-6-15 Wmjv

Trial Judge: Katherine A. Hayes

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

Father appeals from the termination of his rights in daughter A.W. He argues that the trial judge improperly acted as a witness and improperly shifted the burden of proof onto him. We affirm.

A.W. was born in March 2003. She lived in New Hampshire with one or both of her parents during the first ten years of her life, and she was in foster care twice during this time. Mother and A.W. subsequently moved to Vermont. There were pending custody proceedings in both New Hampshire and Vermont in 2013 and 2014. In 2013, the New Hampshire authorities investigated allegations that father physically and sexually abused A.W. but it did not substantiate the abuse. DCF also investigated the allegations and it did substantiate the abuse. In October 2014, New Hampshire ceded jurisdiction to Vermont.

In June 2015, the Department for Children and Families (DCF) filed a petition alleging that A.W. was a child in need of care or supervision (CHINS). At that point, A.W. had been living with mother in Vermont for approximately a year. The court issued a temporary care order, granting custody to DCF. The parties later agreed that A.W. was CHINS. The court issued a disposition order in October 2015, which called for reunification of A.W. with mother. Father, represented by counsel, participated in the disposition hearing. The case plan made specific service recommendations for father, including participating in a psychosexual evaluation and an assessment for substance-abuse and mental-health issues, and engaging in a parenting class. Father did not appeal from the court's disposition order.

In January 2017, DCF moved to terminate parents' rights. Mother relinquished her parental rights and, after a hearing, the court terminated father's rights. It made numerous findings, including the following. A.W. is a high-needs child with a relatively low I.Q. She is extremely vulnerable to being abused and has likely suffered past trauma. When A.W. first came into DCF custody, she had very poor social skills. She was struggling at school and she engaged in violent, out-of-control behavior. Since being placed with a foster family, A.W. has thrived and made enormous progress. She has a close, loving relationship with her foster family and wants to remain in their home.

As noted above, when this case began in June 2015, father was directed to engage in a variety of services. He refused to do so and asserted that he did not need any services. Father visited A.W. once during the two-and-a-half years that she was in custody. Father refused to work with DCF and he refused to participate in the court proceedings after late 2015. He dropped out of sight and moved from Keene, New Hampshire to Ohio in December 2015. The court found that father had no relationship with A.W., and he had virtually no understanding of the complexity of her needs or how traumatic it would be for her to reunify with him. Additionally, father provided no proof, beyond his own testimony, that he could meet A.W.'s basic needs. Father was unwilling to take any steps to obtain appropriate counseling or parenting education, or to try to reestablish a healthy relationship with A.W.

Turning to the statutory best-interest factors, the court concluded that they all favored termination of father's rights. As to the most important factor, the court determined that father could not parent A.W. within a reasonable time. He had not engaged with any of the services required by the case plan. He had shown no improvement or even any attempt to meet the case plan expectations. Father had not even engaged in the required screening to attempt to disprove that he abused A.W. or that he needed mental-health or substance-abuse treatment. The court found it clear that father had stagnated in his ability to parent. For these and other reasons, the court terminated father's rights. This appeal followed.

Father first argues that the judge improperly assumed the role of a witness. He cites to several pages in the trial transcript where the court refers to the procedural history of A.W.'s case, including prior proceedings in New Hampshire and Vermont. The record indicates that the judge did not act as a witness but rather relied on court records, without objection, in an attempt to clarify confusion that had arisen over the result of a 2013 proceeding. This discussion did not deprive father of a fair hearing and it had no bearing whatsoever on the court's decision here. Even assuming arguendo that error existed, it was harmless. See In re R.W., 2011 VT 124, ¶ 17, 191 Vt. 108 (noting that Supreme Court applies harmless error analysis in termination-of-parental-rights cases and will reverse judgment only where error has affected party's substantial rights).

Father next asserts that the court shifted the burden of proof to him. He states that his alleged abuse of A.W. and the other issues to be addressed through the case plan were never proven to exist, and that the court erroneously concluded that it was his responsibility to disprove the abuse and other issues through screening.

Again, we find no error. The disposition plan required that father participate in psychosexual treatment. The disposition plan also required father to participate in screening around other risk factors identified as barriers to reunification, such as father's mental health problems and substance abuse. The court adopted DCF's case plan and father did not appeal from this order. Father cannot now argue that he had no obligation to comply with the case plan. In any event, the court did not shift the burden of proof to father. It simply faulted father for failing to take steps to comply with the case plan, including assessments that might have shown no need for further treatment. The record here amply supports the court's conclusion that father had stagnated in his ability to parent A.W. and that he was unable to resume his parental duties within a reasonable time. See In re D.M., 2004 VT 41, ¶ 5, 176 Vt. 639 (mem.) ("Stagnation may be

found if the parent has not made the progress expected in the plan of services for the family despite the passage of time.”).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice