

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. 2020-259

FEBRUARY TERM, 2021

In re R.S., Juvenile
(C.H., Mother*)

} APPEALED FROM:
}
} Superior Court, Franklin Unit,
} Family Division
}
} DOCKET NO. 214-8-18 Frjv

Trial Judge: Howard E. Van Benthuisen

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

Mother appeals the family division’s order terminating her parental rights with respect to her son, R.S. We affirm.

The Department for Children and Families (DCF) has been working with mother since 2009 in connection with her three older children, whom she no longer parents,¹ in addition to R.S. The concerns about mother’s parenting included mental-health problems, lack of stable housing, and an inability to meet the children’s basic needs.

R.S. was born in August 2018. That same month, DCF filed a petition alleging that R.S. was a child in need of care or supervision (CHINS) due to mother’s substance abuse, unresolved mental-health problems, and the presence in her life of a substantiated sexual abuser of children. The family division entered an emergency care order on the day the petition was filed, and custody of R.S. was transferred to DCF. In December 2018, mother stipulated to a CHINS adjudication, agreeing that her mental-health problems put R.S. at risk of harm. That same month, DCF placed R.S. with the same foster family with whom he has continuously lived ever since.²

Mother did not contest DCF’s disposition case plan, which the family division adopted in January 2019. The plan’s initial goal was reunification with a parent³ by July 2019. The plan’s action steps called for mother to participate in a mental-health evaluation and engage in any recommended treatment, take prescribed medication, participate in the Family Time coaching

¹ Mother voluntarily relinquished her parental rights to two of the children and placed the other child with a private agency for adoption.

² The foster family includes a couple and their four biological children. R.S.’s younger half-brother, who was also placed in DCF custody, lives with the family as well.

³ R.S.’s biological father, who was not living with mother at the time of R.S.’s birth, voluntarily relinquished his parental rights at the termination hearing.

program, acquire safe housing, and identify a safe support system. Mother's visits with R.S. became inconsistent beginning in January 2019 and stopped altogether in March of that year.

In August 2019, the State filed a petition to terminate mother's parental rights with respect to R.S. Following an August 25, 2020 termination hearing, the family division issued an order granting the petition. The court concluded that mother's ability to care for R.S. had stagnated because she had made no progress in achieving the case plan's key goals, including the critical goal of addressing her mental-health problems, and that R.S.'s best interests, considered pursuant to the governing statutory criteria, 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 substantially changed circumstances exist 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 criteria set forth in 33 V.S.A. § 5114(a)); 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)); 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.").

On appeal, mother argues that the evidence does not support the family division's findings made in support of its conclusion that mother's ability to care for R.S. had stagnated. Specifically, mother challenges findings concerning mother's alleged substance abuse, her failure to visit R.S. since March 2019, and her efforts to address her mental-health problems. She does not challenge the court's findings or conclusions concerning R.S.'s best interests. We conclude that the evidence and the court's findings support its stagnation determination. See In re D.S., 2014 VT 38, ¶ 22, 196 A.3d 882 ("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)). Mother is essentially asking this Court to reweigh the evidence and assess witness credibility, which we will not do. See id. ("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).

Mother first complains that no evidence supported the family division's reference to mother's substance abuse. However, the family division did not even mention mother's substance abuse in determining that there had been a substantial change of circumstances justifying modification of the initial disposition order. The court merely mentioned in its findings section that one of the "initial presenting problems" in this case was mother's substance abuse. In short, this finding had no impact on the court's conclusion that mother's ability to care for R.S. had stagnated.

Next, mother takes issue with the family division's finding that she did not visit, and made no request to visit, R.S. from March 2019 to February 2020. She briefly argues that the court ignored visitation restrictions resulting from the COVID-19 pandemic, and she suggests that video visits would not have been a good substitute, given that R.S. was only between eight and nineteen months old during that time period. However, DCF did not institute a general policy of replacing in-person visits with remote visits until March 2020, more than a year after mother stopped visiting R.S. The court's findings on mother's failure to seek visitation with R.S. between March 2019

and February 2020 is supported by the record. Moreover, mother does not dispute the court's finding that she never followed up by meeting the caseworker in the first instance or starting with telephone calls in the second instance after she requested visits in February and June of 2020.

Finally, mother contends that the family division minimized her efforts to address her mental-health issues, including her ten-month engagement in mental-health counseling. The family division found that mother never completed a psychiatric or psychological evaluation as required and that she attended counseling inconsistently until January 2020, when her attendance became more consistent. The court also found, however, that mother's counselor told DCF that it was hard for mother to make progress in counseling due to recurring daily life crises. These findings were supported by the testimony of mother's caseworker.

In short, the evidence supported the family division's findings made in support of its conclusion that mother's ability to parent R.S. had stagnated because of her failure to follow through on critical action steps set forth in the disposition plan, including addressing her mental-health problems, attending visitations, and participating in supervised Family Time coaching.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice