

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. 2020-144

SEPTEMBER TERM, 2020

In re A.D., Juvenile (A.D., Mother*)	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Family Division
	}	
	}	DOCKET NO. 419-10-18 Cnjv
		Trial Judge: Thomas J. Devine

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

Mother appeals the termination of her parental rights with respect to her daughter, A.D. We affirm.

Mother does not challenge any of the family division’s findings, which reveal the following facts. A.D. was born in February 2014. For the first four years of her life, A.D. lived with mother and her maternal grandmother at her grandmother’s home. Mother and her former live-in boyfriend, who is not A.D.’s father,¹ cared for A.D. during the day while grandmother worked as a registered nurse. Mother and grandmother shared A.D.’s care in the evenings after grandmother returned from work. When A.D. was diagnosed with autism at age two,² grandmother decided to quit her job so that she could stay home and focus on A.D.’s care.

Since then, grandmother has been A.D.’s primary caregiver. She coordinated A.D.’s many medical, dental, and school appointments. She worked closely with service providers from various programs and organizations to get A.D. needed support services. Regularly scheduled conferences were set up to coordinate the work of the many service providers supporting A.D. Grandmother attended all these conferences, while mother missed most of them, which resulted in some delays in services and mother lacking critical information about A.D.’s needs. Although grandmother was the liaison for A.D.’s service providers, her effectiveness was limited because she lacked legal authority to consent to treatment decisions, and at times mother would not sign the necessary forms to allow A.D. to access services.

¹ A.D.’s putative father has never been a part of A.D.’s life and has not participated in any of the CHINS (child in need of care or supervision) proceedings.

² In addition to being on the autism spectrum, A.D. is developmentally delayed in verbal communication, personal hygiene, feeding herself, and safety awareness. She requires close supervision.

During this period, the relationship between mother and grandmother worsened, as mother's behavior became more dysregulated.³ DCF became involved with the family in June 2018. Police were called to the home on two occasions in the late summer and early fall of that year to respond to altercations between mother and grandmother. After a CHINS petition was filed in October 2018, the Intensive Family Based Services program stopped providing services to the family because of mother's escalated behavior. At a preliminary hearing in response to the CHINS petition, the family division issued a conditional custody order (CCO) placing A.D. in grandmother's custody while allowing mother to remain in grandmother's home and provide limited care for A.D.

In November 2018, before the temporary care hearing was held, the State filed an emergency motion alleging that mother had become dangerously dysregulated on several recent occasions. Mother's behavior was frightening A.D., and grandmother was worried for the child's safety. At an emergency hearing, the family division found that mother's behavior was detrimental to A.D.'s safety and well-being. The court issued a juvenile protective order that required mother to leave grandmother's home and to have contact with A.D. only under the supervision of an individual approved by DCF.

After mother left grandmother's residence, she suffered through a year-long state of homelessness, instability, and domestic abuse by several partners. During that year, mother's contact with A.D. was sporadic and unplanned, and she did not participate in court proceedings.

Mother did not appear at a December 2018 temporary-care hearing in which the family division continued the CCO with grandmother. Nor did mother appear at the January 2019 merits hearing at which the court adjudicated A.D. CHINS due to her risk of emotional and direct physical harm resulting from mother's increasingly violent behavior. On the first day of the disposition hearing in March 2019, at which mother did not appear, the family division rejected DCF's proposed case plan goal of a permanent guardianship or other custody to grandmother. DCF filed a revised case plan with a goal of adoption. The case plan recommended that mother address medical issues and follow treatment recommendations; participate in a mental-health assessment and follow treatment recommendations; attend all medical, dental, and education meetings concerning A.D.; and sign releases. The court did not issue a disposition order at the resumed May 2019 hearing, however, because the State had not yet filed a termination-of-parental-rights (TPR) petition.

A.D.'s attorney filed a TPR petition in September 2019. Between September 2019 and January 2020, when the TPR hearing was held, mother had contact with A.D. on four or five occasions at grandmother's residence for two-hour visits, in addition to a longer Christmas visit.

³ Mother, in her mid-twenties and unemployed, self-reported various physical and mental health conditions, including fibromyalgia, chronic pain, a broken back, post-traumatic stress disorder, anxiety, and depression. However, mother refused to undergo a mental-health assessment, as requested by the Department for Children and Families (DCF), or to provide DCF or the family division with any records or competent medical evidence about her mental-health conditions. Accordingly, although the family division found it likely that mother suffered from one or more mental-health conditions, it was not prepared to make conclusive findings on those conditions and mother's needs based solely on mother's self-reporting.

In April 2020, the family division issued an order terminating mother's parental rights after considering each of the statutory best-interest factors set forth in 33 V.S.A. § 5114(a).⁴ Regarding the first factor concerning the child's interaction and relationship with persons who may significantly impact the child's life, the court found that although A.D. has a loving relationship with both mother and grandmother, grandmother is the person who has provided A.D. with the daily nurturing and care upon which A.D. depends, in contrast to mother, who was essentially absent from A.D.'s life in the two years before the TPR hearing. As for the second factor concerning the child's adjustment to her home, school, and community, the court found that grandmother had consistently fulfilled A.D.'s compelling need for stability and continuity, including making sure that A.D. received various services to address her special needs, while mother continued to require counseling and support in her own life.

Regarding the third and most important factor, the court concluded that mother was unlikely to be able to resume her parental duties within a reasonable period of time from A.D.'s perspective. The court recognized the recent progress mother had made in her own life but concluded that she would still need to successfully navigate a wide range of services before she could resume caring for A.D. The court concluded that the likelihood of her successfully completing such services was hindered by the fact that she continued to deny there was any basis for a CHINS petition and to perceive herself as a victim at the hands of DCF. The court also emphasized A.D.'s complex special needs, her overriding need for stability, and the need for her caregiver to work effectively with a wide range of service providers, which mother was unlikely to be able to do, given her attitude toward DCF and the CHINS proceedings. Turning to the fourth factor concerning whether the parent has played and continues to play a constructive role in the child's life, the court found that mother had not played a constructive role in A.D.'s life since the child's first two years.

On appeal, mother argues that in light of her loving bond with A.D. and the fact that A.D. was already thriving in a stable situation with grandmother, it is not reasonable from A.D.'s perspective to terminate mother's parental rights unless and until grandmother was no longer able to care for A.D. Mother analogizes the instant situation to a divorce proceeding where both parents have a loving bond with the child, but one parent is more suited to provide primary care for the child. She asserts that, in such situations, the noncustodial parent is not cut off from the child but rather is given the opportunity to continue a loving relationship through parent-child contact. In mother's view, that is what should happen here, in the form of a permanent guardianship or some other custodial relationship. According to mother, terminating her parental rights in this situation is irrational.

We find these arguments unavailing. In determining whether to terminate parental rights, the family division is required under Vermont law to consider the best-interest factors set forth in 33 V.S.A. § 5114(a). The court did so, and the record amply supports the court's determination that each of those factors strongly supports terminating mother's parental rights. As the court found, after years of minimal contact with A.D., mother would still need a wide range of services to be in a position to resume parental care of A.D., and yet she continued to believe that there was no basis for the CHINS petition and refused to acknowledge the need for the recommended

⁴ Because the family division had not yet issued a disposition order, it did not need to make a threshold determination of changed circumstances since the issuance of a previous order before considering the statutory best-interest factors. Compare 33 V.S.A. § 5318(a)(5) (providing that at initial disposition court may order termination of parental rights and transfer of custody to DCF), with 33 V.S.A. § 5113(b) (providing that court may modify previous order on grounds that change of circumstances requires such action to serve child's best interests).

services. These findings, as well as the court's findings establishing A.D.'s compelling need for stability and permanency in her life and for continuity in receiving required services to address her complex special needs, amply support the court's conclusions that mother would not be able to resume her parental duties within a reasonable period of time from A.D.'s perspective and that termination of mother's parental rights is in A.D.'s best interests.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice