

*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. 2020-237

JANUARY TERM, 2021

In re I.B. & I.B., Juveniles	}	APPEALED FROM:
(M.B., Mother* & D.B., Father*)	}	
	}	Superior Court, Addison Unit,
	}	Family Division
	}	
	}	DOCKET NO. 2/3-1-19 Anjv
		Trial Judge: Alison S. Arms

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

Mother and father individually appeal the family division’s order terminating their parental rights with respect to their two sons, Ih.B. and Ic.B. We affirm.

Ih.B. and Ic.B. were born in October 2011 and August 2013, respectively. Between 2010 and 2018, the Department for Children and Families (DCF) received a number of reports regarding the children. In 2018, DCF received a report from the children’s school stating that the children were without proper parental care and raising concerns about their home environment and hygiene. During the ensuing investigation, DCF identified issues regarding neglect, inadequate physical care, insecure housing, emotional maltreatment, use of excessive physical discipline, ongoing substance abuse, and domestic violence. Both children had specialized needs. Ih.B. was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and presented highly aggressive and sexualized behaviors.

In January 2019, DCF received a report regarding lack of supervision at home and the children’s access to guns. Ic.B. reported domestic violence in the home and the parents pointing guns at each other. He reported one incident where Ih.B. threatened to shoot mother and himself after not being able to wake her up and then wound up shooting the gun into the sky, with the bullet nearly striking Ic.B.’s forehead. On January 10, 2019, the children were taken into DCF custody pursuant to an emergency care order. On March 12, 2019, mother and father individually stipulated to the family division’s adjudication that Ih.B. and Ic.B. were children in need of care or supervision (CHINS). Mother stipulated that the boys were at risk of harm because fighting in the home created a toxic environment and caused emotional dysregulation in the children. Father stipulated that the boys were at risk of emotional harm because of his frequent absence from the home while working and his yelling at the children when he was home.

On May 14, 2019, with no objection from the parents, the family division adopted DCF’s disposition case plan, which called for reunification with the parents within six-to-twelve months. The case plan indicated that the children were at risk of emotional, developmental, medical and/or physical harm if the parents: (1) failed to maintain a safe and stable household; (2) were not sober and thus unable to provide safe and appropriate supervision; (3) were not aware of the children’s

psychological, social, and medical needs, as well as their need for stability and safety; and (4) employed techniques of intimidation and violence towards the children or to each other in front of the children. The case plan identified the following action steps that the parents needed to address to achieve reunification with the children, including: (1) provide safe, clean, and adequate housing to meet the children's basic needs; (2) maintain a source of income, whether through employment, vocational rehabilitation or economic support services; (3) engage in individual substance-abuse evaluations, follow through with any recommendations from those assessments, and sign releases to allow DCF to speak to the service providers; (4) demonstrate sobriety by not using unprescribed substances; (5) participate in a domestic-violence assessment and follow recommendations; (6) refrain from using physical aggression or intimidation with others, including family members; (7) work with a parent educator to learn general stages of child development; and (8) demonstrate an ability to supervise and monitor the children and to put the children's needs above their own.

On February 25, 2020, the State filed a petition to terminate both mother's and father's parental rights. In an August 18, 2020 decision, following a July 22, 2020 termination hearing, the family division granted the State's petition. The court concluded, by clear and convincing evidence, that there was a substantial change of circumstances resulting from stagnation of both parents' ability to care for the children and that the children's best interests, considering the governing statutory factors, warranted termination of both mother's and father'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 substantially changed circumstances existed since initial disposition order to justify modification of that order and, if so, whether termination of parental rights is in children's best interests, considering statutory factors set forth in 33 V.S.A. § 5114(a)); see also In re D.M., 2004 VT 41, ¶ 7, 176 Vt. 639 (mem.) ("The key question for the court when considering whether stagnation has occurred is whether the parent has made progress in ameliorating the conditions that led to state intervention."); In re B.W., 162 Vt. 287, 291 (1994) (stating that substantial change in material circumstances is "most often found when the parent's ability to care properly for the child has either stagnated or deteriorated over the passage of time" (quotation omitted)).

Mother and father individually appeal the termination order. Mother argues that the evidence in the case does not support the family division's conclusion that her ability to care for the children had stagnated since issuance of the disposition order in May 2019. She asserts that "proper findings" would support return of the children to her because she abided by the case plan and demonstrated her ability to meet the children's medical and physical needs. She suggests that the court's termination order was based primarily on its determination that the children's foster families could offer the children a more affluent lifestyle than could the children's biological parents. For his part, father argues that the family division's findings do not support its determination that it was in the children's best interests to terminate his parental rights.

As an initial matter, we do not find any indication in the record that the family division based its termination order in whole or in part on a consideration of the foster families' ability to offer the children a more affluent lifestyle than the biological parents could offer them. The court focused its findings on mother's and father's efforts, or lack thereof, to avail themselves of case plan services aimed at addressing the issues that led to their children being placed in state custody. In concluding that the parents' ability to care for the children had stagnated, the court found that parents had failed to acquire safe and stable housing or demonstrate an understanding of how that would benefit the children, had minimized the circumstances that led to removal of the children from their custody, including domestic violence and safety concerns, and had failed to engage meaningfully in counseling regarding domestic violence or substance abuse. The court also found

that mother had not addressed her emotional dysregulation issues, which affected her ability to communicate with service providers and parent the children. As for the children's best interests, the family division concluded that the statutory factors supported termination of parental rights because: (1) the parents had neither adequately interacted with service providers to improve their parenting skills nor consistently engaged in visits with the children; (2) the children had made significant progress in foster care and were adjusted to their home, school, and community; (3) the parents would not be able to resume their parental duties within a reasonable period of time from the children's perspective, given the children's need for stability and the parents' failure to make progress in demonstrating an ability to care for the children, who had been in foster care for eighteen months; and (4) the parents did not play a constructive role in the children's lives.

Essentially, both mother's and father's challenges to the family division's findings and conclusions regarding changed circumstances and the children's best interests ask this Court to reweigh the evidence and assess their credibility. This we will not do. See In re D.S., 2014 VT 38, ¶ 22, 196 Vt. 325 ("We leave it to the sound discretion of the family court to determine the credibility of the witnesses and to weigh the evidence." (quotation omitted)); In re S.B., 174 Vt. 427, 429 (2002) (mem.) (stating that this Court's role in reviewing orders terminating parental rights "is not to second-guess the family [division] or to reweigh the evidence, but rather to determine whether the court abused its discretion" in terminating parental rights).

The family division found that the parents were generally resistant to case planning and support services. Regarding the critical issue of obtaining safe and stable housing, the court found that during the pendency of the CHINS proceedings, the parents lived at various times at four different locations in Vermont, including for a time at the home of the paternal grandfather, and in Michigan. The court noted that the parents declined help in finding suitable housing from service providers and that father had indicated on numerous occasions that they would be able to move into a home provided by his employer in October 2019 but that it never happened. At the time of the termination hearing, the parents were staying temporarily in a room at a hotel with the help of a state voucher, which was renewable every two weeks, after being asked to leave a friend's house and refusing to stay at a shelter. The parents testified that the day before the termination hearing they learned that a trailer in a former junkyard that father had agreed to clean up would be available to them within the month. Because of this late notice, DCF was not able to visit the home. The court found that the claimed prospective housing was uncertain and that its suitability for the children was questionable. Father challenges this finding. Given the parents' failure to work with service providers to obtain safe and stable housing and the timing of the parents' belated claim that housing would be available to them in the near future, the family division's findings that the parents had failed to obtain safe and stable housing and that their claimed prospective housing was both uncertain and questionable as to its suitability for the children were not clearly erroneous. See In re D.S., 2014 VT 38, ¶ 22 ("As long as the court applied the proper standard, we will not disturb its findings unless they are clearly erroneous, and we will affirm its conclusions if they are supported by the findings." (quotation omitted)).

Regarding mother's explanations concerning the children's poor hygiene and dental needs, which she repeats on appeal, the family division found them not to be credible. Nor did the court find credible mother's attempts to minimize how domestic violence within the family and the lack of safety measures regarding guns jeopardized the children's emotional, developmental, and physical wellbeing. Nor did the court find credible father's excuses for not obtaining a substance-abuse assessment and following through with recommendations. The court also found that the counselor mother claimed to have worked with at the hotel where the parents were staying was not a substitute for working with service providers to obtain the type of counseling expected in the case plan. As for visiting the children, the court found that mother's attendance had been

inconsistent and that father had not even begun visits until January 2020, when he began seeing the children every other week. The court also found that the parents had not meaningfully participated in an Easter Seals parenting program or worked with a parent educator and had failed to show an ability to supervise and monitor the children appropriately based on their ages and their developmental, emotional, and physical needs.

Based on these and other findings, the family division concluded that the parents had not made any meaningful progress toward reunification with the children in the eighteen months since the children had been placed in state custody. The court concluded that the children's best interests warranted termination of mother's and father's parental rights because the parents' failure to meaningfully engage in the recommended services and to gain insight into the conditions and causes that led to the children being placed in state custody demonstrated that they would be unable to resume their parental duties within a reasonable period of time from the children's perspective. The record supports this determination, and we decline to reweigh the evidence in the way both parents seek.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice