

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. 2020-126

AUGUST TERM, 2020

In re S.K. & A.K., Juveniles	}	APPEALED FROM:
(R.K., Mother*)	}	
	}	Superior Court, Lamoille Unit,
	}	Family Division
	}	
	}	DOCKET NOS. 38-7-18 Lejv &
		39-8-18 Lejv

Trial Judge: Nancy J. Waples

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

Mother appeals the court's order terminating her parental rights to S.K. and A.K., born in July 2017 and August 2018, respectively. On appeal, mother argues that some of the court's findings were not supported by clear and convincing evidence. We affirm.

The court made the following findings. The Department for Children and Families (DCF) received multiple reports regarding mother in 2017 and 2018. During the family-support case, DCF worked with mother to address issues such as her untreated mental-health issues, her roughness with S.K., and the condition of mother's home. Mother's situation deteriorated during the family-support case. An Easter Seals worker observed mother being physically rough with S.K. Mother's boyfriend and his son moved into the house and the condition of the home worsened. In July 2018, the Easter Seals worker filed a report with DCF after she observed multiple injuries and bruising on S.K. Several days later, mother went to the DCF office. The DCF case worker sent photos of S.K. to a pediatrician. The pediatrician stated that the injuries were highly suspicious for child abuse and recommended that S.K. be removed from her caregiver and given immediate medical attention. After examination at two hospitals, a doctor concluded that the injuries suggested forceful pinning of S.K.'s head by an adult's hand. The doctor also observed multiple ligature marks and bruising on S.K.'s neck, which the doctor concluded were caused by nonaccidental trauma. Mother stated that she was the only person who cared for S.K. Mother provided several possible explanations for S.K.'s injuries, and the doctor deemed her explanations for the injuries not credible.

In July 2018, the State filed a petition alleging that S.K. was a child in need of care or supervision (CHINS). A CHINS petition was filed as to A.K. a day after her birth. In August 2018, mother began to suggest that her boyfriend caused the injuries to S.K. DCF and police investigated and ruled out the boyfriend as the perpetrator.

Mother stipulated to the merits of the CHINS petitions, agreeing that the children were without proper parental care based on the nonaccidental injuries incurred while in mother's care. Although mother made some progress initially, she began to regress after the post-disposition

hearing. In May 2019, DCF changed the case-plan goal to adoption. DCF was concerned about the lack of a credible explanation for S.K.'s injuries but was also concerned about her failure to comply with the case plan and make sustained improvement in her mental health and parenting skills. Mother had not completed a mental-health assessment and was not making progress in her therapy or with Family Time Coaching.

The State moved to terminate mother's rights in June 2019. Following a hearing, the court found there was a change in circumstances based on mother's lack of improvement in her ability to regulate her emotions, keep her home safe, and improve her parenting. The court further found that the best-interests factors weighed in favor of termination. The children were both in permanent homes and thriving. S.K. was in a family placement and was bonded with her new family. S.K.'s nightmares had improved, and she had learned to walk properly. A.K. was placed with her father and he was meeting all her needs. Mother's relationships with her children were compromised by her struggle with mental health, physical roughness, and inability to read their cues. Mother would not be able to parent S.K. and A.K. within a reasonable time. Mother was unable to sustain any improvement in her parenting and did not have the ability to manage her own mental health and to regulate her emotions. Finally, mother did not play a constructive role in the children's lives because she could not maintain a safe living environment, regulate her own mental health, or prioritize the children's needs. Therefore, the court granted the petition to terminate mother's rights.

On appeal, mother argues that the evidence does not support the court's finding that mother's progress had stagnated. Mother challenges several specific findings. "Individual findings of fact will stand unless clearly erroneous, and conclusions of law will be upheld if supported by the findings." In re A.F., 160 Vt. 175, 178 (1993). On appeal, this Court does not assess the evidence anew and its role is "limited to determining whether [the findings] are supported by credible evidence." Id.

Mother's first challenge concerns the advice she received from a DCF caseworker after observing S.K.'s injuries. Mother contends that the evidence does not support the court's finding that DCF advised her to get "immediate medical attention" for the injuries to S.K. Mother contends that, instead, the evidence shows that she was advised to go to the hospital that night or make an appointment the next day. The State concedes that the evidence shows that the DCF case worker did not advise mother to get immediate medical attention until after a doctor saw the photographs of S.K.'s injuries. Any error in the court's finding as to when mother was instructed to seek medical attention was harmless insofar as the exact advice mother received from DCF about the need for medical attention after S.K.'s examination did not affect mother's substantial rights. See In re D.C., 2012 VT 108, ¶ 16, 193 Vt. 101 (employing harmless-error standard in termination case so that reversal is granted only if party's substantial right is affected). The court's key findings on this issue are supported by the evidence—S.K. sustained injuries that a medical professional deemed nonaccidental and S.K. required immediate medical attention. Moreover, mother stipulated to the merits, agreeing that S.K. was CHINS due to the injuries she received while in mother's care. Finally, the detail of what instruction mother received, and when she received it, had no bearing on the court's decisions regarding mother's lack of progress and the assessment of the children's best interests.

Mother also challenges some of the court's findings related to mother's explanations for S.K.'s injuries. Mother argues that the court improperly faulted her for attempting to find a reasonable explanation for S.K.'s injuries, implying that she was fabricating, instead of crediting her for attempting to ascertain what happened. There was no error. The court's findings accurately portrayed the evidence. The court found that mother had provided multiple explanations for the

injuries, these explanations were conveyed to doctors and investigated, and the doctors ruled them out as possible causes of the injuries. The court did not make any inference from these findings that mother was purposefully fabricating.

Mother next challenges the court's finding that the disposition case plan DCF submitted in September 2018 was "clear that the lack of a credible explanation for [S.K.'s injury] was a potentially insurmountable barrier to reunification." Mother agrees that the lack of an explanation would make reunification difficult but contends that there was no evidence that reunification without an explanation was impossible. There was no error. The court did not describe reunification as impossible. The court's description that reunification without a reasonable explanation for the injuries would be "potentially insurmountable" is supported by the evidence. In fact, the court's decision demonstrates that the decision to drop the goal of reunification with mother was based on more than the lack of an explanation for S.K.'s injuries. The court found that when DCF changed the case-plan goal to adoption, the DCF caseworkers explained to mother that the lack of a credible explanation was a factor in this decision, but her lack of progress and inability to demonstrate sustained improvement "drove the decision."

Mother also contends that the court improperly found that she failed to make improvements in her parenting skills. Mother contends that the Family Time coach wanted her to conform to a particular parenting style and that she did not have to make changes as long as her actions did not harm the children or cause them to fear her. The court's finding that mother did not make progress in her parenting skills is supported by the evidence, including the following: mother continued to be "heavy-handed" with her children and demonstrated unsafe behaviors; mother did not recognize that S.K. was receptive to mother's moods and would get upset if mother was angry, spoke roughly, or demonstrated sadness; and mother needed prompting to recognize when the children needed comforting. These are all valid concerns about mother's ability to parent and support the court's finding that mother did not make progress in improving her parenting skills.

Finally, mother challenges the court's findings concerning her compliance with the mental-health and medication requirements of the case plan. Mother argues that the evidence does not support the court's finding that she was prescribed Zoloft in May 2018, "took it briefly, noticed a positive change, increased her dosage and then stopped taking it because she did not like how it made her feel." This finding is supported by mother's testimony that she was on Zoloft after S.K. was born, she was "fairly good" at taking it, increased her dosage twice, and then stopped.

Additionally, mother contends that she attempted to comply with the mental-health requirements of the disposition case plan. The court's findings on this issue are as follows. In June 2019, mother had not completed her mental-health assessment, had not consulted with a medication provider, and was not making progress in her individual therapy. In October 2019, the court found that mother completed a self-evaluation of her mental health to be prescribed medication and, based on the assessment, her practitioner recommended that mother have a full psychiatric evaluation.

Mother contends that she complied with the case plan by obtaining a mental-health evaluation for diagnoses and prescriptions and that it was not clear that more was required from her. She asserts that she is prepared to do a psychological evaluation, if necessary.

The testimony supports the court's findings that mother did not participate in a mental-health evaluation or a full medication consultation and that mother was aware of these requirements. The DCF caseworker testified that mother participated in a mental-health self-

assessment but had not undergone a full evaluation. The caseworker also testified that she had discussed with mother the lack of a mental-health evaluation when the case-plan goal was changed.

In sum, the court acted within its discretion in determining that there was a change of circumstances in this case due to mother's stagnation where mother failed to make sustained improvement in her ability to regulate her emotions or anger, her home continued to have periods where its condition was unsafe, her parenting skills did not improve, and she could not manage her depression or anxiety or place the needs of the children over her own. See In re A.G., 2004 VT 125, ¶ 19, 178 Vt. 7 (explaining that whether there has been change of circumstances is "a matter within the sound discretion of the family court" (quotation omitted)). Therefore, there are no grounds to reverse.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

William D. Cohen, Associate Justice