

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. 2018-107

JULY TERM, 2018

In re J.F., Juvenile	}	APPEALED FROM:
(J.P., Mother*)	}	
	}	Superior Court, Addison Unit,
	}	Family Division
	}	
	}	DOCKET NO. 141-12-16 Anjv
		Trial Judge: Helen M. Toor

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

Mother appeals the court’s order terminating her rights to her son J.F., born in June 2015. On appeal, mother argues that the evidence does not support the court’s finding that mother lacked stable and permanent housing. We affirm.

The court found the following. In December 2016, a petition was filed alleging that J.F. was a child in need of care or supervision (CHINS) due to lack of proper parental care. The petition alleged, among other things, that J.F. was staying with mother and her then-partner in a barn that lacked running water, or a functioning toilet and mother declined efforts to find better housing. The partner has a history of sexual abuse of a child, but mother continued to live with him although she agreed not to leave him alone with J.F. or let him bathe J.F. Prior to filing the petition, the Department for Children and Families (DCF) worked with mother for over six months to obtain safer housing, but she refused to go to a shelter or to a house run by a parent-child center. Mother has agoraphobia and general anxiety. In March 2017 mother stipulated that J.F. was CHINS due to her inability to maintain suitable housing.

In December 2016, when he was removed from mother’s care, DCF placed J.F. in a foster home, where he has remained. The foster parents are related to mother’s then-boyfriend and had already been providing care for J.F. about one or two weeks every month even before the case began. J.F. is well adapted to his foster home and his daycare. The foster parents wish to adopt J.F.

The disposition plan, adopted in July 2017, had a goal of reunification with mother. Some case plan goals included expectations that mother find safe, stable, permanent housing, engage in mental-health treatment, visit J.F. weekly, and attend meetings with service providers. The goal was to have housing within three to six months. In October 2017, DCF filed a petition to terminate

parental rights and the next month sought to change the case plan goal. The court held a hearing in January 2018.

At the time of the final hearing, mother was living with her friend's parents. Mother's space in the home is very small and until a day before the hearing there were guns stored in the room, which the friend lied about previously removing. There is a room set up for J.F. The friends indicated that mother could stay with them as long as she likes. Mother was unemployed and lacked a license. Mother was pregnant and planned to obtain employment and place both J.F. and baby in daycare.

The court found that there was a change in circumstances due to stagnation. Although the court acknowledged that mother had made progress in some areas—she completed mental-health counseling and attended team meetings—she did not make progress towards the primary goal of finding safe long-term housing. The court then considered the statutory factors and concluded that termination was in J.F.'s best interests, concluding that there was no likelihood that mother could provide a stable home for J.F. within a reasonable period of time.

When the termination of parental rights is sought after an initial disposition, the trial court must conduct a two-step analysis. In re B.W., 162 Vt. 287, 291 (1994). The court must first find that there has been a substantial change in material circumstances; second, the court must find that termination of parental rights is in the child's best interests. Id. In assessing the child's best interests, the court is guided by the statutory criteria. 33 V.S.A. § 5114.

On appeal, mother contends that as a matter of law the court erred in stating that mother's current housing is not "stable." Mother asserts that stable housing does not depend on whether the housing is independent of others and that in this case the housing was stable because the evidence demonstrated mother could stay for as long as she wanted. We disagree with mother's characterization of the trial court's decision. The court did not hold that as a matter of law that living in someone else's home could not be stable housing; rather, the court made a finding of fact that in this instance mother's living situation did not demonstrate that she had found stable housing. On appeal, findings will be upheld unless clearly erroneous and when findings are challenged "our role is limited to determining whether they are supported by credible evidence." In re A.F., 160 Vt. 175, 178 (1993).

The following evidence was presented about mother's living situation at the time of the final hearing. Mother moved into her friend's parents' home in early November 2017. Mother testified that living there was a "step" until she could find her own place in six to twelve months. Mother also testified that she did not spend daytime hours at the residence. The court made other relevant findings related to mother's housing. Since April 2016 mother had changed her housing situation every few months, living with friends, staying in the barn, or using emergency housing. Mother had refused offers of help to find places to find appropriate housing. Given mother's testimony that she viewed her living situation as temporary and mother's history of living for short periods in different housing situations and refusing offers for help with housing, the court did not

err in finding that mother's living situation did not amount to stable housing, that her progress had stagnated, and that termination of her parental rights was in the child's best interests.

Affirmed.

BY THE COURT:

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice