

*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. 2019-133

AUGUST TERM, 2019

In re L.A., Juvenile  
(S.F., Mother\*)

} APPEALED FROM:  
}  
} Superior Court, Rutland Unit,  
} Family Division  
}  
} DOCKET NO. 16-1-18 Rdjv

Trial Judge: Cortland Corsones

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

Mother appeals the termination of her parental rights to daughter L.A., who is six years old. We affirm.

L.A. was born in June 2013 as the result of a brief, physically abusive relationship between mother and father that centered around using and selling illegal drugs together. Father has played no role in L.A.'s life, did not appear at the proceedings below, and did not appeal the termination of his parental rights to L.A.

The Department for Children and Families (DCF) first became involved with the family around the time of L.A.'s birth in 2013. L.A. was born addicted to opiates as a result of mother's use of heroin during pregnancy. L.A. was transferred from Rutland Regional Medical Center to Fletcher Allen Health Care in Burlington because she was suffering from seizures. She required specialized follow-up care, but mother did not bring her to her appointments, creating a high-risk situation. DCF provided visiting nurse care for L.A. and recommended substance-abuse counseling and daycare services for mother. When L.A. was approximately six months old, mother was arrested and charged in federal court for distribution of heroin and crack cocaine. She was released to the Lund Program in Burlington with L.A. Although she initially did well at Lund, mother stopped complying with the program requirements after thirty days and was re-arrested. DCF placed L.A. with mother's aunt, T.M. Mother was eventually convicted of the drug-distribution charge and served thirteen months in prison. L.A. was one year old when mother was incarcerated. Mother eventually transferred guardianship of L.A. to another aunt, C.F., who lived in Florida. DCF closed its case at that time.

L.A. lived in Florida with C.F. until 2015 or 2016, when C.F. was diagnosed with leukemia and decided to return to Vermont. In January 2017, mother also moved back to Vermont. C.F. died shortly afterward. C.F.'s death was difficult for L.A., who regarded C.F. as her mother.

L.A. returned to mother's custody, where she remained until January 2018. At that time, mother and L.A. lived in a rented motel room. On January 26, 2018, mother went to get some food and left L.A. in the room in the care of people actively using drugs. While mother was gone,

the police raided the room, entering with guns drawn. They found L.A. in the motel bed within reach of drugs and drug paraphernalia. DCF was granted emergency custody as a result of this incident. DCF placed L.A. with mother's aunt T.M., with whom she has lived ever since.

In March 2018, mother stipulated that L.A. was a child in need of care or supervision. DCF attempted to set up parent-child contact and services for mother, but mother was actively using drugs and had no contact with L.A. for six months. In April 2018, DCF filed a disposition case plan with concurrent goals of reunification with mother or adoption. The plan called for mother to refrain from using illegal substances, engage in substance-abuse and mental-health treatment, consistently attend visits with L.A., and maintain contact with DCF. Mother did not engage in any services recommended by the case plan. She continued to use illegal drugs. With the exception of one week in July 2018, she did not have regular contact with L.A. In June 2018, mother was charged in federal court with sale of cocaine. Mother moved to Boston at some point during the fall of 2018.

In July 2018, DCF prepared a new case plan recommending termination of parental rights and adoption by December 2018.\* The case plan expected mother to engage in substance-abuse and mental-health treatment, participate in a parenting class, and consistently attend visits with L.A. The plan cautioned that mother was in danger of losing parental rights if she did not seek appropriate therapy and services. Mother made no efforts to engage in the recommended services and did not participate in visits with L.A. In August 2018, DCF filed petitions to terminate mother's and father's parental rights.

In February 2019, mother agreed to plead guilty to the pending federal charge in exchange for the government's recommendation that she participate in a twelve-month federal drug-court program in Boston. If mother successfully completes the program, the government will recommend a time-served sentence; if she does not, she will be sentenced to serve at least five years in prison. Mother currently lives in a room in Boston that is inadequate for L.A.'s needs. She is employed in the dispatch office of a taxi company. Since December 2018, mother and L.A. have had contact once a week through FaceTime, a platform for video communications. They have not seen each other in person since mother moved to Boston. Mother began participating in substance-abuse and mental-health counseling in early 2019.

Following an evidentiary hearing in March 2018 at which mother appeared and testified, the family court issued a written decision terminating mother's and father's parental rights. The court found that mother had stagnated in her ability to parent L.A. and that modification of the existing disposition order was necessary. The court then assessed the factors set forth in 33 V.S.A. § 5114. It found that L.A. was strongly bonded to her foster parents and considered their home to be her home and a safe place. L.A. struggled in school but was receiving beneficial services in the foster community. The court found that mother would not be able to resume parental duties within a reasonable amount of time, because the drug-court program would take twelve months and L.A. was in need of permanency now. Further, mother faced significant prison time if she did not succeed in the program. Finally, the court found that mother did not play a constructive role in L.A.'s life. Although mother had previously played a constructive role in L.A.'s life during periods when she was sober, these were irregular and in the past. For most of L.A.'s life, she had no contact with mother. Other relatives had raised L.A. and provided her with the emotional support

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\* The docket entries do not indicate that the July 2018 case plan was filed with the court at that time. However, mother testified that she had seen it and understood that the goal had been changed to termination of parental rights because she had not met the expectations of the earlier plan.

and affection she needed. L.A. enjoyed her FaceTime visits with mother and loved mother, but she made it quite clear that she wanted to stay with her foster parents because they kept her safe. The court concluded that termination of parental rights was in L.A.'s best interests. Mother appealed.

On appeal, mother challenges the court's conclusion regarding the fourth statutory factor, which is "whether the parent has played and continues to play a constructive role, including personal contact and demonstrated emotional support and affection, in the child's welfare." Id. § 5114(a)(4). Mother argues that the court erred in determining that she does not play a constructive role in L.A.'s life. She argues that their frequent FaceTime contact is important to L.A. and notes that both DCF and the foster mother recognized that establishing in-person contact would be beneficial. She further argues that the court improperly focused on her past history of drug use and lack of contact with L.A. in considering whether she played a constructive role in L.A.'s welfare.

When, as here, a court faced with a termination petition has determined that changed circumstances warrant modification of an existing disposition order, the court must assess whether the best interests of the child require termination in accordance with the four statutory factors set forth in § 5114(a). "As long as the court applied the proper standard, we will not disturb its findings unless they are clearly erroneous, and we will affirm its conclusions if they are supported by the findings." In re D.S., 2014 VT 38, ¶ 22, 196 Vt. 325 (quotation omitted).

The court applied the proper standard in this case, and its findings are not clearly erroneous. Factor (a)(4), by its plain language, requires the court to assess the parent's past and current role in the child's life. It was therefore appropriate for the court to consider mother's past behavior. The court concluded that mother had not played a constructive role for much of L.A.'s life and did not currently do so. This determination is supported by the court's findings and the evidence. Mother admitted that for most of L.A.'s life, mother had not had contact with the child or acted as her parent. Mother did not have any contact with L.A. for six months after L.A. entered DCF custody in January 2018. Although they had recently begun to communicate regularly through FaceTime, and those interactions had gone well, mother had not seen L.A. in person since July 2018. Mother and L.A. loved each other, but for most of her life, L.A.'s foster parents had provided L.A. with the emotional support, structure, and discipline she needed. L.A.'s foster mother was her educational advocate and brought L.A. to her therapy sessions. L.A. was in therapy because of her traumatic upbringing by mother and the loss of her parental figures, including mother. Mother herself acknowledged that "[L.A.]'s got some issues, and I'm the cause of that." L.A. had made it clear that she wanted to stay with her foster parents because they kept her safe. Although "in some cases a loving parental bond will override other factors in determining whether termination of parental rights is the appropriate remedy," this is not such a case. In re J.F., 2006 VT 45, ¶ 13, 180 Vt. 583.

Mother also argues that termination of her parental rights was unnecessary because L.A. lives with a relative, T.M., who is committed to providing the child with a secure home for however long is needed and is willing to facilitate contact between L.A. and mother.

We see no error. Termination is appropriate if the court finds that it is in the best interests of the child in accordance with the statutory factors. § 5114(a). Here, the court found that all of the factors weighed in favor of termination, including the "most important" factor, whether mother was able to resume parental duties within a reasonable time from the perspective of L.A.'s needs. In re N.L., 2019 VT 10, ¶ 9. The court applied the appropriate standard and its findings and conclusions are supported by the evidence.

Mother further argues that there was no evidence that T.M. wished to adopt L.A. Although T.M. may not have specifically stated that she would adopt L.A., she told DCF and the court that she was willing to provide a permanent stable home for L.A. The evidence showed that T.M. and her husband had been providing a safe and loving home for L.A. This was not a case where the child’s lack of any meaningful relationship with an adult other than the parent might outweigh the other factors and preclude termination. Cf. In re J.M., 2015 VT 94, ¶ 11, 199 Vt. 627 (2015) (holding that court appropriately considered absence of alternative placement in denying termination petition where child had no foster home and his sole meaningful relationship was with father). Furthermore, we have made clear that termination does not depend on the availability of a pre-adoptive home if the court finds by clear and convincing evidence that the best interests of the child weigh in favor of termination. See In re T.T., 2005 VT 30, ¶ 7, 178 Vt. 496 (2005) (“[A]n alternative placement is not a prerequisite to termination of parental rights.”). As discussed above, the court applied the proper standard and we see no reason to disturb its conclusion.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Beth Robinson, Associate Justice