

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. 2020-284

MARCH TERM, 2021

In re Z.P., Juvenile
(Z.P., Father*)

} APPEALED FROM:
}
} Superior Court, Franklin Unit,
} Family Division
}
} DOCKET NO. 8-1-18 Frjv

Trial Judge: Scot L. Kline

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

Father appeals from the termination of his rights in son Z.P. Mother is deceased. Father argues that the court improperly admitted and relied on hearsay evidence in support of its decision. We affirm.

Z.P. was born in Georgia in November 2017. His maternal grandmother was present for his birth and she stayed in Georgia for approximately a week before returning to Vermont. About one week later, mother and Z.P. moved to Vermont to stay with grandmother. Not long thereafter, mother returned to Georgia to deal with pending criminal charges. She left Z.P. in grandmother's care.

In January 2018, the Department for Children and Families (DCF) filed a petition alleging that Z.P. was a child in need of care or supervision (CHINS) and he was placed in the temporary legal custody of DCF. In June 2018, mother stipulated that Z.P. was CHINS. She agreed that she "struggled with substances and had engaged in prostitution as the result of human trafficking, and she had pending criminal charges in the Carolinas and Georgia." She further agreed that she "left [Z.P.] in VT with grandmother without following through with a probate guardianship, thus placing the child at risk of harm." The court also held a CHINS merits hearing and a disposition hearing in August 2018 to provide father with notice and an opportunity to participate. Father did not appear at the hearing. Legal custody was continued with DCF and the case plan goal was reunification with mother. The disposition plan included requirements for mother and numerous action steps for father. In December 2019, DCF moved to terminate parents' rights. In February 2020, mother died of an accidental drug overdose.

Following a termination hearing in the Fall of 2020, the court terminated father's rights. It made numerous findings, including the following. Mother had longstanding substance-abuse issues and she engaged in activities indicating prostitution. The court credited grandmother's testimony that mother said father was her "pimp" and that he physically abused her. Mother showed grandmother photographs of her black eyes caused by father. Grandmother was also present for telephone conversations between mother and father. Grandmother testified that the two bickered over the phone, that Z.P. was present for some calls, and that father would call mother

a “crack whore” while mother called him a “no-good father.” Grandmother also testified that she spoke with other women who said that father prostituted them.

As indicated above, mother left Z.P. with grandmother not long after his birth and she did not return for six months. When she returned, mother attended a residential rehabilitation program and later lived with Z.P. at the Lund Center between October 2018 and June 2019. Grandmother had daily contact with Z.P. during this time. Grandmother testified that she knew that mother and father had also communicated during this time. The court credited father’s testimony that he communicated with mother several times a week, though it also credited grandmother’s testimony that the interactions were not all positive. Father did not appear at post-disposition or permanency planning hearings and never challenged the action steps in the disposition order until the termination hearing.

In June 2019, mother was discharged from Lund. Z.P. returned to grandmother’s home, where he has remained. Mother moved into her own housing in October 2019 and began to engage in drug-related activity. In February 2020, mother died of an accidental drug overdose.

As indicated above, the disposition case plan, adopted in August 2018, contained numerous action steps for father. These included: following DCF’s plan for contact with Z.P., starting with twice weekly calls and letters; actively engaging in and completing treatment specific to perpetrators of domestic violence and human trafficking; signing releases to allow DCF to monitor his progress; completing a comprehensive substance-abuse assessment and providing a copy of the assessment to DCF; obtaining safe and stable housing; and providing proof of a legal source of income.

Father did not complete any of the steps. Father started communicating with Z.P. via one-line emails in June 2020, almost two years after the disposition plan was approved and well after the termination petition was filed. Father admitted that he did not begin to explore services until June 2020. He flatly declined to seek a substance abuse assessment and stated that he would not spend any money on domestic violence counseling.

DCF had significant difficulty contacting father during the pendency of this case. It made multiple attempts to contact father and obtain a valid address for him. As father acknowledged, he “basically disappeared” from the case between early 2018 and early 2020. He failed to provide an address where he could be reached. He did not provide a sample for genetic testing as ordered by the court in February 2018; his mother ultimately did so. Father took no steps to help establish or confirm his paternity.

The court found that Z.P. was well cared for in grandmother’s home. He had been diagnosed with separation anxiety, oppositional disorder, and unspecified stress and trauma. He saw a behavioral therapist and grandmother was willing to follow through with the recommendations for therapy. Z.P. attended day care, which he liked, but he struggled with aggression issues. Grandmother testified that she and her spouse and adult children were willing to help raise Z.P. and that Z.P. enjoys being part of their family. The court found that grandmother and her family were fully able to meet Z.P.’s special and day-to-day needs and that Z.P. was well-adjusted to their home.

Based on these and other findings, the court concluded that father had stagnated in his ability to parent and that termination of his rights was in Z.P.’s best interests. The court discussed in detail father’s failure to take the actions expected of him under the case plan. It evaluated each of the statutory best-interest factors and concluded that they all supported termination of father’s rights. It found that Z.P. had no real relationship with father and it considered father’s lack of

contact with Z.P. for such an extended time significant. It further found that Z.P. was strongly bonded and attached to his foster parents and he was well-adjusted to their home. As to the most important factor, the court concluded that father could not parent Z.P. within a reasonable time. Z.P. was three years old and had been in DCF custody almost his whole life. Father had not seen Z.P. in person since December 2017. He made no effort until June 2020, almost twenty-two months after the adoption of the case plan and still had not met any of the plan's expectations. He did not call DCF for weekly updates on Z.P. and only began very limited communication with Z.P. through DCF in June 2020. He did not engage in domestic violence and human trafficking counseling or complete a substance abuse assessment. He showed little or no progress in demonstrating that he had safe and stable housing; he did not provide proof of his income. The amount of time that had elapsed was substantial from Z.P.'s perspective and Z.P. needed permanence. For these and other reasons, the court concluded that termination of father's rights was in Z.P.'s best interests. This appeal followed.

Father argues that the court improperly admitted and relied upon hearsay evidence to support its termination decision, both in finding changed circumstances due to stagnation and in concluding that he could not parent Z.P. within a reasonable time. Father contends that he should not have been required to comply with certain action steps, including treatment for domestic violence and human trafficking and a substance abuse assessment, because those requirements were based on hearsay. He cites In re D.C., 160 Vt. 608, 609-10 (1993) (mem.), in support of his position. According to father, without hearsay evidence that arguably established the need for these steps, the termination decision would be without material support. In a related vein, he argues that the hearsay testimony was unreliable and lacked probative value and the error was not harmless because it formed the basis for the court's stagnation and termination conclusions.

We reject these arguments. First, the action steps for father were contained in an August 2018 disposition order that father did not appeal. That distinguishes this case from In re D.C., cited by father. See 160 Vt. at 609-10 (vacating CHINS and disposition order, including requirement for sex-offender treatment and psychosexual evaluation, where finding that father sexually abused child was not supported by the evidence), abrogated on other grounds by In re D.D., 2013 VT 79, 194 Vt. 508. The court noted in its decision that father knew what was expected of him and he took no steps to comply for almost two years. Father fails to show why he would be entitled to challenge the need for these actions steps now, years after the disposition order was issued.

We also note that father's stagnation was not the only change of circumstances that supported modification of the disposition order. Mother's death satisfied that requirement. See D.C., 2012 VT 108, ¶¶ 18-19 (recognizing that changed circumstances can "arise independent of the subject parent's actions" and that "stagnation is not the only way to show changed circumstances").

In any event, the court may admit and rely upon hearsay "to the extent of its probative value" in a termination hearing. 33 V.S.A. § 5317(b); see also In re A.F., 160 Vt. 175, 181 (1993) ("Hearsay evidence is admissible in termination proceedings as long as it is not the sole basis for termination of parental rights."). We need not decide if the court abused its discretion in admitting grandmother's hearsay statements about father's alleged abuse of mother and his alleged role as her pimp because these findings were immaterial to the court's decision. Any error in admitting these statements would be harmless. See In re B.S., 163 Vt. 445, 454 (1995) (explaining that alleged error must affect party's substantial rights and trial court's termination decision will stand where its findings, apart from those based on improper evidence, support its conclusion). The court's decision was based on father's failure to take any steps to build a relationship with Z.P.

during the many years Z.P. was in custody or demonstrate in any way his ability to parent Z.P. As father admitted, he basically disappeared from the case for two years, a significant amount of time in Z.P.'s life. These findings are amply supported by the record and they support the court's stagnation and termination conclusions. See In re G.S., 153 Vt. 651, 652 (1990) (mem.) (explaining that trial court's findings will stand unless clearly erroneous and its conclusions will stand where supported by its findings). We find no error.

Affirmed.

BY THE COURT:

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice