Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-011

APRIL TERM, 2017

In re M.J., M.J. and M.J., Juveniles	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
	}	Family Division
	}	
	}	DOCKET NOS. 152/153/154-11-14 Rdjv
		Trial Judge: Nancy Corsones

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

Father appeals from the termination of his rights in M.J., M.J., and M.J. He argues that the court's finding that he has essentially no relationship with the children is based on inadequate evidence. We affirm.

The children were born in 2005, 2008, and 2012, respectively. They were taken into the custody of the Department for Children and Families (DCF) in October 2014 pursuant to an emergency care order. In January 2015, the children were adjudicated as children in need of care or supervision. DCF later moved to terminate parents' rights, and following a November 2016 hearing, the court granted its request. The court made numerous findings, including the following. Mother was addicted to opiates and resisted treatment throughout DCF's four-year involvement with the family. At the time of the final hearing, mother was homeless and actively addicted. Father was frequently incarcerated throughout the children's lives, and he made little progress in addressing the issues that brought the children into custody. The children were placed with father in January 2015, but removed from his care in June 2015 after father: allowed unsupervised contact between the children and mother; sent one of the children to live with his mother in violation of the placement order; and failed to provide all three children with a safe home and enough food. Father was subsequently terminated from drug court for using cocaine. A warrant issued for his arrest in the fall of 2015 after he failed to appear for court. Although he knew of the warrant, father did not turn himself in for over three months. Father blamed the authorities for not coming to pick him up. Following their removal from father's care, father had no contact with the two youngest children. He had one phone call with the eldest child, which occurred fifteen months before the termination hearing. During this call, father chastised the child for failing to hold the family together. Father has been incarcerated at various prisons in New York State and, absent unforeseen circumstances, was set to be released in January 2017. Father did not contact DCF until learning that a termination hearing was scheduled.

Based on these and numerous other findings, the court concluded that parents had stagnated in their ability to care for the children, and that termination of their rights was in the children's best interests. The court explained that father's pattern of criminality had resulted in extensive periods of incarceration during the children's infancy and adolescence, and that pattern continued. Father had no relationship with the younger children, and a marginal relationship, at best, with the oldest child. Although father could have reached out to DCF to set up, at minimum, a schedule of written or telephone communication with the children, he failed to do so. The court concluded that father had not played a constructive role in the children's lives. The court also found no reasonable possibility that father would be able to resume parenting within a reasonable time. At the time of the final hearing, father was participating in a shock incarceration program in New York. Assuming that he was released from incarceration, he then would be on parole for another fourteen months. New York would not accept a referral under the Interstate Compact on the Placement of Children, and it was only speculation that father's parole could be transferred to Vermont. Even if it were possible, the court continued, father's movements would be tightly controlled and it was unlikely at best that the children would be placed with him on a full-time basis given that he had not seen the children since he was on warrant status in the fall of 2015. The court examined the remaining statutory best-interest factors as well, and concluded that they all supported termination. This appeal followed.

Father argues on appeal that the evidence did not present a clear picture as to the importance of his relationship with the children. He cites evidence that he believes creates uncertainty as to how the children felt about father, and asserts that the importance of the father's relationship with the middle child "remains a mystery." Father questions why the children's therapists were not called as witnesses during the hearing to provide insight on this issue.

We find no basis to disturb the court's decision. The trial court applied the appropriate statutory standard in evaluating the children's best interests, and its findings and conclusions are supported by the evidence. See 33 V.S.A. § 5114 (identifying statutory best-interest factors); In re G.S., 153 Vt. 651, 652 (1990) (mem.) (explaining that as long as trial court applied proper statutory standard in evaluating child's best interests, Supreme Court will not disturb findings on appeal unless clearly erroneous and will affirm conclusions if supported by findings). This Court does not reweigh the evidence on appeal. See In re A.F., 160 Vt. 175, 178 (1993) (recognizing that it is exclusive role of trial court to assess credibility of witnesses and weigh evidence).

We note at the outset that father does not challenge the court's conclusion that he cannot parent the children within a reasonable time, the most important statutory best-interest factor, or its assessment of the children's adjustment to their new homes. See 33 V.S.A. § 5114 (a)(2), (3); In re B.M., 165 Vt. 331, 336 (1996) (identifying parent's ability to resume parenting as most important statutory factor). The court also appropriately considered father's "interaction and interrelationship" with the children as well as whether father "has played and continues to play a constructive role, including personal contact and demonstrated emotional support and affection, in the child[ren]'s welfare." 33 V.S.A. § 5114(a)(1), (4). As set forth above, the court found that father was frequently incarcerated during the children's lives. He made no effort to contact the children or to engage with DCF prior to the termination hearing. He has had no communication with the two youngest children since 2015. He had one phone call with the oldest child fifteen

months before the final hearing during which he berated the child. If father believes that the children's therapists had important information to provide to the court, he could have called them as witnesses. There is ample evidence in this record, including that cited above, to support the court's finding that father had little to no relationship with the children. We find no error.

Affirmed.

BY THE COURT:

_____
Marilyn S. Skoglund, Associate Justice

_____
Beth Robinson, Associate Justice

_____
Karen R. Carroll, Superior Judge,
Specially Assigned