



*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**

NOVEMBER TERM, 2021

In re C.C., Juvenile	}	APPEALED FROM:
(T.D., Mother* & M.C., Father*)	}	
	}	Superior Court, Bennington Unit,
	}	Family Division
	}	CASE NO. 16-2-15 Bnjv
	}	Trial Judge: Kerry A. McDonald-Cady

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

Mother and father appeal the family division's order terminating their parental rights to their child C.C., born in February 2015. On appeal, mother argues that the family division erred in concluding that parents could not resume parenting in a reasonable period of time, and that parents' progress had stagnated. Both parents argue that termination was not in C.C.'s best interests. We affirm.

The court found the following. Parents have developmental disabilities and prior to C.C.'s birth were provided with parenting education through a new-parent program. C.C. was removed from parents' care a few weeks after birth. He was placed with a foster parent in March 2015. C.C. was born prematurely and had several medical conditions that required treatment, including surgery. The parents stipulated that C.C. was a child in need of care or supervision (CHINS) in June 2015. The State moved to terminate parents' rights at initial disposition. The family division denied the motion in November 2017, concluding that termination was not in C.C.'s best interests. The court found that although parents could not care for C.C., parents had engaged in services and made efforts to cooperate and follow suggestions and advice during supervised visits. The court directed that DCF prepare a new case plan. The adopted disposition plan had concurrent goals of reunification and adoption and included the following case plan goals for parents: engaging in visits with C.C.; attending therapy; maintaining safe and healthy housing; engaging with service providers; following medical recommendations for themselves and C.C.; and following safety plans.

Between January 2018 and January 2019, parents had visits with C.C. and engaged in Family Time coaching. Despite parents' efforts on some goals, there were continuing concerns about parents' ability to parent C.C. Mother was willing to learn but did not demonstrate safe parenting or respond to C.C.'s developmental cues. Father was abrupt with C.C. and there were also concerns about father's use of alcohol. Parents lacked the ability to plan around his needs.

There was also concern about the cleanliness of parents' home, which included animals not properly cared for and recurring bed bugs.

In January 2019, C.C. and his foster mother were in a tragic automobile accident, resulting in his foster mother's death. C.C. sustained life-threatening injuries, including a traumatic brain injury, multiple broken bones, and bruising. He was hospitalized for several weeks. During that time, DCF arranged for parents to stay at a hotel near the hospital. Mother visited C.C. daily, and father visited less frequently. Both parents participated in medical meetings. In March 2019, C.C. was discharged from the hospital and transferred to a pediatric rehabilitation center about an hour from parents' home. DCF purchased bus tickets for parents and arranged for overnight accommodation but between March 2019 and February 2020, parents had minimal or no visits each month.

From March 2020 through March 2021, the facility suspended in-person visits due to the COVID-19 pandemic but allowed remote video visits three days a week. Parents averaged only four or five remote visits each month. In September 2020, the facility opened for in-person visits for a two-week window. Although DCF notified parents and set up a visit, mother cancelled it.

The facility is prepared to train a care provider and to discharge C.C. to the care of a competent caregiver. C.C. has highly specialized medical needs and requires intensive supervision and assistance. C.C. cannot walk independently and cannot speak. He is not toilet trained and needs to be bathed, dressed, and changed. He has a gastrostomy tube that is used to administer medication and that must be cleaned daily. He needs assistance to feed. He also has suffered seizures and requires daily medication. He will require specialized services for the remainder of his life. He is a happy child and would benefit from being placed in a home with a person who could care for him. Neither parent has spent the necessary time to learn about C.C.'s needs or demonstrated adequate competence to meet his medical needs.

In July 2020, the State filed a petition to terminate parental rights. Following a contested hearing, the court found the following. There was a change of circumstances due to parents' stagnation. Parents had minimal visits with C.C., even when there were opportunities for contact through in-person and video visits. Parents did not become trained in how to meet C.C.'s medical needs. In addition, termination was in C.C.'s best interests. C.C. has serious medical needs and would benefit from a home with a competent caregiver. Parents have not prioritized their relationship with C.C. and will not be able to resume parental duties within a reasonable time as measured from C.C.'s perspective. Parents separately appealed.

To terminate parental rights after an initial disposition order is in place, the family court must find by clear and convincing evidence first that there was a change of circumstances and then that termination is in the child's best interests. In re R.W., 2011 VT 124, ¶¶ 14-15, 191 Vt. 108. In assessing the child's best interests, the court must consider the statutory criteria. 33 V.S.A. § 5114(a). The most important factor is whether the parent will be able to resume parenting duties within a reasonable period of time. In re J.B., 167 Vt. 637, 639 (1998) (mem.). On appeal, we will uphold the family court's conclusions if supported by the findings and affirm the findings unless clearly erroneous. In re A.F., 160 Vt. 175, 178 (1993).

On appeal, mother contends that the court erred in concluding that parents could not resume parenting in a reasonable time because the court did not make findings on what exactly a reasonable time was for C.C., given C.C.'s developmental disabilities and brain injuries.

Contrary to parents' assertion, the statute does not require the court to make specific findings on the exact time period that would be reasonable for the child. See 33 V.S.A. § 5114(a) (listing statutory criteria including "likelihood that the parent will be able to resume or assume parental duties within a reasonable period of time"). The reasonableness of the time period is measured from the perspective of the child and can account for the child's age or particularized needs. In re D.S., 2014 VT 38, ¶ 22, 196 Vt. 325. The inquiry is forward-looking but can take into account past events. Id.

Here, the evidence supported the court's finding that parents would not be able to parent C.C. within a reasonable time given parents' lack of progress on the case plan goals during the six years C.C. was in custody and C.C.'s extensive medical and emotional needs. Even before the car accident, parents made little progress in demonstrating that they were able to safely parent C.C. After the car accident, parents initially made efforts to spend time with C.C. at the hospital but did not use the time available to them to visit with C.C. once he was moved to the rehabilitation facility. Parents were provided with assistance and supports to facilitate visits but they did not prioritize their relationship with C.C. to strengthen the bond with C.C. or learn about his medical needs and acquire the skills necessary to care for him.

Mother also argues that the court's finding about parents' inability to parent in a reasonable time was in error because parents had demonstrated that they could make progress in parenting if provided with the proper resources. She asserts that parents were not provided with the necessary resources, and specifically that DCF should have provided them with a hotel room near to C.C.'s rehabilitation facility. The record supports the family division's finding that parents' stagnation was a result of their own actions and that parents were provided with services and support to visit C.C. but failed to follow through on those opportunities. As the family division noted, parents were provided with pre-purchased bus tickets, had funds to pay for a cab, and were provided with an apartment to stay in. Between March 2019 and March 2020, there were no restrictions on parents' contact with C.C., but parents' visits were minimal. During lockdown parents did not take advantage of video visits with C.C. The court found that parents' lack of contact and lack of progress in learning the necessary skills to care for C.C. were a result of parents' own neglect and not the failure of DCF to provide services.

In a related argument mother claims that the court erred in determining that her progress stagnated based on her lack of progress from 2015 until 2018 when the first disposition plan was adopted. According to mother, during that time there was no disposition plan adopted by the court and parents were without notice as to the expectations and the case plan goals. We conclude there was no error. It was evident from the outset of the case that the focus was on improving parents' ability to safely parent C.C. In any event, any error in considering parents' lack of progress during this period was harmless because the family division detailed parents' continued lack of progress from 2018 until the time of the final hearing, and the court found that parents' progress stagnated from March 2019 to March 2020.

Finally, both parents argue that it is not in C.C.'s best interests to terminate parents' rights because DCF has not found a permanent home for C.C. and C.C. will be left without a legal parent. There was no error. As we have emphasized in the past, "termination of a parent's rights does not depend on the availability of a permanent placement option for the child." In re R.B., 2015 VT 100, ¶ 19, 200 Vt. 45. Here, the family division properly weighed the statutory best-interests factors, including the fact that no permanent home for C.C. had yet been identified.

The evidence supports the findings in the court's best-interests analysis and those findings in turn support the conclusion that parents cannot assume parental duties in a reasonable period of time and that termination is in C.C.'s best interests.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice