

*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. 2019-214

NOVEMBER TERM, 2019

In re G.O., Juvenile  
(S.M., Mother\*)

} APPEALED FROM:  
}  
} Superior Court, Windham Unit,  
} Family Division  
}  
} DOCKET NO. 78-7-17 Wmjv  
  
} Trial Judge: John P. Wesley (Ret.),  
} Specially Assigned

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

Mother appeals termination of her parental rights to her daughter G.O., born in March 2014. On appeal, mother argues that the court erred in terminating her parental rights because she asserts that several findings were not supported by the evidence and some of the State's evidence should not have been relied on by the court. We affirm.

The court found the following. Following reports of domestic violence and improper supervision, in October 2016, mother entered a case plan agreement with the Department for Children and Families (DCF), agreeing to, among other things, provide appropriate supervision, participate in parenting classes, follow recommendations, obtain and maintain safe and stable housing, and achieve financial stability. In March 2017, mother and stepfather<sup>1</sup> were evicted from their apartment. DCF was unable to contact mother and learned that they were homeless and staying with various friends and relatives. Mother was attempting to obtain housing, but it was difficult given that both mother and stepfather had a history of criminal convictions and past evictions. DCF filed a petition that G.O. was a child in need of care or supervision (CHINS). In July 2017, the court placed G.O. in mother's custody under a conditional custody order (CCO) with conditions like those included in the case-plan agreement, including that mother obtain safe and stable housing and meet with the DCF caseworker to ensure G.O.'s safety. In August 2017, the court granted the State's emergency motion to vacate the CCO, finding that G.O. was in an unsafe and unstable living situation and lacked consistent adequate supervision and transferring custody of G.O. to DCF. Mother subsequently stipulated that G.O. was CHINS.

The case plan goal was reunification. The case plan objectives for mother included that mother demonstrate an ability to meet G.O.'s needs, demonstrate safe and appropriate parenting, receive a substance-abuse assessment and follow all recommendations, engage in a parenting class,

---

<sup>1</sup> G.O.'s father voluntarily relinquished his parental rights on the first day of the termination hearing.

actively engage with a therapist, maintain safe and stable housing, demonstrate financial stability, and work collaboratively with DCF.

G.O. was placed with a foster family. At first, G.O. engaged in aggressive and violent play and had nightmares and emotional dysregulation. She adjusted well to her foster family and began seeing a therapist. The therapist diagnosed her with engagement disorder and post-traumatic stress disorder. Over the course of therapy, G.O. exhibited more developmentally appropriate behavior. G.O.'s engagement disorder is in remission due to the secure attachments and safe, supportive environment in her foster home. G.O.'s development is at risk if she loses her current sense of belonging and trust. G.O.'s foster family wishes to adopt her.

DCF engaged a psychologist to complete a family assessment. The psychologist determined that G.O. had post-traumatic disorder with features of reactive attachment disorder. The report described mother's past volatile and abusive relationships, and history of drug involvement, unemployment, homelessness, inability to follow through with service providers, and not providing G.O. with safe care and supervision. The psychologist diagnosed mother with bipolar disorder and noted the absence of nurturing behaviors, setting boundaries, or putting G.O.'s needs first. Mother exhibited an inappropriate reliance on her cell phone during time with G.O. An updated report in February 2019 also found that mother continues to be self-absorbed and does not know how to make G.O. feel secure or understood.

By July 2018, DCF changed its goal to termination of parental rights. DCF noted that G.O. had been out of mother's home for eleven months and that mother and stepfather had not made progress toward the case-plan goals. They were wilderness living in a tent. They had not engaged in parenting classes or anger-management courses and did not have financial stability.

Mother consistently attended visits with G.O., however, mother struggled to maintain appropriate boundaries during visits. She elevated her own needs before G.O.'s. She did not place limits on her own use of her cell phone during visits. She engaged in arguments in G.O.'s presence. At one visit, mother told G.O. that she was working on getting her to come home, which caused G.O. to become emotionally distraught.

The State filed a petition to terminate parental rights in September 2018. The court held a contested hearing over three days in March and May 2019. The court found that there was a change of circumstances due to stagnation. Mother had not demonstrated progress to providing either the necessary physical or emotional support to give G.O. a safe and secure environment. Mother continued to lack stable housing and financial stability. Mother did not display the ability to understand and recognize G.O.'s needs, especially given G.O.'s past trauma and need for stability. The court also found that termination was G.O.'s best interests. Mother was unable to regulate her own needs and emotions during visits and spent an inordinate amount of time on her cell phone. Mother did not have the capacity to provide appropriate nurturing to G.O. G.O. has a loving and stable foster home. G.O. was well adjusted to her current home and community. She was at risk of regression if removed from her supportive environment. It was unlikely that mother would be able to parent G.O. within a reasonable time as measured from G.O.'s perspective given G.O.'s young age and need for permanency and mother's lack of improvement over the course of the time G.O. had been in custody.

On appeal, mother first argues that the evidence does not support several findings, which were integral to the court's finding that mother's progress had stagnated. On appeal, the court's findings of fact will be upheld "unless they are clearly erroneous." *In re M.L.*, 2010 VT 5, ¶ 8, 187 Vt. 291. The family court as factfinder determines the credibility of witnesses and weighs the evidence. *Id.*

Mother first contends that the court erred in not finding that she had completed a parenting course as required by the case plan. Mother points to evidence submitted at trial showing that mother and stepfather had attended two sessions of Mindful Parenting in March 2018. The court found that there was insufficient information regarding the content of the course to show that the parenting class met the requirements of the case plan, especially since mother did not discuss the class with DCF. We conclude that the court's finding is fully supported by the evidence. The court considered mother's evidence regarding the class and acted within its discretion in finding that it was insufficient to show that mother had met the requirements of the case plan.

Mother next argues that the evidence does not support the court's finding that mother was removed from a waiting list for a housing program in May 2018 because mother told the housing program that she intended to move to New Hampshire. According to mother, she was removed from the list because she missed several appointments, had a criminal record, had transportation difficulties, and had a past eviction. The July 2018 case plan indicates that mother's case with Springfield housing ended in May 2018 after mother expressed a desire to move to New Hampshire and a preference for living outdoors. This case plan was admitted at the termination hearing by agreement of the parties. Therefore, it was part of the record before the court and the court did not err in relying on the content of the report to support its finding.

Mother also argues that the court inappropriately and insensitively criticized mother for being homeless and for using her cell phone. We conclude that there was no error. The court did not disparage mother for being homeless or for generally for utilizing her cell phone. Indeed, the court acknowledged how parents' financial insecurity posed challenges. The court properly considered how mother's lack of safe and stable housing and the existence of a chaotic and unstable environment impacted G.O. The evidence supports the court's finding that G.O. had post-traumatic stress disorder and engagement disorder and suffered from her adverse childhood experiences, including periods of homelessness, exposure to violence, exposure to lead, financial insecurity, and her parents' mental health issues. She required a place of safety, stability, and security. In addition, the court's findings as to mother's cell phone were related to how this use during visits impacted mother's interaction with G.O. The evidence supports the court's findings that mother did not place limits on her own use of her cell phone during visits and mother's constant use caused her to be disconnected from G.O. and the visit activities.

There is no merit to mother's final argument that the court erred in considering reports and updates filed by DCF because there was no opportunity for rebuttal or clarification. As an initial matter, mother's assertion that these items were submitted *ex parte* is not supported by the record, which demonstrates that these filings were submitted with notice to the other parties. Mother is correct that the court cannot rely on status updates filed by DCF outside of the hearing process as substantive evidence in the termination decision. But the documents identified by mother in her appellate brief were admitted as evidence at the termination hearing by stipulation of the parties.

Therefore, there was opportunity for mother at trial to rebut or clarify any fact or assertion made in the documents and the court did not err in considering the content of these documents in making its findings and reaching its decision.

Affirmed.

BY THE COURT:

---

Paul L. Reiber, Chief Justice

---

Beth Robinson, Associate Justice

---

Harold E. Eaton, Jr., Associate Justice