



*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**

JUNE TERM, 2024

In re I.P. & N.D., Juveniles	}	APPEALED FROM:
(R.M., Mother*)	}	
	}	Superior Court, Chittenden Unit,
	}	Family Division
	}	CASE NOS. 20-JV-00439 & 20-JV-00441
		Trial Judge: A. Gregory Rainville

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

Mother appeals the termination of her parental rights to minor children I.P. and N.D. We affirm.

I.P. was born in September 2015, and N.D. was born in September 2016. In December 2020, the State filed petitions alleging that I.P. and N.D. were children in need of care or supervision (CHINS) due to mother's use of methamphetamine and other substances, mother's mental-health issues, and concerns about domestic violence between mother and her then-partner. The family division transferred custody of the children to the Department for Children and Families (DCF) in a temporary care order.

In January 2021, mother stipulated that I.P. and N.D. were CHINS. The court issued a disposition order in June 2021 in which it continued custody with DCF and established a goal of reunification with either parent within six to nine months. The disposition case plan adopted by the court expected mother to complete a substance-abuse assessment and follow all recommendations; provide urinalysis (UAs) as requested; engage in individual counseling to address her substance abuse and resulting trauma; develop a relapse-prevention plan; maintain safe and stable housing; sign and maintain releases; and engage in parent education and take a Nurturing Parents class.

In July 2022, DCF filed petitions to terminate the parental rights of mother and the children's fathers. The court held a hearing over three days in April, September, and October 2023. In January 2024, it issued a written order granting the petition to terminate the parental rights of mother and N.D.'s father.\*

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\* I.P.'s father's parental rights were terminated in a separate order in February 2024. Neither he nor N.D.'s father appealed the termination of their rights.

The court made the following findings in its order. The children were initially placed with their maternal grandmother and aunt. During this period, mother continued to struggle with substance abuse and did not visit the children for significant periods of time. In the fall of 2021, the children were transitioned to a foster home. The foster parents reported aggressive behaviors between the girls and regression after family visits. Mother was inconsistent in attending visits. In April 2022, mother stopped attending visits altogether. She reengaged with DCF in the summer of 2022, and in August 2022 began having video calls with the children.

The children moved to their current foster home in June 2022. They have become bonded to their foster family. They refer to the foster parents as Mom and Dad and identify the foster home as their home and their foster brothers as their siblings. They have made friends in their new community, are doing well in school, and enjoy participating in various extracurricular activities. Foster parents enrolled the children in counseling, which has helped them in dealing with difficult emotions.

Mother has a long history of unstable mental health, substance abuse, and relationships with unsafe partners. Mother has three older children, two of whom were removed from her care and adopted. The third child, an adult, was living with mother, I.P., and N.D. when the children were taken into DCF custody. He reported to authorities that mother was using drugs and had a dangerous partner.

In September 2021, nine months after the children entered DCF custody, mother was charged with stealing a car, leaving the scene of an accident, burglary, and two counts of possession of stolen property. She was offered drug treatment court but failed to appear and was eventually arrested in February 2023. Mother declined to re-engage in drug treatment court, which indicated to the family court that she was not committed to sobriety. She was sentenced to serve two-to-five years, split to serve thirty days, with a four-year term of probation. She completed the incarcerative portion of her sentence in the summer of 2023. The family court expressed doubt that mother would complete probation without reoffending, based on her long history of addiction and recent drug use, untreated mental health issues, and separation from her former fiancé, who had provided her with stable housing through his VA benefits.

Mother testified that she had bipolar disorder and PTSD. She began using substances at age thirteen and has struggled with addiction since that time. She has been addicted to opiates, heroin, “benzos,” and crystal methamphetamine. She testified that she last used crystal methamphetamine in April 2022, when she overdosed, had seizures, and was hospitalized. Mother asserted that she had been sober since that time and provided evidence of negative UA results dating from the fall of 2022 and spring of 2023. The court found the UA evidence alone was insufficient to corroborate her claim of sobriety, as it could easily be “doctored.”

In September 2023, mother attended a visit with the children that was intended to be a birthday celebration for N.D. Mother arrived thirty minutes late and appeared to be under the influence. She was harried, talking fast, smelled strongly of marijuana, and was unable to move around without knocking things over. Mother admitted to smoking marijuana on the way to the visit to calm herself. DCF requested a UA the next day, but mother did not comply, which was unusual for her.

A few weeks later mother’s then-fiancé provided a UA that was positive for cocaine. He acknowledged to DCF that he had been using for some time. Mother had lived with him for over a year and planned to coparent the children with him. In addition to struggling with substance abuse, the fiancé suffered from PTSD and required mother’s help to perform the tasks of daily

living, including personal care. The children reacted poorly to mother's fiancé and refused to engage with him during video calls. By the time of the final hearing, mother had separated from the fiancé.

The court found that mother did not engage with the case plan until the late summer of 2022. She began medication-assisted treatment in the spring of 2022 and had changed providers several times. She had not consistently attended mental-health counseling. For most of the time that the children were in custody, mother's housing was unstable; she had lived in Burlington, Bradford, Barre, and Williston.

Mother had not progressed beyond a weekly supervised one-hour visit with the children. She participated in Family Time Coaching in February and March 2022, but she was discharged from the program for lack of engagement. She resumed having in-person visits in early 2023. Mother came prepared with snacks and activities for visits. However, the children struggled emotionally with the visits and frequently refused to attend. Both children were upset after the September 2023 visit during which mother appeared to be under the influence, and N.D. told the foster mother that she was never going to attend another visit.

The court found that mother had stagnated in her progress toward reunification, citing her inconsistent contact with the children, lack of insight into the trauma the children endured because of her absence, substance use, and continued exposure of the children to unsafe partners. Turning to the statutory best-interests factors, it found that mother's relationship with the children had been detrimentally impacted by her behavior, and the children did not trust mother and did not want to have contact with her. The children had a strong bond with their foster home and community and removing them from that environment would be contrary to their best interests. Mother was unlikely to be able to resume parenting within a reasonable time and did not play a constructive role in their lives. The court therefore concluded that termination was in the children's best interests and granted the petitions. Mother appealed.

When considering a petition to terminate parental rights after initial disposition, the court must first determine whether there exists a change in circumstances sufficient to justify modifying the existing disposition order. In re B.W., 162 Vt. 287, 291 (1994); 33 V.S.A. § 5113(b). A change in circumstances "is most often found when a parent's ability to care for a child has either stagnated or deteriorated over the passage of time." In re S.W., 2003 VT 90, ¶ 4, 176 Vt. 517, 518 (mem.) (citation omitted). "Stagnation may be shown by the passage of time with no improvement in parental capacity to care properly for the child," but "the mere fact that a parent has shown some progress in some aspects of his or her life does not preclude a finding of changed circumstances warranting modification of a previous disposition order." In re B.W., 162 Vt. at 291 (quotation omitted). If it finds a change in circumstances, the court must then consider whether termination is in the child's best interests using the factors set forth in 33 V.S.A. § 5114(a). "As long as the court applied the proper standard, we will not disturb its findings unless they are clearly erroneous, and we will affirm its conclusions if they are supported by the findings." In re N.L., 2019 VT 10, ¶ 9, 209 Vt. 450.

On appeal, mother argues that the court erred in finding that her progress toward reunification with I.P. and N.D. had stagnated. She argues that she had no meaningful way to comply with the case plan because DCF would not force the children to attend visits and the court denied her motion to increase the frequency of contact.

We have recognized that "stagnation caused by factors beyond the parents' control could not support termination of parental rights." In re S.R., 157 Vt. 417, 421-22 (1991). The record

here does not support mother's argument that DCF or the court caused her stagnation, however. Even when the children were in the care of mother's relatives at the beginning of the case, mother was inconsistent in attending visits. The court found that this was attributable to mother's continued untreated substance abuse. Mother did not have any contact with the children for several months in the spring and summer of 2022. This prolonged absence damaged her relationship with the children and made the resumption of visits difficult for them. Mother also presented her then-fiancé as a future parent, which caused the children anxiety. They eventually began to refuse to attend visits. When they did attend a visit in September 2023, mother arrived late and under the influence. These facts support the court's conclusion that it was mother's lack of commitment to addressing her substance abuse, as well as her lack of insight into how her behavior and choice of partners had impacted the children, that interfered with contact, and not DCF's actions.

While mother did seek increased contact in February 2023, the court denied her motion because she had not yet been sentenced on her criminal charges. Mother's criminal behavior was a matter within her own control and was the underlying reason for the court's refusal to require increased contact at that time. See In re K.F., 2004 VT 40, ¶ 12, 176 Vt. 636 (mem.) (explaining that father bore sole responsibility for his frequent incarceration, failure to maintain consistent contact with DCF, and lack of bond with child).

Further, there was ample evidence beyond mother's lack of progress in visitation to support a finding of stagnation. Mother was discharged from Family Time Coaching due to lack of engagement. She claimed to be sober but appeared at a September 2023 visit under the influence of marijuana and refused to participate in drug treatment court. She continued to choose partners with histories of substance abuse, criminal behavior, and domestic violence, and lacked insight into how these choices affected her children. She also failed to maintain stable housing for herself and the children. Under these circumstances, the court did not err in finding that mother had stagnated in her progress in addressing the issues that led the children to enter state custody.

Mother does not challenge the court's assessment of the best-interests factors, which is supported by its findings. We therefore see no reason to disturb the decision below.

Affirmed.

BY THE COURT:

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice

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Nancy J. Waples, Associate Justice