



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

SEPTEMBER TERM, 2021

In re B.P. & A.P., Juveniles	}	APPEALED FROM:
(J.D., Mother* & K.P., Father*)	}	
	}	Superior Court, Franklin Unit,
	}	Family Division
	}	CASE NO. 165-7-18 Frjv & 136-5-19 Frjv
		Trial Judge: Howard E. Van Benthuyssen

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

Mother and father appeal from the termination of their rights in B.P. and A.P. We affirm.

B.P. was born in August 2017 and A.P. was born in May 2019. B.P. was taken into the custody of the Department for Children and Families (DCF) in July 2018 after parents refused to secure necessary medical care for him after he ingested suboxone. Rather than returning B.P. to the hospital, parents drove to Alabama. B.P. was taken into custody in Alabama and returned to Vermont. He has remained in DCF custody since that time. A.P. was taken into DCF custody at birth. She was placed with parents pursuant to a conditional custody order (CCO) in May 2019, but the CCO was revoked in October 2019. A.P. has remained in DCF custody since that time. In July 2020, DCF moved to terminate parents' rights in both children, B.P. by modifying the existing disposition order, and A.P. at initial disposition. The court granted DCF's request to consolidate the cases for trial. Following a multi-day hearing that concluded in January 2021, the court terminated parents' rights in both children.

The court made numerous findings, none of which are challenged on appeal. Parents struggle with chronic homelessness, domestic violence, substance abuse, and mental-health issues. Although they were able to maintain sobriety, parents made no progress in addressing the remaining issues. They failed to obtain permanent and stable housing despite being employed and despite DCF's repeated offers of assistance. They failed to engage in consistent mental-health treatment as required by the case plan and they continued to struggle with anger management and emotional control. Both parents are prone to dysregulation as evidenced by repeated angry outbursts, throwing things around, screaming, yelling, and swearing at DCF and service providers, and repeatedly arguing amongst themselves. Parents also failed to adequately address domestic-violence issues between them.

Parents did not do well with visitation. They had supervised visits with B.P. through the Northeastern Family Institute (NFI) between November 2018 and April 2019. They struggled to

learn coparenting skills, communicate respectfully with one another, and understand and satisfy B.P.'s needs. Parents were typically late or unprepared for the visits. Many visits ended early because parents became so dysregulated. Parents argued in front of B.P.; they yelled, swore, and engaged in name-calling, and mother threatened father with physical harm. Parents' behavior worsened over time, and they were discharged from Family Time Coaching through NFI by mid-April 2019. Parents also struggled to maintain proper decorum and appropriate behavior during court hearings, meetings, doctor appointments, and interactions with service providers.

Family Time Coaching resumed when A.P. was born. Parents continued to argue during visits and their conflicts interfered with the quality of the visits. Many visits were cancelled before they started because parents could not control their anger and emotions. During visits, both parents, and particularly mother, became so escalated that the visit could not continue. Neither parent could consistently meet the children's needs during the visits. Parents exhibited similar behavior during supervised visits in the community. By the end of September 2019, parents had made no positive progress and they required the most restrictive level of visitation. Neither parent took responsibility for their problems or the risk their situation presented to the children, and neither could receive and implement constructive feedback. NFI terminated its work with the family in October 2019.

The court later suspended mother's visits with B.P., which had been changed to video visits due to the COVID-19 pandemic, in the spring of 2020 because they were causing him harm. As of August 2020, mother's visitation with B.P. had not been restored. Father continued to see B.P. but he missed three of four visits in August 2020. Mother occasionally participated during father's visits with B.P. despite the court order suspending her contact. While some of father's visits with B.P. went poorly, many other video visits went well. Parents had virtual and in-person visits with A.P. The court found that A.P. was too young to be able to tolerate and focus on the calls for more than a few minutes at a time.

Both children were doing well in their foster placements and their foster families ensured that their needs were met.

Based on these and numerous other findings, the court first concluded with respect to B.P. that parents had stagnated in their ability to care for him. It explained that they had not been able to secure permanent housing for the almost three years these cases were pending despite being employed and having been offered housing assistance. More importantly, the court explained, both parents had untreated mental-health issues. Mother remained highly volatile and apt to lash out with vulgar language and profanity at father, service providers, foster parents, and DCF workers. She could not control her temper or emotions in private meetings, public settings, and the courtroom. Father also struggled to control his temper and emotions, although to a lesser extent than mother. His actions caused visits to be preemptively ended. He also made inappropriate comments in court, calling a witness a liar during her testimony. Both parents emotionally abused the other, often in the children's presence. Father physically abused mother at least twice and mother was sufficiently fearful of him to carry a pepper spray gun to defend herself. Neither parent developed insight into why the children were in custody and instead blamed everyone else involved in their cases. Both continued to deny the need for DCF intervention and neither completed the mental-health counseling specified in the case plan. Parents' failure to address their mental health impacted their ability to focus on improving their parenting skills. They prioritized their own needs and emotions over those of the children; they fought with each other to the point of screaming, causing the children to become visibly distressed and the visits to be terminated. Parents could not complete the Family Time Coaching, despite two attempts, and they were rated at the conclusion of the program as

requiring the highest level of supervision for parent-child contact. Their parenting skills did not improve. They had not parented either child in over a year at the time of the termination hearing and they had not parented B.P. in more than two-and-a-half years.

The court then turned to the best-interest analysis. It discussed the specific circumstances of A.P.'s case and recognized that DCF sought to terminate parents' rights in A.P. at initial disposition. The court made detailed findings with respect each best-interest factor and concluded that they all supported termination of parents' rights. As to the most important factor, the court concluded that parents failed to demonstrate their ability to parent and interact with the children. It reiterated that parents could not moderate, modulate, or control their emotions while visiting with the children, which impacted their relationship with the children and their ability to improve their parenting skills. They failed to obtain any insight into proper parenting or acquire proper parenting skills. They failed to address the issues that brought the children into custody. Given parents' failure to make progress despite lengthy DCF involvement and given the length of time the children had been in DCF custody, the court concluded that the children could not wait any longer for the unlikely possibility that parents would make progress. It thus terminated parents' rights in both children. This appeal followed.

Father argues that the court's stagnation and termination decision were based on a factor beyond his control, namely, the requirement that some of his visitation occur by video because of the COVID-19 pandemic. According to father, he lost valuable bonding time with the children because the visits occurred by video. Mother joins in father's argument regarding video visits and separately argues that the court failed to adequately consider that A.P.'s circumstances differed from B.P.'s circumstances.

We find no error. See In re G.S., 153 Vt. 651, 652 (1990) (mem.) (recognizing that as long as trial court applies proper standard, its findings will stand unless clearly erroneous and its conclusions will be upheld if supported by findings). As set forth above, the court's decision was not based on the lack of parental bond stemming from video visitation or otherwise. It recognized that parents loved and were attached to the children. Its determination was based on parents' failure to make progress in meeting numerous case plan goals, including obtaining secure housing, addressing domestic violence, and, most critically, addressing their mental-health issues. Their pre-COVID visitation with the children went very poorly because parents could not regulate their emotions. They fought and acted out to the detriment of the children. This pattern continued into the pandemic. Mother's visits with B.P. had to be suspended due to the harmful effect they had on him. Father continued to visit separately with B.P. (with mother appearing occasionally) and the court found that B.P.'s video visits with father went fairly well. Parents had both video and in-person visits with A.P. While the court recognized that it was challenging to get a two-year-old child to focus on a video call, that observation played no role in its ultimate decision. The record does not support parents' contention that the court's stagnation and termination conclusions were based on a factor beyond their control.

We similarly reject mother's assertion that the court failed to adequately consider A.P.'s circumstances. Mother contends that A.P. was happy to see her during visits and that the visits went well. She notes that A.P. has been in DCF custody for less time than B.P. The record shows that the court considered A.P.'s individual circumstances in reaching its conclusion. It made numerous findings specific to her, including parents' behavior during visitation with her, and it recognized that DCF sought to terminate parents' rights in A.P. at initial disposition. It specifically acknowledged that A.P. had been in DCF custody for a shorter period than B.P. The same underlying issues that drove the court's conclusion as to B.P. amply supported the court's conclusion as to A.P. While mother would interpret the evidence differently, we leave it to the

trial court to assess the credibility of witnesses and weigh the evidence; we do not reweigh the evidence on appeal. In re A.F., 160 Vt. 175, 178 (1993); see also In re S.B., 174 Vt. 427, 429 (2002) (mem.) (“Our role is not to second-guess the family court or to reweigh the evidence, but rather to determine whether the court abused its discretion in terminating mother’s parental rights . . .”). We find no error in the court’s decision.

Affirmed.

BY THE COURT:

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

William D. Cohen, Associate Justice