

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. 2018-083

JULY TERM, 2018

In re H.D., Juvenile	}	APPEALED FROM:
(H.D., Mother*)	}	
	}	Superior Court, Caledonia Unit,
	}	Family Division
	}	
	}	DOCKET NO. 91-9-15 Cajv
		Trial Judge: M. Kathleen Manley (Ret.),
		Specially Assigned

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

Mother appeals a decision of the superior court, family division, terminating her parental rights with respect to her daughter, H.D.* We affirm.

Mother does not dispute the family court’s findings, which reveal the following facts. H.D. was born in September 2015. Two days after H.D.’s birth, the Department for Children and Families (DCF) filed a petition alleging that H.D. was a child in need of care or supervision (CHINS) because of concerns over mother’s substance abuse during pregnancy, her involvement with a violent partner, her untreated mental-health issues, and her unstable housing situation. At the initial court hearing, the family court issued a conditional custody order that maintained custody of H.D. with mother subject to a number of conditions. In December 2015, after mother allowed contact between her partner and H.D., in violation of one of the conditions, and got into a physical altercation with her mother, the court issued an emergency order placing H.D. in DCF custody. DCF, in turn, placed H.D. with a foster family with whom she has remained ever since.

In January 2016, the family court adjudicated H.D. CHINS. Following a March 2016 disposition hearing, the parties accepted, and the court adopted, a case plan recommending concurrent goals of reunification with mother or adoption. The plan established August 2016 as the time by which to achieve the goal. Recommended services included participation in the Safe Babies program, continuation with the Nurse Family Partnership and Family Time coaching, and counseling to address substance-abuse and mental-health issues. The disposition case plan, and all subsequent plans, called for mother to demonstrate her ability to independently provide a safe environment for H.D. and to meet H.D.’s basic needs.

In the first year after the CHINS determination, mother did not meet most of the case plan expectations. She continued her relationship with her partner and lied to the DCF case worker about it. DCF tried to engage mother’s partner in the case plan, but he refused, which hindered

* H.D.’s father has played no role in her life and had not appeared at any court hearing in the year before the termination hearing.

mother's reunification with H.D. Mother also failed to engage in counseling and with other service providers on a regular basis. Mother and H.D. had contact at H.D.'s daycare three days a week, including two days with Family Time coaching. Mother also had contact supervised by her mother on another day, which eventually included an overnight at mother's aunt's home. As contact increased, mother struggled to be consistent with visitation, arriving late or canceling on many occasions. H.D. exhibited signs of stress following the increased contact with mother, and family-supported overnights ended.

Because of mother's lack of progress, the passage of time, and H.D.'s age, DCF filed a termination petition in November 2016. In January 2017, mother ended her relationship with her partner and moved into her own apartment. She became more engaged in services and began to make progress, particularly in the Safe Babies program. Notwithstanding the pending termination petition, DCF gave mother more unsupervised time with H.D. in her apartment because of her progress with the case plan. Mother also continued to see H.D. three days a week at H.D.'s daycare, with and without Family Time coaching. When unsupervised visits began again, H.D. began to struggle with transitions. She acted out and had difficulty sleeping.

In early March 2017, H.D. returned to her foster home following unsupervised time with mother with bruises on her body that concerned the foster mother. A report was made to DCF, and an investigation opened. On two more occasions that month, H.D. returned to her foster home after unsupervised visits with mother with bruises on her body. Mother was not able to explain the bruising. A pediatrician who examined H.D. concluded that the location of the bruises suggested non-accidental trauma and recommended that unsupervised visitation be discontinued pending DCF's investigation. DCF suspended unsupervised visitation later that month, but supervised visitation continued. In May 2017 DCF closed its investigation after concluding that the allegations of abuse were unsubstantiated.

The State then withdrew its termination petition, and DCF changed its case plan goal to reunification with mother. Mother renewed unsupervised time with H.D. for two hours each week at first, then four hours a week, and then three days a week beginning in June 2017. That same month, more bruising appeared on H.D. following unsupervised visits with mother, and mother was not able to explain the bruising. As the periods of unsupervised contact increased, H.D. once again began acting out and had difficulty sleeping. During the summer of 2017, mother missed some of H.D.'s medical appointments and canceled some Family Time coaching for various reasons, including watching a friend get a tattoo and taking a newly acquired dog to a vet appointment. Mother acknowledged that she was struggling with handling both the dog and H.D. during visits.

In late July 2017, H.D. returned to her foster home after an unsupervised visit with mother with a large bruise on her face. Mother initially had no explanation for the bruise, but she later stated that H.D. might have fallen on her sippy cup. H.D. also had bruising and/or scratches on her upper arm and along the side of her spine. The pediatrician who previously examined H.D. testified at the termination hearing that the bruising, particular the facial bruising, was not in a location typical of an accidental injury for a child that age. Unsupervised time ended, although mother continued to see H.D. in a supervised setting five days a week for two hours at a time. Once the unsupervised visits ended, H.D.'s behaviors improved.

In September 2017, mother filed a motion to increase contact and reinstate unsupervised visitation. Following an October 2017 hearing, the family court denied the motion based on its conclusion that increased and/or unsupervised visitation would not be in H.D.'s best interests. In November 2017, the State filed a new termination petition. A termination hearing was held over

two days in mid-January 2018. Following the hearing, the family court granted the State's petition, finding that there had been a substantial change of circumstances due to stagnation in mother's ability to care for H.D. and that termination of mother's parental rights was in H.D.'s best interests, considering the evidence and the statutory criteria. See 33 V.S.A. §§ 5113(b), 5114(a).

Mother appeals, arguing that the court terminated her parental rights without an adequate explanation even though the evidence and the court's findings make a compelling case for retaining the bond between her and H.D. At a termination hearing in which modification of parental rights is sought, the family court must find, by clear and convincing evidence, first that there has been a substantial change in material circumstances justifying the modification and second that the termination of parental rights is in the child's best interests. See In re A.W., 167 Vt. 601, 603 (1998) (mem.). We will uphold the court's findings on both steps of the analysis if they are supported by clear and convincing evidence, and we will affirm the court's conclusions if supported by such findings. Id.

We conclude that the record supports the family court's termination order. The court noted that in the previous two years H.D. had developed a significant bond with the foster family with whom she had spent almost her entire life, from the time she was nine weeks old. The court acknowledged that mother had made significant progress in that she had quit using substances, ended a problematic relationship, found housing, maintained employment, maintained an extensive contact schedule with H.D., and, after fits and starts, began to engage with service providers. The court also recognized that mother and H.D. had a strong attachment. The court's principal concerns, however, were the passage of time and mother's continuing inability to demonstrate that she could safely parent H.D. The court found that mother had made virtually no progress towards reunification with H.D. during the first year after the child was removed from her care. The court further found that, notwithstanding mother's progress during the second year, H.D. had increased behavioral problems and unexplained bruising in atypical locations on multiple occasions following unsupervised visits with mother, which called into question mother's ability to protect H.D. and keep her safe. The court recognized that one could expect a child, particularly a child such as H.D. who had difficulty with transitions, to struggle with changes in contact schedules, but the court concluded that in this case it could not attribute H.D.'s struggles merely to schedule changes. The court concluded that, notwithstanding the bond between mother and H.D. and mother's significant progress in other areas of her life, the record demonstrated that mother could not safely parent H.D. independently—and thus could not meet one of the most significant requirements of the case plan years after H.D. was taken into state custody. The court acknowledged that the evidence did not clearly and convincingly demonstrate that mother had physically mistreated H.D., but it concluded that the evidence did demonstrate that mother could not provide adequate care to keep H.D. safe. The court further found that mother had not been able or willing to develop an adequate support network to help her care for H.D.

With respect to H.D., the court further found that the child had not been well served by the state of flux over the two years in which mother and DCF worked toward reunification. During that time, H.D. had developed a very close bond with her foster family, particularly her foster mother, who testified that they wanted to adopt the child. The court found that time was of the essence in establishing permanency for such a young child as H.D. Given what had occurred over the past two years, the court concluded that there was no likelihood that mother would be able to resume her parental duties within a reasonable period of time from H.D.'s perspective. See In re C.P., 2012 VT 100, ¶ 30, 193 Vt. 29 (explaining that most important best-interests factor is whether parent will be able to resume parental duties within reasonable period of time from perspective of child). The court recognized that mother played a constructive role in H.D.'s life, but that

conclusion did not override its concerns over mother's continued inability to safely parent a young child with a significant need for permanency.

This is not a case, as mother argues, where the family court failed to explain or justify its termination decision. The court fully explained its decision to terminate mother's parental rights, and the evidence and the court's findings and conclusions support that decision.

Affirmed.

BY THE COURT:

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice