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 NOS. 2020-310 & 2021-028

JUNE TERM, 2021

In re C.R., R.R., T.R., C.R., Juveniles (C.R., Father*)	}	APPEALED FROM:
	}	
	}	Superior Court, Grand Isle Unit,
In re B.R., C.R., R.R., T.R., C.R., Juveniles (A.R., Mother*)	}	Family Division
	}	
	}	
	}	DOCKET NOS. 22/23/24/25/26-10-18 Gijv
		Trial Judge: Samuel Hoar, Jr.

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

Mother and father appeal the family division's order terminating their parental rights with respect to their five minor children. We affirm.

The family division's uncontested findings reveal the following facts. The subject children in this case are B.R., Ca.R., R.R., T.R., and Ce.R., who were born, respectively, in New York in January 2004, June 2012, May 2013, October 2017, and October 2018. The younger four of these children were born to father and mother. The oldest, B.R., was one of the children born to mother and another father, who relinquished his parental rights to B.R. on the first day of the termination hearing.

The family has a long history of involvement with child protective services in both New York and Vermont, where the family moved in 2015. The recurrent theme in state involvement with the family has been the parents' excessive corporal punishment of the older children, which ultimately impacted all the children's emotional and psychological health. The parents' children were taken into child protective custody in New York in 2010 and returned to the parents' custody in 2014. In 2015, similar allegations of excessive corporal punishment prompted the State of Vermont to file petitions alleging that the parents' children were in need of care or supervision (CHINS). The children remained in the parents' custody under a conditional custody order (CCO), which was vacated in October 2017.

One year later, in October 2018, the State filed the instant CHINS petitions, alleging that the children were experiencing the effects of excessive corporal punishment, egregious physical abuse, and threats of physical and emotional maltreatment, and that there were multiple unsecured guns in the house that endangered the children. That same month, father was charged with multiple crimes, including aggravated domestic assault against his stepson and being a felon in possession of a firearm. He was held in jail for several months for lack of bail before being released on home

confinement. In March 2019, the parents stipulated to an adjudication of the children as CHINS. Although they denied the allegations of abuse, they stipulated that the children were endangered by easy access to guns and that all information contained in the CHINS affidavits, including allegations of abuse, could be addressed at disposition.

In May 2019, the parents agreed to the disposition plan for all five children proposed by the Department for Children and Families (DCF) and adopted by the family division. The plan had a goal of reunification and contained actions steps requiring the parents to, among other things: (1) acknowledge and be accountable for the impact of their actions on the children, and to not blame the children for the abuse that the children had endured or witnessed; (2) follow a visitation plan; (3) take a Nurturing Parent class; (4) engage in the HEART program through Northeast Counseling and Support Services to understand the developmental needs of children; and (4) participate in a forensic examination. The plan also required mother to: (1) support B.R.'s educational and emotional needs by ensuring B.R.'s school attendance, participating in B.R.'s special-needs meetings, and working with B.R.'s therapist; and (2) participate in mental health counseling to address issues related to the impact of her verbal and physical abuse of the children, with an emphasis on finding healthy ways to interact with the children.

In January 2020, at DCF's request, the family division suspended the parents' visitation following a November 2019 visit during which the parents lied to the children about father's circumstances and told the children that DCF was lying to them. Father could not appear in-person for the visit with Ca.R and R.R. because he had been reincarcerated after violating conditions of release imposed in connection with the October 2018 charges.[*] After consulting with the children's therapeutic team about how best to inform the children in an age-appropriate way why father would not be at the visit, a DCF caseworker informed Ca.R. and R.R. of father's circumstances. At the visit in question, father telephoned in and told the children, with mother's backing, that he was away at work and that the caseworker had lied about the reason he was not at the visit. When Ca.R. asked why the caseworker would lie, the parents told him that DCF was trying to hurt him and to pull the family apart. In a January 2020 order, the family division suspended the parents' visitation based on concerns about the children's emotional safety stemming from the incident but scheduled a status conference in thirty days to give the parents an opportunity to demonstrate that they understood how their conduct could cause the children emotional harm and that they were prepared to take steps to assure the court that such conduct would not be repeated if parent-child contact resumed. As it turned out, it was the last time that the parents visited the children, insofar as neither parent either sought resumption of visits or provided the court with the assurances it required.

A few days prior to this visit, the State had filed petitions to terminate mother's and father's parental rights to the five children. A termination hearing was held over seven days between July and October of 2020. In a November 2020 order, the family division granted the petitions. The court concluded that the parents' ability to care for their children had stagnated, resulting in a substantial change in circumstances, see 33 V.S.A. § 5113(b) (providing that court may amend or vacate previous orders upon showing that changed circumstances requires such action to serve children's best interests), and that the children's best interests, considering the factors set forth in 33 V.S.A. § 5114(a), warranted terminating mother's and father's parental rights. See In re R.W.,

[*] Father pleaded no-contest to those charges in January 2020.

2011 VT 124, ¶ 14, 191 Vt. 108 (stating that in termination proceeding, "the trial court must determine, first, whether there has been a substantial change in material circumstances"— which is "most often found when the parents' ability to care properly for the child[ren] has either stagnated or deteriorated over the passage of time"—"and, second, whether termination is in the child[ren]'s best interests" (quotation omitted)). The court denied the parents' motion for reconsideration in a January 2021 order, which the court amended on its own motion approximately one week later.

On appeal, in a consolidated brief, the parents argue that: (1) the matter must be remanded for a new termination hearing before a different judge because the record demonstrates that it is not possible for this Court to determine if the family division applied the applicable clear-and-convincing standard in rendering its termination decision, see In re D.P., 147 Vt. 26, 32 (1986) (reversing order terminating mother's parental rights because it was not possible to determine whether court had applied clear-and-convincing standard to evidence concerning mother's parental unfitness); and (2) the court erred in grounding its best-interests analysis on an earlier, incorrect decision to suspend their visitation based on a single mistake unlikely to be repeated.

In support of their first argument, the parents cite: (1) an instance during the termination hearing where the court spoke of getting over "the preponderance hill" when discussing with the juveniles' attorney an objection to testimony she elicited linking specific incidents of alleged physical abuse with a diagnosis of post-traumatic stress disorder (PSTD); and (2) the court's determination in its order denying the parents' motion for reconsideration that its findings were "amply supported by a preponderance of the credible evidence." Regarding the cited colloquy between the court and the juveniles' attorney, the court essentially invited mother's attorney to object to testimony being elicited by the juveniles' attorney concerning a connection between some of the parents' alleged abusive acts and Ca.R's PTSD diagnosis. The court stated that previous testimony could get the court "a little ways towards" a finding that the abuse did, rather than could, cause PSTD, but did not get the court "over the preponderance hill." Regarding the court's statement in its order denying parents' motion for reconsideration, the court amended the order on its own motion one week after entering its initial order denying the motion for reconsideration by replacing the words "a preponderance of" with "THE CLEAR AND CONVINCING WEIGHT OF."

These facts do not demonstrate that the family division's application of the governing standard was "hopelessly muddled," as parents claim. The court made it abundantly clear that it was applying a clear-and-convincing standard in its termination decision by repeatedly referring to clear and convincing evidence supporting its findings and conclusions. The court stated at the end of the first paragraph of its termination decision that its findings and conclusions set forth below were all made based on "clear and convincing evidence." Later in the findings section of its decision, the court stated that: (1) the overwhelming majority of the allegations of physical abuse "were proved by clear and convincing evidence"; (2) "the clear and convincing evidence strongly supports the finding that both parents engaged in a persistent pattern of excessive physical discipline on the three older children"; (3) the evidence created a "compelling inference" of the severe adverse impacts on the children resulting from the parents' physical abuse; (4) "clear and convincing evidence establishes beyond any serious doubt that both parents persist to this day in their refusal to accept any meaningful degree of accountability for their actions and the impact of those actions on the children," and further that both parents "continue to blame the children for the

abuse they visited upon them"; and (5) the parents' continued failure to recognize their children's needs and the adverse impacts their actions had on the children were proved "by the clear and convincing evidence adduced at the TPR hearing." Moreover, at the beginning of the conclusions section of its decision, the court acknowledged that the State had the burden of proving "by clear and convincing evidence" that there was a substantial change in material circumstances justifying modification of the prior disposition order and that termination of mother's and father's parental rights was in the children's best interests. At the conclusion of that section, the court stated that the statutory best-interests factors weighed "overwhelmingly" in favor of terminating mother's and father's parental rights. Finally, in its order section at the end of the decision, the court stated that it had found "by clear and convincing evidence" that there was a substantial change of material circumstances and that the children's best interests warranted terminating both mother's and father's parental rights. In short, the record amply demonstrates that the family division was aware of and applied the governing clear-and-convincing standard in its termination decision.

The parents also argue that the January 2020 suspension of their visitation was unwarranted under the facts, and thus the family division erred by relying on the suspension as a basis for assessing the first and fourth best-interests factors in § 5114 concerning the parent-child relationships. We find this argument unavailing. The family division indefinitely suspended visitation shortly after the State filed its termination petitions based on its findings that the parents not only made inappropriate statements at the November 2019 visit but also used the visit to manipulate the children, which was extremely detrimental to the children because it made it difficult for DCF to help them cope with the trauma that they had experienced in their young lives. Given the facts set forth above, the parents have failed to demonstrate that the court abused its discretion in granting DCF's motion to suspend visitation pending the scheduling of a status conference within thirty days, which gave the parents an opportunity to demonstrate their understanding of the potential harm to the children resulting from their actions and to assure the court that they would not engage in this type of conduct again. See 33 V.S.A. § 5319(a), (b), (d) (establishing guidelines for court to order, modify, or terminate parent-child contact).

In any event, the January 2020 suspension of parent-child visitation did not play a significant role in the family division's stagnation or best-interests analyses. The court detailed the parents' conduct at the November 2019 visit to serve as an example of the court's finding that the parents' attitude and conduct towards DCF throughout these proceedings had "alternated between passive aggression and outright defiance" and had been "directed more at manipulation than cooperation" and "more at avoiding than accepting responsibility for behaviors that have had profound adverse impacts on their children." The court based its stagnation assessment on the parents' failure to satisfactorily complete the action steps required of them in the disposition plan and to demonstrate that they were making progress towards putting themselves in a position to care for the children. As for the court's analysis of the statutory best-interests factors, the court stated that these factors weighed "so heavily in favor of termination that the court could not in good conscience seriously consider the possibility of giving these parents another chance." In addressing each of the specific factors, the court concluded that: (1) the parents' relationship with the children was "far from healthy"; (2) the parents had had no relationship with the children for over a year "due to their own willful conduct"; (3) the parents were "far from ready" to provide safety, stability, and support to the children, which the foster families were providing; (4) the parents had "made no real progress" toward reunification in the two years since the children were taken into state custody; and (5) the parents had generally "not played a constructive role in their

children's welfare" and, since the children were taken into state custody two years earlier, their role had been only "at times and at best neutral," primarily due to their unwillingness to acknowledge their abuse and its impact on the children. These findings and conclusions underscore the parents' complete failure to make progress toward reunification and amply support the court's termination decision based on the children's best interests, irrespective of the court's January 2020 order suspending visitation.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice