

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. 2020-047

JULY TERM, 2020

In re J.A. & A.A., Juveniles	}	APPEALED FROM:
(M.P., Mother*)	}	
	}	Superior Court, Franklin Unit,
	}	Family Division
	}	
	}	DOCKET NO. 169/170-10-17 Frjv

Trial Judge: Howard E. Van Benthuisen

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

Mother appeals the termination of her parental rights with respect to her children, A.A. and J.A. We affirm.

The family division’s unchallenged findings reveal the following facts. A.A. and J.A. were born in March 2013 and June 2017, respectively. In the fall of 2013, the Department for Children and Families (DCF) became involved with the family because of concerns over mother’s erratic behavior, her threats to harm herself and the children, and domestic assault perpetrated on mother by her partner. In June 2017, the same month J.A. was born, DCF offered mother a variety of services through an open-family support case. In October 2017, DCF filed a petition alleging that the children were in need of care or supervision (CHINS) because mother’s mental-health challenges were endangering them. On the same day the petition was filed, the children were taken into DCF custody on an emergency basis.

The children were adjudicated CHINS in March 2018. Notwithstanding DCF’s providing mother a variety of services, the issues that caused the children to be taken into state custody—mother’s untreated mental-health problems, her suicidal tendencies, domestic violence between her and her partner, and her threats to herself, the children, DCF personnel, and others—all persisted through the summer of 2018. In August 2018, mother’s visits with the children were suspended due to her threatening behavior towards DCF personnel and her failure to engage in mental-health counseling. Nevertheless, in August 2018, the family division approved a case plan that set concurrent goals of reunification with a parent or adoption. The identified areas of need included developing a safe support system of family and friends, consistently engaging in psychiatric treatment, being able to communicate with others without dysregulating, and demonstrating an ability to care for herself independently. In November 2018, mother appeared to be doing better, and her visits were resumed. Mother reengaged in counseling, and in the spring of 2019, her visits were increased to twice a week.

Notwithstanding the resumption of visits, DCF changed its case plan goal to adoption in February 2019, and in April of that year the State filed a petition to terminate mother’s parental

rights.* Mother became progressively less and less stable during the second half of 2019. Her visits with the children were suspended in July 2019 because of her deteriorating mental health, as manifested in several incidents involving her threatening or bizarre behavior. A termination hearing, initially scheduled for an August 2019 date, was continued twice due to mother's involuntary hospitalization and the need for a competency evaluation and appointment of a guardian ad litem. The hearing was eventually held on December 19, 2019. Mother was represented at the hearing, but she did not attend, and her whereabouts were unknown.

Following the hearing, the family division terminated mother's parental rights, concluding that her ability to care for the children had stagnated and that termination of her parental rights was in the children's best interests. See In re R.W., 2011 VT 124, ¶ 14, 191 Vt. 108 (stating that family division addressing termination petition seeking modification of prior order must determine first whether there has been substantial change in material circumstances—most often shown by passage of time with no improvement in parent's ability to care for children—and, if so, whether termination is in children's best interests pursuant to statutory criteria set forth in 33 V.S.A. § 5114(a)).

Mother appeals, arguing that the family division failed to recognize that DCF provided no meaningful assistance to her following her involuntary hospitalization. We have repeatedly held that although the reasonableness of DCF's reunification efforts is not one of the statutory best-interests criteria and thus not a prerequisite to terminating parental rights, "the level of assistance provided to parents is relevant in determining whether a parent is unlikely to be able to resume parental duties within a reasonable period of time." In re C.P., 2012 VT 100, ¶ 38, 193 Vt. 29 (quotation omitted); see also In re J.M., 170 Vt. 587, 589 (2000) (mem.) (concluding that DCF's "assistance is a factor in determining whether [it] met its burden of showing that a parent is unlikely to be able to resume parental duties within a reasonable period").

Mother argues that DCF should have been aware that she was beyond self-help when she was involuntarily hospitalized in July 2019, but that instead of being proactive in helping her, DCF remained passive in the months following her hospitalization. In support of this argument, mother cites three answers the DCF caseworker gave to questions asked at the termination hearing. She contends that by faulting her for her lack of progress, the family division failed to recognize that her mental-health condition rendered her incapable of helping herself.

We find these arguments unavailing. The court identified a multitude of services that DCF offered to mother over a period of years to help her overcome the barriers—including her struggles with her mental health—that prevented her from caring for her children. Unfortunately, mother was either unwilling or unable to consistently engage in those services. By the time mother was involuntarily hospitalized in July 2019, DCF had been involved with the family for six years and had had a case plan with recommended services in place for over two years. Mother does not explain how DCF could have forced her to meaningfully and consistently engage in those services, which she failed to do. The family division did not assign blame to mother, but rather found that she had not successfully addressed her risk factors by consistently engaging in the recommended services, establishing a safe support network of family and friends, and developing an ability to communicate with others without dysregulating. In fact, the court's unchallenged findings show

* The State also filed petitions to terminate the parental rights of A.A.'s and J.A.'s fathers. The State eventually withdrew its petition regarding J.A.'s father, and J.A. later was placed in the conditional custody of his father in New York. A.A.'s father has not appealed the family division's termination of his parental rights.

that mother did not consistently engage in services and undermined her support network through multiple incidents of threatening behavior.

None of the DCF caseworker's statements at the termination hearing show that DCF failed to support her. First, when asked whether she engaged with the hospital in planning for mother's release in August 2019, the caseworker responded that she had not done so and that it would not have been appropriate to do so. She also testified that when mother was involuntarily hospitalized, she reached out to her, but that further communication continued through the attorneys after mother accused the DCF worker of stalking her. Later during her testimony, when asked if mother was able to identify a psychiatrist during the case, the DCF caseworker stated, "Not that I'm aware of." Finally, at the end of her testimony, in response to the court's inquiry as to whether she had ever learned of a diagnosis for mother, the caseworker responded, "Not an official diagnosis, no." These isolated statements, standing alone, do not demonstrate that DCF failed to support mother to help her address the issues that led to her children being taken into state custody. The record amply supports the family division's conclusion that the statutory best-interests criteria, including whether mother would be able to resume her parental duties within a reasonable period of time, weigh heavily in favor of terminating mother's parental rights.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice