



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 L.R., Juvenile
(M.O., Mother*)

} APPEALED FROM:
}
} Superior Court, Chittenden Unit,
} Family Division
} CASE NO. 180-4-19 Cnjv

Trial Judge: Kirstin K. Schoonover

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

Mother appeals the termination of her parental rights to her daughter L.R., who is five years old. We affirm.

The following facts are drawn from the court's order, which it issued after a hearing that took place over two days in January and March 2021. Father voluntarily relinquished his rights below and is not a party to this appeal.

L.R. was born in February 2016. The Department for Children and Families (DCF) opened a case at L.R.'s birth due to concerns about mother's drug use and criminal involvement. DCF offered mother services, some of which mother engaged in. DCF eventually closed the case but remained involved with mother.

In March 2018, DCF filed a petition alleging that L.R. was a child in need of care or supervision (CHINS) and requested and received emergency custody of L.R. after a home visit during which mother threatened DCF staff with dogs. At the merits hearing, father, who had initially reported drug use in the home to DCF, changed his testimony. The court found insufficient evidence to conclude that L.R. was a CHINS and the case was dismissed.

Later in 2018, DCF received multiple reports of drug use in mother's apartment. Father acknowledged that he had lied in the earlier proceeding and told DCF that he was concerned. In November 2018, DCF sought emergency custody of L.R. The court issued a conditional custody order placing L.R. in mother's care but requiring L.R. to live with a family friend. Following a merits hearing in March 2019, the court again found insufficient evidence to support a CHINS finding, and dismissed the case.

In April 2019, shortly after L.R. was returned to mother's care, DCF again received reports that drug deals were taking place in mother's apartment and that mother appeared to be under the influence of drugs. A DCF worker visited mother's apartment. Mother was loud, angry, and swore at the DCF worker. At the worker's request, mother brought L.R. to the door. The child was crying and had a mark on her forehead that appeared to be a bruise. Mother stated that it was makeup and tried, unsuccessfully, to wipe it off. She denied using drugs. She would not allow DCF to enter the apartment. Her speech was quick, slurred, and difficult to understand.

A DCF worker contacted mother by phone a week later to discuss the concerns about substance abuse. Mother swore at the DCF worker, refused to participate in urinalysis or a drug assessment, and told the worker to "lose her number." DCF contacted a longtime friend of mother's, who stated that she believed mother was using drugs in front of L.R. and that mother had asked her to watch L.R. for days at a time.

A few days later, two confirmed sales of crack cocaine took place in mother's apartment. Police obtained a warrant to search the apartment and found syringes, drugs, and drug paraphernalia, including in L.R.'s bedroom. DCF filed a third CHINS petition and the court granted custody to DCF. L.R. was placed with her paternal grandmother, with whom L.R. has lived since. After a contested merits hearing in July 2019, the court adjudicated L.R. CHINS. Mother, who was threatening and abusive toward DCF staff, refused to engage in a safety assessment and chose instead to not attend visits with L.R. from April to September 2019.

In September 2019, the court adopted a case plan calling for reunification with either parent within six months followed by a six-month conditional custody order to monitor progress. Mother was expected to undergo a substance abuse evaluation and follow recommendations for treatment, meet with DCF to create a safety plan for visits with L.R., consistently attend visits, engage in anger management counseling, and obtain stable housing.

Mother complied with the disposition order's requirement that she create a safety plan, and visits resumed. However, mother attended inconsistently. At a November 2019 visit, mother became angry when the usual DCF worker did not attend and threatened and insulted the coworker who was filling in. Visits were suspended as a result. Around Thanksgiving, mother was reincarcerated for a month. Upon her release, she entered inpatient treatment. DCF scheduled a meeting with mother after she completed treatment to discuss safety planning, but mother missed the meeting. DCF determined that two supervisors were required during visits—one for L.R. and one for mother. Mother requested visitation, but DCF delayed it in order to figure out supervision. Mother became aggressive, stating, "Be ready for a war. I'll make your life a living hell."

DCF scheduled a visit on February 13, 2020. L.R. had not seen mother for four months. During the visit, mother took a phone call and learned that her home had been raided. She left the visit early. This was her last in-person visit with L.R. She subsequently relapsed on cocaine and failed to complete intensive outpatient treatment, and was incarcerated for violating conditions of release. In late February, L.R.'s attorney moved for termination of parental rights.

Mother was incarcerated for much of 2020. During one period of release, she expressed interest in seeing L.R. and improving her life, but she was unable to complete a safety assessment because she was reincarcerated. Mother participated in weekly phone calls with L.R. for a few months but these ceased in September 2020 when mother was transferred to a different facility and DCF was unable to locate her. In November 2020, she was sentenced in federal court

to time served and three years of supervised release on a charge of maintaining a drug-involved premises. She was released from custody and completed an intensive outpatient program. At the time of the termination hearing in January 2021, mother was living in a hotel with her new fiancé, who has a history of domestic violence, and was not employed. She was pregnant and taking Suboxone. She was complying with her federal probation conditions. In December 2020, she began participating in video calls with L.R.

The court found that mother had stagnated in her progress toward reunification and that this was a change in circumstances that justified modification of the previous disposition order. See 33 V.S.A. § 5113(b). It reasoned that mother had not consistently attended visits with L.R. during the life of the case and had no in-person contact with L.R. since February 2020. She had relapsed and been incarcerated several times, and had not maintained sobriety for any significant length of time. She had not engaged in substance abuse or anger management evaluation or treatment, obtained stable housing, or engaged in parenting support programs. The court acknowledged that mother had been compliant with her federal probation conditions and was trying to make a new start with her new partner. However, it found that this progress had come too late and was not significant enough.

Turning to the best-interests factors set forth in 33 V.S.A. § 5114(a), the court found that mother and L.R. had had a strong relationship when L.R. was younger, but it had been significantly weakened by mother's extended absences and lack of in-person contact. L.R. did not know mother's fiancé, except for some limited contact through video meetings. In contrast, L.R. was bonded to her paternal grandmother, to whom she looked for support, and was well adjusted to grandmother's home and community. The court found that mother was not likely to be able to resume parental duties within a reasonable time due to her limited contact with L.R., her pregnancy, and her failure to engage in recommended services or obtain stable housing or employment. The court found that mother loved L.R. but did not play a constructive role in her life. Based on these findings, the court concluded that termination of mother's parental rights was in L.R.'s best interests.

On appeal, mother argues that the evidence does not support the family court's findings that mother and L.R. did not have a strong bond and that mother had not played a significant role in L.R.'s life for years. Mother argues that the DCF worker testified that L.R. calls mother "Mom" or "Mommy" and looks forward to seeing her mother at visits. Recently, she had expressed a desire to see her mother more often. Mother testified that at the end of visits, L.R. told her, "I love you, Mom." Mother argues that these facts render the court's findings about the parent-child bond clearly erroneous and require reversal of the termination order.

When reviewing a termination-of-parental-rights decision, we will uphold the family court's factual findings unless clearly erroneous and will affirm its conclusions of law if reasonably supported by the findings. In re J.M., 2015 VT 94, ¶ 8, 199 Vt. 627. "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 . . . parental rights." In re S.B., 174 Vt. 427, 429 (2002).

The court's findings regarding the parental bond are supported by evidence in the record and are therefore not clearly erroneous. The court acknowledged that L.R. missed mother and that mother loved L.R., and that they had had a significant relationship when L.R. was younger. However, the court found, and the record shows, that mother was absent from L.R.'s young life for months at a time and was inconsistent in attending visits that did occur. Mother had not seen L.R. in person for over a year, and shared recent video meetings with her new fiancé, a person

with whom L.R. had no previous relationship, instead of focusing on L.R. L.R. now looked to her grandmother for the type of emotional support that a parent would ordinarily provide. The court weighed this evidence and reasonably inferred that the parent-child bond had weakened over the life of the case. See Mullin v. Phelps, 162 Vt. 250, 260 (1994) (“A finding will not be disturbed merely because it is contradicted by substantial evidence; rather, an appellant must show there is no credible evidence to support the finding.” (quotation omitted)).

Mother further argues that the court’s decision was premature. She points to grandmother’s testimony that L.R. might need mental health counseling to deal with mother’s absence from her life, and claims that the court should have waited to see what the anticipated mental health counseling would reveal before deciding whether termination was in L.R.’s best interests. To the extent that mother is arguing that the court should have continued the termination hearing in order to obtain a mental health assessment of L.R., mother failed to raise this argument below and has therefore not preserved it for appeal. In re C.B., 2020 VT 80, ¶ 9. In its decision, the court acknowledged grandmother’s opinion that L.R. might need counseling to process her sadness and anger about the absence of her parents. It weighed this and the other evidence presented by the parties and concluded that although mother and L.R. loved each other, mother could not resume parenting within a reasonable time and did not play a constructive role in L.R.’s life, and therefore termination was in L.R.’s best interests. Given the ample evidence supporting the court’s conclusions on these points, we cannot say that its decision was an abuse of discretion. Although “in some cases a loving parental bond will override other factors in determining whether termination of parental rights is the appropriate remedy,” this is not such a case. In re J.F., 2006 VT 45, ¶ 13, 180 Vt. 583.

Affirmed.

BY THE COURT:

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

William D. Cohen, Associate Justice