

*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. 2020-193

NOVEMBER TERM, 2020

In re A.M., H.M., B.M., Juveniles	}	APPEALED FROM:
(K.M., Mother*)	}	
	}	Superior Court, Bennington Unit,
	}	Family Division
	}	
	}	DOCKET NO. 139/140/141-10-17 Bnjv
		Trial Judge: Kerry A. McDonald-Cady

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

Mother appeals the termination of her parental rights with respect to her three children, A.M., H.M., and B.M.<sup>1</sup> We affirm.

The following facts are undisputed. A.M., H.M., and B.M. were born in September 2007, June 2009, and August 2012, respectively. The children have been the subject of two petitions alleging that they were children in need of care or supervision (CHINS). The first petition, alleging neglect due to inappropriate living conditions, was filed in May 2015. The children were adjudicated CHINS but remained in the care of their parents under a conditional custody order (CCO) until December 2015, when the family division vacated the CCO and closed the CHINS case.

Approximately two years later, in October 2017, the State filed a second CHINS petition after police discovered the family once again living in deplorable conditions in a motel. The floor of the motel room was covered with garbage, soiled clothes, food, and scattered prescription pills. The only sink in the motel room was clogged with stagnant, brown water. The single shower stall was full of trash piled just short of the ceiling, and the toilet was clogged and full of human waste. Surrounding the toilet were soiled diapers and used feminine hygiene products. The sink, shower, and toilet had not been functioning for some time, so there was no place in the room for the family to wash, bath, or relieve themselves. At that time, A.M. was academically two grades behind his age level and had developed “brittle bones disease” due to a lack of proper nutrition. H.M. and B.M. were also behind in school, and all three children were traumatized after being exposed to these living conditions and then removed from their parents’ care.

In response to the State’s petition, the family division issued emergency and temporary orders transferring custody of the children to the Department for Children and Families (DCF). DCF placed the children with their paternal great aunt and uncle, who were recently licensed as foster parents. The court adjudicated the children CHINS in early May 2018 based on the parents’

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<sup>1</sup> Father voluntarily relinquished his parental rights on the first day of the termination hearing.

admissions of neglect. At a July 2018 disposition hearing, the court approved a case plan that sought to reunify the children with mother within a six-to-nine-month period. The case plan called for mother to attend all visits with the children on time, participate in a mental health assessment and follow through on all recommendations from the assessment, meet regularly with the Easter Seals family support worker, demonstrate an ability to meet the children's needs related to hygiene, attend all meetings and appointments for the children, obtain and maintain appropriate housing, work cooperatively with service providers, and immediately inform DCF of any change in her address or telephone number.

Between July 2018 and early December 2018, mother made significant progress towards achieving the case plan goals. She progressed to unsupervised visits, including weekend overnight visits. She obtained her own three-bedroom subsidized apartment and was engaged with DCF service providers. Unfortunately, by mid-December 2018, mother's progress abruptly ceased. In early December of that year, DCF received a report that mother had been abusing prescription medication, and late that month mother tested positive for opiates after submitting to a drug test. Mother refused DCF's requests over the next few months to submit to additional drug tests. During that period, mother was no longer cooperating with service providers, particularly the Easter Seals family support worker.

In early February 2019, DCF called for mother to submit to a substance abuse assessment as an additional case plan goal.<sup>2</sup> Mother did not comply with that goal. Around that time, DCF learned that mother had a romantic relationship with an untreated sex offender. About the same time, mother stopped her individual therapy. She never addressed her hoarding problem or took any responsibility for the family's living conditions that led to the children being taken into state custody. Despite increasing concerns surrounding these issues, DCF sought and obtained two three-month extensions—first from April to July 2019, and then from July to October 2019—for mother to complete a drug assessment and demonstrate that she was making significant progress towards reunification with the children. Unfortunately, mother continued to refuse to submit to drug tests and she made no progress towards reunification. During this six-month period, mother's attendance at visits decreased dramatically.

In September 2019, DCF filed a petition to terminate both mother's and father's parental rights. The hearing began on March 13, 2020. On the second day of the hearing, June 25, 2020, DCF announced that it had removed the children from their foster parents' home and had begun the process of revoking the foster parents' license upon discovering that the great uncle did not reveal to DCF during the licensing process that he had been substantiated in Massachusetts for abuse and neglect of his own children decades earlier when they were minors.

Following the hearing, the family division issued a decision terminating mother's parental rights to all three children. The court concluded that: (1) any progress mother initially made towards reunification had stagnated over the previous year and a half; and (2) the statutory best-interest factors set forth in 33 V.S.A. § 5114(a) militated in favor of terminating mother's parental rights. See In re D.S., 2016 VT 130, ¶ 6, 204 Vt. 44 (describing two-step analysis whereby family division must first determine whether there has been substantial changed circumstances since initial disposition order and, if so, whether termination of parental rights is in children's best interests, considering statutory factors). The court concluded that mother lacked insight into the trauma the children had endured under her care, her role in the removal of the children from her care, the significance of the case plan goals to her being able to resume care of the children, and

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<sup>2</sup> In July 2019, the family division formally adopted a substance abuse assessment as one of the case plan goals.

the importance of consistent visitation to achieve that goal. The court found stagnation with respect to the case plan goals requiring consistent visitation, cooperation with service providers, participation in mental health counseling, and participation in a substance abuse assessment. The court further concluded that termination of mother's parental rights was in the children's best interests because mother and the children no longer had a bond and mother was not doing the things necessary to put her in a position to resume care of the children within a reasonable period of time from the children's perspective.

Mother appeals, arguing that the family division committed reversible error by not making findings on whether DCF provided mother with adequate assistance and by concluding that mother did not play a constructive role in the children's lives. We find no merit to either argument.

Regarding her first argument, mother points to her testimony that beginning in late December 2018 and early 2019, communication between her and DCF broke down and DCF did not respond to her questions. As mother acknowledges, however, the DCF caseworker contradicted mother's testimony by testifying that although there was a period in early 2019 where she could not go to mother's home after work hours for safety reasons, she was accessible during that period by phone and email. In its decision, the family division acknowledged mother's beliefs about DCF not helping her, but the court found that, despite substantial efforts of service providers to help her, mother failed to consistently visit the children for long periods of time, engage in mental health counseling, cooperate with service providers, participate in substance abuse screening, or submit to drug tests upon request. The court found that mother was not willing to accept help or consider change. The court also noted mother's belief that mental health counseling would be a waste of time and concluded that mother stopped cooperating with service providers due to her misguided belief that DCF was not helping her by accommodating weekend visits.

In short, the court's decision reflects that it thoroughly considered the nature and extent of DCF's efforts to support mother's reunification with the children. The court was not obligated to make a specific finding on mother's testimony that DCF did not return her telephone calls during a certain period. Nor is mother's argument supported by the DCF caseworker's testimony that she met with mother's boyfriend in January 2020 to assess what risk mother might pose to the children if she continued to have a role in their lives following their adoption. This occurred not long before commencement of the termination hearing. DCF's request on two occasions in mid-2019 for three-month extensions to allow mother more time to participate in a drug assessment and demonstrate her ability to care for the children indicated that DCF made genuine efforts to pursue its initial goal of reuniting the children with mother, despite mother's ongoing struggles.

Mother also argues that the family division erred by concluding that she does not play a constructive role in the children's lives. According to mother, the court focused on whether the children should be returned to her care rather than on what was in the children's best interests. Mother contends that, in light of the children's sudden removal from their longtime foster home during the termination proceedings, the court should have recognized the children's need to maintain a relationship with their mother during this traumatic transition period. In mother's view, by indicating that the sudden turn of events did not affect its analysis as to whether the children should be returned to mother's care, the court failed to focus on the children's best interests.

We find this argument unavailing. The court's findings, which are supported by the evidence presented at the termination hearing, provide ample support for the family division's conclusion that mother did not play a constructive role in the children's lives. The court found that mother and the children no longer shared a bond due to mother's past parental neglect and her failure to maintain consistent visits with the children since they were taken into DCF custody. The

court also found that although mother had made some admirable progress in her own personal life, she had not demonstrated a consistent interest in the children's lives. We discern no basis to reverse the family division's termination order.

Affirmed.

BY THE COURT:

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice