

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. 2021-005

JUNE TERM, 2021

In re M.D. & L.D., Juveniles	}	APPEALED FROM:
(J.D., Father*)	}	
	}	Superior Court, Windsor Unit,
	}	Family Division
	}	
	}	DOCKET NO. 68/69-5-19 Wrjv
		Trial Judge: Lisa A. Warren

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

Father appeals from the court’s adoption of a disposition case plan that set a goal of reunification with mother only. He argues that the Department for Children and Families (DCF) caused delays and assigned him an unexperienced case manager, which prejudiced him. We affirm.

Mother and father are the parents of L.D., born in June 2013, and M.D., born in August 2016. Parents do not live together. The children were taken into DCF custody in June 2019 pursuant to a temporary care order. Following a contested merits hearing, the court found the children in need of care or supervision (CHINS); parents agreed at the conclusion of the hearing that the children were CHINS. The court found, based on undisputed evidence, that for an extended period, including between late April 2019 and late May 2019, M.D. arrived at daycare with bruises on and near his buttocks, lower back, abdomen, and thighs. The bruises were indicative of nonaccidental origin given their number and location and they appeared after time spent with both parents. Between this same period, the children displayed more aggressive behaviors and M.D. regressed significantly in his toileting. Parents’ history also raised significant concerns: father had his rights terminated in another child in a case involving significant physical abuse allegations; M.D. suffered two skull fractures in 2017, which resulted in a DCF substantiation with perpetrator unknown; and in 2018, M.D. fell from a second story window and fractured his leg while in mother’s care and mother initially lied about how he was injured.

Between October 2019 and March 2020, various case plans were filed, hearings were commenced and then continued, and one case plan was rejected by the court. DCF filed a new case plan in March 2020, which relied on recommendations from a forensic family evaluation. The plan sought reunification with mother only as DCF concluded that permanency could be achieved with mother in a more timely and safe manner than with father. DCF later filed a permanency case plan and a request for a reasonable-efforts finding. At a July 2020 hearing, father contested the disposition plan, permanency plan, and reasonable-efforts finding. DCF filed supplemental updates to the disposition and case plans on November 2, 2020. A contested hearing on disposition and permanency was held over two days in early November 2020.

Following this hearing, the court issued an order concluding that the disposition/permanency case plan achieved the purpose of the disposition statute, 33 V.S.A. §§ 5316, 5318, and the permanency statute, *id.* § 5321. It made numerous findings, including the following. Four caseworkers were assigned to this case since it began; the DCF supervisor remained the same. One caseworker, who worked with parents between October 2019 and July 2020, left by mutual agreement of the caseworker and his supervisors. The court made detailed findings about this case worker and his interactions with father that we do not repeat here. The supervisor assisted this caseworker prior to his removal. She helped create the revised disposition plans and she had team meetings with the caseworker who was later removed. She assisted this case worker with contact interviews; she reviewed, revised, and signed reports with the district director; she reviewed documents and conducted her own interviews. Father reported being unable to work with this caseworker, which created difficulties in the case. The supervisor did not want father's animosity toward the case worker to be a barrier to father working toward his action steps.

As indicated above, DCF relied on a forensic evaluation to develop its revised case plan. The court found that this report provided important information with respect to each parent. During the evaluation, father complained of unfair treatment and he lacked insight into why the children were in custody. He incorrectly recalled how various situations occurred and he could not provide a coherent narrative about why his first daughter was in state custody. Father was adamantly opposed to engaging in therapy and he had shown no benefit from prior therapy. The evaluator concluded that, if DCF were to work with father, it would have to accept that he would just "go through the motions." When discussing reports that father threatened mother, father was "very one dimensional, blank, and reported that DCF should not be involved with him, that they were only involved for bad reasons, and he was being treated unfairly." Overall, father presented as defensive and afraid; he was not receptive to introspection and he externalized blame. It was difficult to take what father said as reliable or trustworthy. The evaluator stated that he could not accurately assess father given his unwillingness to self-disclose in an honest, forthcoming fashion. Father's partner was equally unforthcoming; she sought to have a family that excluded mother, she supported father's narrative, and she would follow father's lead in not disclosing information to DCF. The partner also interacted with the children when they were with others without identifying herself, including "sell[ing] popcorn" at the children's foster home.

The evaluator found mother much more forthcoming. She was more multi-dimensional and expressed more insight into her past. Mother presented as motivated to make better choices in her relationships and interested in improving for the benefit of her children's well-being. She expressed regret and distress over M.D.'s broken leg; she acknowledged lying about how his leg was broken. Mother was also sensitive to, and ready to assist with, L.D.'s depression and aggression issues; father, by contrast, presented as blank or noncommunicative when this topic was discussed. L.D. appeared sadder and more disconnected with father than with mother. L.D.'s primary attachment was with mother and he voiced his desire to be with her.

The caseworker who was removed testified that, during his work on the case, mother was more willing to comply with what was asked of her and she engaged with the case worker. Mother demonstrated significant behavior change, checked in weekly, discussed what she needed to do, and called the caseworker or his supervisor with challenges that she faced. During this time, father engaged in parent education, a mental health evaluation, worked with a domestic violence (DV) specialist and had started attending DV classes. Father had virtual family time with the children due to COVID.

Before a case plan was developed based on the forensic evaluation, the caseworker's interactions with father influenced the services he recommended. For example, during team

meetings, father was very defensive, did not listen, was argumentative, alleged the caseworker was biased against him, and did not follow the rules of the meeting. Father was disruptive and focused on what mother was doing or not doing. The supervisor had a similar experience with father. A DV specialist was asked to sit in on a team meeting, given father's background and mother's report that he was abusive. The specialist observed similar behavior and she confirmed that father's behaviors were consistent with DV perpetrators.

The court also noted an additional history of violence involving father set forth in the case plan, which it found compelling. This included: father's admission that he saw M.D.'s injuries and did not report them to DCF; father's arrest for two counts of criminal threatening with mother as the victim; the issuance of a restraining order on behalf of his ex-girlfriend based on admitted facts that, while she was holding the parties' six-month-old child, father threatened to kill her and slit her throat, he spit in her face, and held her mouth closed with his hand; credible witnesses described father as a drinker and drug abuser with a bad temper; his daughter is afraid of him and is receiving ongoing therapy for domestic violence trauma; and mother reported being sexually assaulted by father.

Overall, the court found, DCF had not been able to properly assess father's safety. The court cited examples of father secretly recording conversations and later stating that he needed to do so because he had a traumatic brain injury (TBI) though father's doctor reported that father did not have a TBI noted in his medical history. As indicated, DCF determined that permanency could be achieved with mother in a more timely and safe manner than with father. It nonetheless included numerous recommendations for father, including family-time coaching (FTC), therapy, DV intervention programming, and anger management. An additional person was assigned to support FTC because the coach was uncomfortable and intimidated by father and father alleged that the coach was biased.

The court concluded that mother had either achieved or was in progress with all action steps and she had demonstrated a sincere willingness to work to achieve reunification. While father had engaged in some action steps, his ongoing mistrust of DCF, antagonistic behaviors towards service providers, continued blaming of mother, and extensive DV history, presented ongoing and substantial obstacles to self-change. The court also noted that the children remained consistent in their desire to return to mother's care. For these and other reasons, the court concluded that the June 2020 disposition/permanency case plan achieved the purpose of both the disposition statute and permanency statute. It further concluded that DCF used reasonable efforts to finalize the plan. Father appeals from this order.

Father argues on appeal that the court erred in adopting DCF's proposed case plan. According to father, DCF caused delays and provided him with an inadequately trained case manager. He argues that this prejudiced him, although he does not identify any particular prejudice beyond asserting that, due to delays, "there was never a true plan to follow." He nonetheless contends that he complied with all requirements or made a good faith attempt to do so. Father questions why the plan sets a goal for reunification with mother and not him, arguing that he was less likely than mother to have injured the children and that he engaged in more programming than mother, he was employed, and he had stable housing. Father asserts that DCF adopted its case plan because it was biased against him.

We review the court's decision for abuse of discretion. In re J.D., 165 Vt. 440, 444 (1996). The court's findings will stand unless clearly erroneous and its conclusions will be upheld where supported by the findings. See In re J.C., 2016 VT 9, ¶ 6, 201 Vt. 192. It is the exclusive role of

the trial court to weigh the evidence and assess the credibility of witnesses. In re A.F., 160 Vt. 175, 178 (1993).

We find no abuse of discretion here. First, the court’s decision did not turn on father’s noncompliance with a case plan. The court acknowledged that father had an action plan in place and had demonstrated a willingness to complete at least some steps. Aside from complaining about the absence of a “true plan to follow,” father identifies no other alleged prejudice from his interactions with one caseworker, who worked closely with a supervisor for much of his time. There is no showing that the case plan stemmed from bias against father.

As reflected above, the case plan was informed by the results of the forensic evaluation and father’s history of domestic violence. The court explained in detail the findings and conclusions in the evaluation, and it made findings about father’s history. It explained why DCF deemed reunification with mother, but not father, an appropriate goal. It recounted that mother had demonstrated insight and a sincere willingness to take steps necessary to achieve reunification, including providing information to DCF. Father was much less engaged, including on issues involving the children, and he was unwilling to self-disclose in an honest, forthcoming fashion, during the forensic evaluation. He lacked insight, was defensive, and he was an unreliable narrator. He was unwilling to engage in therapy and was likely to simply “go through the motions.” He had an extensive history of violence toward others. The court also found that M.D. had bruising after visits with both father and mother and that father admitted observing injuries that he did not report to DCF. Thus, while recognizing that father had taken some steps toward engagement, the court considered other factors—including those discussed in the evaluation as well as father’s ongoing mistrust of DCF, antagonistic behaviors toward service providers, continued blaming of mother, and his extensive DV history—as presenting ongoing and substantial obstacles to self-change. The court acted well within its discretion in adopting a case plan setting a goal of reunification with mother only. The court’s decision is supported by the court’s findings, which are in turn supported by the record. Father’s disagreement with the court’s conclusion does not demonstrate an abuse of discretion. See, e.g., Meyncke v. Meyncke, 2009 VT 84, ¶ 15, 186 Vt. 571 (mem.) (explaining that arguments which amount to nothing more than a disagreement with court’s reasoning and conclusion do not make out a case for an abuse of discretion). This includes his assertion that he is a more suitable parent than mother. We emphasize, moreover, that we leave it to the trial court to weigh the evidence and we do not reweigh the evidence on appeal. We find no error.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice