



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

JANUARY TERM, 2022

In re G.C., Juvenile	}	APPEALED FROM:
(E.C., Mother*)	}	
	}	Superior Court, Washington Unit,
	}	Family Division
	}	CASE NO. 157-10-18 Wnjv
	}	Trial Judge: Timothy B. Tomasi

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

Mother appeals from the termination of her parental rights in G.C.* She argues that the court erred in finding that she stagnated in her ability to parent and concluding that termination of her rights was in G.C.'s best interests. We affirm.

G.C. was born in April 2017. She was taken into the custody of the Department for Children and Families (DCF) in late 2018 after mother overdosed on heroin in her car. G.C. was with mother at the time. DCF moved to terminate mother's rights in September 2020. Following a May 2021 hearing, the court granted its request.

The court made the following findings. Mother has a traumatic personal history. She was abused as a child and continued to be abused by her partners as an adult. Mother has two older children, both of whom live with their respective fathers despite mother's assertion that the fathers were violent toward her and/or the children. Mother has numerous physical and mental health disorders. She has battled substance abuse for many years. She also has a criminal history, including federal charges for conspiracy to distribute cocaine and heroin. Mother acknowledged a history of poor decision-making due in part to her trauma, mental health, and substance abuse.

After G.C. came into DCF custody, mother struggled to obtain housing. She also struggled to complete a substance abuse program, although she eventually did so. Mother visited G.C. inconsistently but progressed to two overnight visits a week as of February 2020. That month, however, mother was held in contempt for refusing to return her eldest daughter to her

* The court also terminated father's rights; he does not appeal.

father's care and, around the same time, the police were called to mother's residence to respond to an argument between mother and her mother. G.C. was present during the argument. Mother admitted that it was a poor decision to have her mother, who had abused and abandoned her, come to help with the children.

Mother's overnight visits were suspended in mid-March 2020 and mother had not had overnight visits with G.C. for fourteen months by the time of the court's termination decision. In July 2020, Family Time Coaching was closed due to mother's inability to follow expectations. A referral to Easter Seals was also closed due to mother's lack of involvement. After G.C. was taken into custody, mother continued to abuse substances, followed by periods of sobriety. Mother relapsed on heroin in July 2020. She used opiates in October and December 2020; she used methamphetamines in January 2021. She visited with G.C. while under the influence of methamphetamines and behaved erratically and incoherently.

G.C. has been in the same foster home since November 2018. She has a strong and loving bond with her foster family. The foster parents have a warm and stable home, and they can meet all of G.C.'s needs.

Based on these and numerous other findings, the court concluded that mother had stagnated in her ability to parent. The court acknowledged mother's progress toward stability, particularly in the four months leading up to the termination hearing. It found that mother's efforts, however, came after years of delay, stops, and starts. G.C. had been in DCF custody since October 2018 and much of mother's progress occurred after January 2021. In between these dates, many action steps went unaddressed. Mother used illegal drugs; her visitation with G.C. was halted and then restarted multiple times based on mother's failure to engage, her substance abuse, or her misconduct. Even after the State filed its TPR petition, mother used opiates and shot methamphetamines. Mother failed to appreciate the significant negative effect that her substance use had had on G.C. Mother also failed to secure stable long-term housing. Most importantly, the court concluded, mother had not shown a long period of stability where she had been sober and stable such that she could reliably and consistently care for herself and G.C. Given mother's history and consistent with the results of a psychological evaluation conducted as part of these proceedings, the court remained highly concerned about how long mother's recent progress would last. Given the issues that brought G.C. into custody and as measured from G.C.'s perspective, the court concluded that mother had stagnated in her ability to parent G.C.

Turning to the statutory best-interest factors, the court found that they all supported termination of mother's rights. The court found many of its findings regarding stagnation equally applicable to its conclusion that mother could not resume her parental duties within a reasonable time. It found mother's recovery likely would be marked by periods of sobriety and stability and periods of relapse and unreliability. Mother continued to use alcohol despite acknowledging that it could be a concern. Mother's trauma history and mental health issues also caused mother to misperceive events and misjudge reality. Mother had not had unsupported visits with G.C., much less overnight visits, since February 2020 and G.C. had been in DCF custody for much of her young life. Given all that had occurred, the long delays in making significant progress, the uncertainty that the attained progress would be maintained, and that

additional progress could be made, the court concluded that mother could not resume her parental duties within a reasonable time.

The court further found that, while mother and G.C. loved each other, mother had been dealing with her own demons for most of G.C.'s life and she was, at best, an inconsistently positive force in G.C.'s life. G.C. was strongly bonded with her foster family who she had been living with since late 2018. Her foster parents met all of G.C.'s needs.

The court determined that the clear and convincing evidence compelled the conclusion that termination of mother's rights was in G.C.'s best interests. It found that G.C. needed immediate stability and permanency instead of ongoing uncertainty and delay, and this could be achieved only by granting the State's petition. This appeal followed.

Mother first challenges the court's stagnation conclusion. She asserts that the court should not have based its stagnation finding on her prior substance abuse given that she was sober and engaged in treatment for the five months before the TPR hearing. She also argues that her inability to secure housing was based on factors beyond her control given the COVID-19 pandemic and a housing shortage. She notes that, although obtaining stable housing was part of the case plan, it was not an issue that brought G.C. into custody.

To terminate a parent's rights, the trial court must first find that there has been a change in circumstances since the issuance of a prior disposition order, and second, that termination of parental rights is in the child's best interests. In re B.W., 162 Vt. 287, 291 (1994); see also 33 V.S.A. §§ 5113-5114. A change in circumstances is "most often found when the parent's ability to care properly for the child has either stagnated or deteriorated over the passage of time." In re B.W., 162 Vt. at 291 (quotation omitted). The fact that a parent shows "some progress in some aspects of his or her life does not preclude a finding of changed circumstances." Id. (quotation omitted). On appeal, we will affirm the trial court's findings unless they are clearly erroneous, and we will affirm its conclusions if supported by the findings. In re B.S., 166 Vt. 345, 350 (1997).

The court's stagnation conclusion is supported by its findings and by the evidence. The court's conclusion rested on mother's failure to demonstrate that she was stable enough to care for herself and G.C. during the two-and-a-half years that G.C. was in custody. The court recognized that mother had made progress in the months leading up to the hearing. It concluded, however, that her progress came very late and that it was unlikely to last. This was consistent with the opinion offered by the doctor who conducted mother's psychological evaluation and with mother's treating psychiatrist. While mother argues that her recent progress showed that she had not stagnated, the court concluded otherwise and we leave it to the trial court to assess the credibility of witnesses and weigh the evidence. 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 . . .").

This case is not like In re T.M., 2016 VT 23, ¶ 23, 201 Vt. 358, the holding of which we emphasized was "narrow and closely tied to the facts of [that] case." The father in T.M. struggled with opioid dependency when his children were taken into custody. We reversed the

trial court's stagnation finding where the father had "reliably participated in his substance abuse treatment for over a year and complied with [his] Suboxone regime and abstained from illicit opioids," maintained stable housing for more than one year, maximized his visitation with his children, "never missed a family time coaching session, and had a demonstrated bond with his children." *Id.* We concluded that the father's "use of an undetermined amount of marijuana throughout part of the period preceding the termination hearing" did not "reflect[] such a substantial departure from the case plan goals with respect to his progress in improving his capacity to resume his parental responsibilities that it amounts to stagnation." *Id.* The instant case involves much different circumstances. Mother was using illegal drugs four months before the termination hearing and she visited with G.C. while under the influence of drugs, behaving erratically and incoherently. While mother made progress just before the termination hearing, she had many stops and starts during the many years that G.C. was in custody and she failed to persuade the court that her most recent progress would be long-lasting. As the doctor who performed the psychological evaluation stated, mother "never displayed a substantial period of successful sobriety and ability to care for herself and her children." The court agreed with this expert's conclusion, and it acted within its discretion in doing so.

The court's stagnation decision did not turn on mother's inability to secure stable housing and any error as to whether mother was to blame for this failure would be harmless. We note, however, there is evidence to show that mother failed to take steps available to her to secure stable housing during the time G.C. was in custody, including an eviction action commenced pre-pandemic for failure to pay rent and her failure to take the necessary steps to remain on the waiting list for the Lund Home in July 2019. In any event, the court did not blame mother for her inability to find housing after the Fall of 2020. While it rejected her claim that the State was to blame for her failure to find housing, it found that mother had been working diligently since Fall 2020 to find an apartment. The court did not err in concluding that mother had stagnated in her ability to parent.

Mother next challenges the court's conclusion that termination of her rights was in G.C.'s best interests. She contends that, by relying on the results of her psychological assessment, the court failed to engage in a forward-looking analysis of her ability to parent G.C. She further asserts that she successfully ameliorated the conditions that led to DCF custody and that the court should weighed the evidence differently with respect to the statutory best-interest factors.

As we have explained, to determine what course of action is in a child's best interests, the court must consider four statutory factors. 33 V.S.A. § 5114. The most important factor is the likelihood that the natural parent will be able to resume his or her parental duties within a reasonable time. See *In re B.M.*, 165 Vt. 331, 336 (1996). The court must measure the reasonable period from the child's perspective, mindful of considerations such as a "child's young age." *In re D.S.*, 2014 VT 38, ¶ 22, 196 Vt. 325 (quotation omitted). As long as the court applied the proper standard, we will not disturb its findings on appeal unless they are clearly erroneous; we will affirm its conclusions if they are supported by the findings. *In re G.S.*, 153 Vt. 651, 652 (1990) (mem.).

The court applied the appropriate standard here and its conclusion is supported by the evidence. We recognize that a court must engage in a "forward-looking" analysis and consider a parent's "prospective ability to parent" but, "[o]f course, past events are relevant to this

analysis.” In re D.S., 2014 VT 38, ¶ 22 (quotation omitted). Mother’s history is relevant in assessing her prospective ability to parent and the court did not err in relying on the results of her psychological assessment in reaching its conclusion. Mother’s remaining arguments turn on the court’s assessment of the credibility of witnesses and the weight of the evidence, matters reserved exclusively for the trial court. In re A.F., 160 Vt. at 178. We do not reweigh the evidence on appeal. We find no error in the court’s conclusion that termination of mother’s rights was in G.C.’s best interests.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice