

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. 2018-084

JUNE TERM, 2018

In re B.W., Juvenile
(J.W., Mother*)

} APPEALED FROM:
}
} Superior Court, Caledonia Unit,
} Family Division
}
} DOCKET NO. 50-9-16 Cajv

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

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

Mother appeals from the termination of her parental rights in daughter B.W. She argues that the court erred in concluding that she could not parent B.W. within a reasonable time. We affirm.

B.W. was born in May 2013. Mother was incarcerated at the time and she was in and out of jail until September 2015. At one point, mother was released to the Lund home to care for B.W. After eight months there, however, mother was asked to leave as she was not adequately caring for herself, B.W., or her living space. These eight months were the only time that B.W. was with mother full-time. At all other times, B.W. was in father's custody.

In September 2016, B.W. was taken into the custody of the Department for Children and Families (DCF) due to domestic violence, parents' substance abuse, and father's association with people who posed a risk to B.W. B.W. was placed in a foster home, where she remains. B.W. was adjudicated as a child in need of care or supervision and the court approved a disposition plan with concurrent goals of reunification with either parent or adoption, with an expected reunification date of May 2017. In August 2017, DCF moved to terminate parents' rights. Father voluntarily relinquished his rights. After a hearing, the court terminated mother's rights.

The court made the following findings. DCF asked mother to work with a family engagement specialist and family time coach to address her attunement and attachment deficits with B.W. Mother failed to attend the family times consistently and eventually asked to decrease visits to once a week. Mother cited her poor health resulting from a compromised immune system as the basis for her inconsistent attendance at visits. Regardless of the reason, the court found that mother had seen B.W. only once a week during the three months leading up to the termination hearing. Mother had also been inconsistent in attending meetings, including shared-parent meetings and B.W.'s medical appointments, which deprived mother of her ability to remain abreast of B.W.'s development and well-being. Mother consequently fell even further behind in her ability to resume parenting, particularly given B.W.'s extraordinary needs. Mother continued to need

coaching during visits. After more than a year, the family time coach could not recommend unsupported time between mother and B.W.

B.W. was traumatized while in father's custody. Upon coming into DCF custody, she exhibited significant fear reactions at surprising times. B.W. also attempted to hug and kiss strangers and she exhibited inappropriately intimate physical contact with her foster father. A licensed social worker conducted a comprehensive trauma assessment and concluded that B.W.'s symptoms met the definition of developmental trauma. He found that while parents loved B.W., their personal struggles impeded their ability to meet her needs. To recover from her developmental trauma, B.W. needed consistent, attentive, secure, and uninterrupted caregiving responses. The licensed social worker recommended child-parent psychotherapy and referred mother to a mental health provider to begin such services. After six months, however, mother still had not followed through sufficiently for therapy to begin. The court found that more than a year after coming into DCF custody, mother could not provide B.W. with attuned caregiving and she was not much closer, if closer at all, than she had been in September 2016.

The court recognized that mother had made some progress in addressing her mental health, substance abuse, and housing issues. Nonetheless, she continued to make inadequate progress toward attunement and attachment with B.W. and the frequency of their contact had decreased, further impeding progress. B.W. was doing very well in her foster home. Her foster parents loved and supported her and met her needs, some of which were extraordinary.

Based on these and other findings, the court concluded that mother had stagnated in her ability to parent B.W. and that all of the statutory best-interest factors supported termination of mother's rights. As to the most important best-interest factor, the court concluded that mother could not parent B.W. within a reasonable time. In reaching its conclusion, the court noted that mother had experienced significant obstacles, some of which were beyond her control, such as a compromised immune system. Others, including her incarceration and removal from the Lund home, were not. But B.W. was now almost five years old. While B.W. was making progress in her foster home, she continued to need consistent, attuned caregiving, which mother could not provide. The court explained that as mother's engagement in family time coaching and family time decreased, mother's ability to resume parenting in the foreseeable future diminished. B.W. needed permanency and could not continue to wait for mother to first overcome the obstacles that led to decreased contact and attendance at very important meetings, then begin to attend to B.W. consistently, and then develop the skills necessary to foster continued progress in addressing B.W.'s developmental trauma. For these and other reasons, the court concluded that termination of mother's rights was in B.W.'s best interests. This appeal followed.

Mother challenges the court's conclusion that she cannot parent B.W. within a reasonable time. Mother asserts that her contact with B.W. decreased due to her serious health issues and she testified that these health issues would be resolved shortly after the termination hearing. Mother also argues that the court erred in finding that she had been inconsistent in attending meetings, including shared-parent meetings. She acknowledges that a DCF case worker testified that mother missed meetings but notes that the case worker did not state that her attendance was "inconsistent." Mother cites the progress she has made in various areas. Finally, mother argues that the court failed to identify any risk of physical or emotional harm to B.W. that would result if mother was provided additional time in which to improve her parenting skills.

We find no error. As we have repeatedly stated, the court must consider four statutory factors to determine if termination of a parent's rights is in a child's best interests of a child. See 33 V.S.A. § 5114. The most important factor is the likelihood that the natural parent can resume

his or her parental duties within a reasonable time. See In re B.M., 165 Vt. 331, 336 (1996). If 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.).

The court applied the correct standard here and its findings are supported by the evidence. As set forth above, the court acknowledged that mother had made progress in some areas. It also acknowledged mother's assertion that she did not consistently attend visits due to her poor health. Regardless of the reason for the missed contact, the court found that mother had seen B.W. only once a week during the three months leading up to the termination hearing. Her inconsistent contact had a detrimental impact on B.W. Mother also missed other important meetings, as the DCF case worker testified. The fact that the case worker did not use the word "inconsistent" is of no moment. Additionally, mother had not progressed to unsupervised contact after more than a year of family time coaching, and she did not follow through with child-parent psychotherapy. Even if mother's health was projected to improve after the termination hearing, the record shows that mother continued to face significant additional obstacles in becoming the consistent, attuned caregiver that B.W. needed. As the court found, B.W. could not afford to wait any longer. See In re B.M., 165 Vt. at 337 (explaining that "reasonable period of time" "must be measured in terms of the child's needs"). The court was not obligated to make specific findings on whether B.W. would be harmed if permanency was delayed for a longer period. It was required only to address the best-interest factors set forth in 33 V.S.A. § 5114 and it did so here. The court's conclusions are supported by its findings, which are in turn supported by the record. We find no error.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice