DA 20-0574

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 160N

IN THE MATTER OF:

G.C. and A.C.,

Youths in Need of Care.

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and For the County of Yellowstone, Cause Nos. DN 18-183 and DN 18-184
Honorable Michael G. Moses, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Shannon Hathaway, Driscoll Hathaway Law Group, Missoula, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Jonathan M. Krauss, Assistant Attorney General, Helena, Montana

Scott Twito, Yellowstone County Attorney, Laura Watson, Deputy County Attorney, Billings, Montana

Submitted on Briefs: June 2, 2021

Decided: June 29, 2021

Filed:

Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 C.V. (Mother) appeals from a Thirteenth Judicial District Court order terminating her parental rights to G.C. and A.C (collectively, the Children).[1] We affirm.

¶3 Prior to this case, the Montana Department of Health and Human Services, Child and Family Services Division (Department) had a history of intervention with this family, including four prior dependency and neglect (DN) petitions (DN 14-149 (concerning G.C.), DN 15-415 (concerning A.C.), DN 17-134 (concerning G.C.) and DN 17-135 (concerning A.C.)), all of which were dismissed. The Department filed the previous petitions due to Mother and B.C.'s (Father) drug abuse, long-term mental health issues, chemical dependency, and parenting issues.[2] Father died from a drug overdose in March 2017. He was never a party to the instant petitions.

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[1] The petitions as to both Children, DN 18-183 (*In re G.C.*) and DN 18-184 (*In re A.C.*), proceeded simultaneously with joint hearings and exhibits and equivalent court filings in each case. For purposes of this appeal, the cases have been consolidated and the Court will refer to the District Court order and record documents in DN 18-183.

[2] The previous petitions alleged, in part, Mother's drug use; mental health issues, including psychosis; a clear and active pattern of substance abuse, including illegal substances and misuse of prescribed medications; failure to follow doctor's advice on chemical issues and mental health issues; and poor and unsafe parenting.

¶4 Soon after the District Court dismissed DN 17-134 and DN 17-135, the Department received reports that Mother was using drugs. On May 22, 2018, the Department received a report that Mother had been in a car accident with the Children; Mother had relapsed and appeared impaired at the time of the accident. The Department removed the Children from Mother's care. The Department filed its Petition for Emergency Protective Services, Adjudication as Youth in Need of Care (YINC) and Temporary Legal Custody (TLC), along with its supporting affidavit on May 25, 2018. This was 43 days after the dismissals in DN 17-134 and DN 17-135. In July 2018, the State filed a Petition for Determination that Preservation and Reunification Services Need Not Be Provided, pursuant to § 41-3-423(2), MCA, citing the three previous DN cases opened for the same issue of physical neglect due to parental drug use.

¶5 At the show cause hearing in June 2018, Mother stipulated to emergency protective services. In August 2018, she stipulated to adjudication of the Children as YINCs and TLC to the Department. The District Court signed and approved Mother's Phase I Treatment Plan on August 16, 2018. At a hearing in October 2018, the Department stated the parties had agreed to a guardianship and that it expected resolution of the present matter in one to eight months. The Department indicated that Mother would continue to work on her treatment plan during this time. At this hearing, the State withdrew its Petition for Determination that Preservation and Reunification Services Need Not Be Provided.

¶6 The State filed its Petition for Permanent Legal Custody and Termination of Parental Rights with Right to Consent to Adoption on February 25, 2019. As the basis

for termination, the petition cited Mother's failure to successfully complete her treatment plan and that her conduct or condition was unlikely to change because of her excessive use of drugs and alcohol, which affected her ability to parent. The petition was supported by Child Protective Specialist (CPS) Heidi Kimmet's affidavit. The affidavit detailed prior Department interventions with Mother and the Children, the Department's reasonable efforts to avoid placement and/or make it possible to safely return the Children to their home, and Mother's compliance and lack of compliance with her treatment plan. The District Court scheduled a hearing on the petition for May 29, 2019. The hearing was rescheduled by both Mother and the State on different occasions. During this time, the Department provided Mother with a Phase II Treatment Plan. Mother signed the plan on July 3, 2019, and the District Court ordered the plan on July 31, 2019. On August 29, 2019, at the time set for the permanent legal custody hearing, the Department moved the court on the record for an extension of TLC to allow Mother time to complete her approved Phase II Treatment Plan. The District Court granted the extension of TLC for six months and set the termination hearing for December 2, 2019.

¶7 The District Court held hearings for the termination petition on eight days over the course of seven months: December 2, 2019, February 26-27, 2020, March 9, 2020, May 6-7, 2020, June 24, 2020, and July 23, 2020.[3] The State called twenty-six witnesses including psychologists, addiction counselors, CPS specialists, counselors for the

[3] During the pendency of this hearing, Mother gave birth to her third child. Mother's parental rights to this child are not at issue in this appeal.

Children, caseworkers, and employees who testified to Mother's drug testing and drug test results throughout her involvement with the Department. Mother called twelve witnesses. The District Court issued its Findings of Fact, Conclusions of Law and Order, terminating Mother's parental rights to G.C. and A.C., on November 4, 2020. Mother appeals. Additional facts will be discussed below as necessary.

¶8 This Court reviews a district court's decision to terminate parental rights for an abuse of discretion, considering the applicable standards of Title 41, chapter 3, MCA. *In re D.D.*, 2021 MT 66, ¶ 9, 403 Mont. 376, 482 P.3d 1176. "A court abuses its discretion if it terminates parental rights based on clearly erroneous findings of fact, erroneous conclusions of law, or otherwise acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice." *In re D.D.*, ¶ 9. Findings of fact are clearly erroneous if not supported by substantial evidence, the court misapprehended the effect of the evidence, or this Court has a definite and firm conviction that the lower court was mistaken. *In re D.D.*, ¶ 9. We review conclusions of law for correctness. *In re D.D.*, ¶ 9.

¶9 The first issue Mother raises on appeal is whether the Department and the District Court violated Mother's rights when her visits with the Children were cancelled. Specifically, Mother maintains that the Department violated her fundamental right to parent when the Department suspended Mother's visits with the children from January to May of 2019. She further asserts that the District Court abused its discretion and violated Mother's rights when it stopped Mother's visits in February 2020 before ruling on the termination of her parental rights in November 2020. Because of the suspended 2020

visits, and not having the Children in her care, Mother argues the Department prevented her from being admitted into sober mother/child living facilities. We restate the issues as whether the Department engaged in reasonable efforts to prevent removal of G.C. and A.C. and to reunite Mother with the Children, and whether the District Court abused its discretion by suspending visitations prior to its determination to terminate Mother's parental rights.

¶10 A parent has a fundamental liberty interest to the care and custody of their children that must be protected by fundamentally fair procedures. *In re D.B.*, 2007 MT 246, ¶ 17, 399 Mont. 240, 168 P.3d 691. A district court may terminate the parent-child relationship if a child is adjudicated a YINC and the court finds "by clear and convincing evidence that: (1) an appropriate court-approved treatment plan was not complied with by the parents or was not successful;[4] and that (2) the conduct or condition of the parents rendering them unfit was unlikely to change within a reasonable time." *In re R.J.F.*, 2019 MT 113, ¶ 24, 395 Mont. 454, 443 P.3d 387 (quoting *In re X.M.*, 2018 MT 264, ¶ 18, 393 Mont. 210, 429 P.3d 920 (citing § 41-3-609(1)(f)(i)-(ii), MCA)). The Department has the burden of proving by clear and convincing evidence that these statutory criteria for termination have been satisfied. *In re R.L.*, 2019 MT 267, ¶ 12, 397 Mont. 507, 452 P.3d 890.

¶11 Because a parent's right to the care and custody of a child is a fundamental liberty interest, a district court must adequately address each applicable statutory requirement

[4] Mother concedes and does not dispute on appeal that the Children were adjudicated as YINCs but maintains that she completed the substantive tasks on her treatment plan.

before terminating an individual's parental rights. *In re R.L.*, ¶ 17 (citations and internal quotation marks omitted). Section 41-3-423(1), MCA, is one such requirement. It provides in pertinent part:

> The department *shall make reasonable efforts* to prevent the necessity of removal of a child from the child's home and *to reunify families that have been separated by the state*. Reasonable efforts include but are not limited to voluntary protective services agreements, development of individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of a paramount concern.

(Emphasis added.)

¶12 We have held that a "determination of whether the Department made reasonable efforts is not a separate requirement for termination," but "it may be a predicate for finding that the conduct or condition rendering a parent unfit, unwilling, or unable to parent is unlikely to change within a reasonable time." *In re R.L.*, ¶ 18; *see also* § 41-3-609(1)(f)(ii). In determining whether the Department has made reasonable efforts, a court is to consider the services provided to the family. Section 41-3-423(7), MCA. Section 41-3-423(1), MCA, is a non-exhaustive list of reasonable efforts the Department must make, but "[w]hat constitutes reasonable efforts is not static or determined in a vacuum, but rather is dependent on the factual circumstances of each case . . . ." *In re R.L.*, ¶ 22. Thus, our determination of whether the Department has made reasonable efforts to reunify the child with his or her parent is highly dependent on the factual circumstances of each case—the totality of the

circumstances—"including a parent's apathy and/or disregard for the Department's attempts to engage and assist the parent." *In re R.L.*, ¶ 22 (emphasis omitted). A district court is required to find that the State is making reasonable efforts at various times in a child abuse and neglect proceeding. Sections 41-3-432(5)(c) (show cause), -437(7)(a)(iii) (adjudication), -442(1)(b) (TLC), -445(6)(c) (permanency hearing), MCA. "Further, the language of § 41-3-423(1), MCA, plainly contemplates that the Department will make reasonable efforts to unify families throughout the proceeding." *In re C.M.G.*, 2020 MT 15, ¶ 14, 398 Mont. 369, 456 P.3d 1017. Though reasonable efforts do not require "herculean efforts," the Department must "adhere to its policies and use its best efforts to place a child in close enough proximity to a parent to arrange visitation in sufficient frequency and duration to make it possible for a parent to establish a bond between herself and her child." *In re R.J.F.*, ¶ 37.

¶13 We turn to the relevant facts surrounding the two periods in which visitations were suspended.

January 2019 - May 2019

¶14 In January 2019, CPS Kimmet suspended visits between Mother and Children after Mother told the Children during a visit that she was moving to Alabama and they would be coming with her. The visitation supervisor suspected Mother was high at the time.[5] After suspending the visits, CPS Kimmet awaited recommendations from

[5] CPS Kimmet testified the visits were suspended for additional reasons, including an email from a visit supervisor outlining her concern with Mother's ability to effectively discipline the Children and about the extent of chaos at a particular visit; Mother's trip to Alabama to visit family, which was contrary to the treatment plan; Mother acting up in visits and not responding

professionals working with Mother and the Children. In February, CPS Kimmet spoke with G.C.'s counselor, Danielle Eldridge, who supported suspending the visits. CPS Kimmet testified she then awaited recommendations from the professionals working with the Children, including Eldridge, before reinstating visits. CPS Kimmet testified the Department did not have a parent child interaction plan in this case as is required by the Department's policy manual. She could not recall why there was not a plan in place. In March 2019, Eldridge wrote to CPS Kimmet indicating she was concerned about the way visitations were being conducted and that visitations were not in G.C.'s best interest at that time. Her opinion was based on G.C.'s experiences after the visits with Mother, information reported to Eldridge about Mother's mental state, and her own observations that G.C. became dysregulated when talking about Mother. Eldridge wrote the letter in hopes that visits would be suspended temporarily to see how suspension of visits impacted G.C. and also to figure out how to make visitations more therapeutic. Eldridge testified that at the time of writing the letter, she did not believe visitations were in G.C.'s best interest "until there was a decision about where permanen[t] [placement] was going." Eldridge was never asked to determine whether visits should start again.

¶15 Eventually, Mother filed a complaint with the ombudsman and CPS Kimmet's regional administrator, Jason Larson. When Larson learned visits had been suspended, he directed CPS Kimmet to immediately restart visits. In an email dated May 6, 2019 to CPS Kimmet, he wrote he had been asking CPS Kimmet to restart visits for weeks and he

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to Family Support Network; Mother's psychotic episode; Mother quitting her prescribed mental health medication and self-medicating; and chaotic visits with the Children.

"expected her to get these back on track by the end of the day." CPS Kimmet restarted the visits in May 2019. When asked if she was aware of the Department policy surrounding the importance of visits, she noted that she did not have time to look at the policy manual.

February 2020 - November 2020

¶16 The District Court again suspended visits between Mother and Children in February 2020. In part, this was because of a recorded visit that took place on February 19, 2020, but the court also heard testimony regarding G.C.'s dysregulation after visits with Mother. At the February 26 hearing, Pandora Palmer, G.C. and A.C.'s individual counselor since October 2019, testified extensively regarding G.C.'s need for permanency. Palmer testified that before she would recommend visitations, Mother would have to complete treatment, and clear expectations would need to be communicated to G.C about every visit. The District Court very directly asked Palmer if she would recommend Mother's involvement in a therapeutic trauma-based treatment at that time. Upon careful consideration, Palmer responded that inserting Mother into G.C.'s treatment at that time would not be therapeutically in G.C.'s best interest. After additional testimony at the February 27 hearing, the District Court continued visits with A.C. and suspended visits with G.C. until the treatment team could advise the court on how therapeutic visits could take place between Mother and G.C. The court stressed the urgency of the matter and ordered the parties to work with Palmer and Lorrine Burke, one of the counselors who helped conduct a parenting assessment of Mother and the Children, on devising a way to better support visits.

¶17 The parties again discussed the status of visits following CPS Kimmet's testimony on March 9, 2020. Mother had not had any visitation with the Children since before the last hearing. A social worker informed the court that she had contacted Burke and that Burke would be meeting with the social worker to review the file for this matter on March 11, 2019 and would follow up with a report. The District Court again stressed the urgency of the matter and asked the Department to gather information from Burke and Palmer about setting up therapeutic visits between Mother and the Children but suspended the visits until this could happen.[6] The District Court received an email report from Burke on April 3, 2020. The report consisted of Burke's own impressions, conclusions and recommendations after reviewing the case file and the impressions and recommendations of therapists working with G.C. and A.C. The recommendations overwhelmingly suggested that visitations were not in the Children's best interest.

¶18 The matter of reinstating visitations was readdressed at the May 7 hearing. The court stated that it would rely upon Palmer's testimony, statements, and reports because she was treating G.C. at the time and had been for some time. The court indicated that it was always open to reports and that as soon as it received a follow-up report from Palmer, it would be willing to reinstate visitations between Mother and the Children; until then, the court affirmed its position that visits would not resume. Counsel for Mother pressed the court, opposing counsel, and members of the treatment team about a follow-

[6] The record is unclear whether visitations with A.C. were suspended at the conclusion of this hearing. Guardian ad litem Fred Snodgrass expressed concern about separating A.C. and G.C. and the possibly detrimental effect of having visits continue with A.C. and Mother but not G.C. and Mother. The court agreed, but the record is unclear whether visits with A.C. were suspended. The court made clear that it was seeking input on the matter from Palmer and Burke.

up report and a timeline on when the parties could expect the report. Counsel for the Department assumed Palmer was already working on the report. A follow-up report never came. As a result, Mother did not see the Children from February 2020 until her rights were terminated in November 2020.

¶19 We cannot say, when considering the totality of the record in this case, that the Department did not engage in reasonable efforts in this matter. CPS Kimmet's supporting affidavit for the petition to terminate rights specifically lists 25 different ways in which the Department made efforts.[7] The right to receive reasonable efforts is not absolute. It is dependent on the parent's engagement, first, but is also limited by the paramount concern for the best interests of the child: "in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern." Section 41-3-423(1), MCA; *see* Department of Public Health and Human Services Policy 402-5 at 9-10 (reduction or denial of visits may be justified under circumstances where the "CPS believes that the child's health, safety and well-being cannot be protected during visits."). During the time of the 2019 suspension, Mother was self-medicating, exhibiting signs of paranoia, testing positive for THC, and tampering with her drug patches. The Department continued providing Children and Mother with constant assistance during this time, albeit separately. Moreover, G.C.'s counselor did not believe visits were in G.C.'s best interest at the time. Though the regional

[7] The efforts included: chemical dependency evaluations, inpatient chemical dependency treatment, intensive outpatient treatment, aftercare treatment, relapse prevention, drug testing, individual therapy, protective placements, trial home visits, supervised visits, monitored visits, unsupervised visits, in-home services, parenting classes, therapeutic parenting time, family engagement meetings, kinship placements, transportations, and psychiatric care.

administrator believed the suspension of visits was contrary to Department policy, the record indicates that Larson did not consult with the Children's counselors. Regardless, an isolated instance of the Department's failure to reinstate visitations between Mother and the Children in this case does not overshadow the numerous efforts the Department did make to reunify the family.

¶20 Furthermore, the District Court did not violate Mother's rights in suspending Mother's visitation rights in 2020. The record overwhelming supports the fact that the District Court recognized the urgency of resuming visitations with the Children but within its discretion waited until professionals working with the Children provided the court with reports indicating it was in the Children's best interest to do so. When the District Court did receive Burke's April 2020 report, the conclusions and recommendations were clear—visits were not in the Children's best interest. Though a follow-up report never came, and courts may only in rare circumstances allow lengthy suspensions of parent visitation, here the court was waiting on a report from the Children's counselors before resuming visitations. Such a suspension was thus reasonable under the circumstances. We conclude the District Court did not abuse its discretion.

¶21 We do recognize, however, the importance of parent-child contact in the reunification of families, and we acknowledge the seemingly unnecessary delay in reinstating visitations in 2019. It was against Department policy as evidenced by the regional supervisor's response and the immediacy with which he requested they begin

again.[8] Though we do not condone lengthy suspensions of parent-child visitations that are contrary to Department policy, and we encourage parties to provide courts with the necessary timely reports to resolve issues on such matters, a review of the record indicates that visits were suspended in this case because they were not in the Children's best interests. Because this is always the paramount consideration for a court, we conclude the District Court did not abuse its discretion in determining the Department provided reasonable efforts as required by § 41-3-423(1), MCA. The court's November 4, 2020 order terminating Mother's parental rights articulates these efforts at great length and we do not conclude the court's findings of fact are clearly erroneous nor its conclusions of law incorrect.

¶22 Consistent with our foregoing analysis, Mother's claim that the Department interfered with her admission into sober living must fail.

¶23 The second issue raised on appeal is whether the District Court erred when it concluded Mother was unlikely to change in a reasonable time. Mother argues there was substantial evidence presented establishing that Mother had made significant progress towards maintaining her sobriety for the long term, was under the treatment of a mental health therapist and addictions counselor, had been sober for over a year, and had housing that was safe and appropriate enough to care for the Children's newly born half sibling.

[8] CPS Kimmet admitted in her testimony that she disobeyed Larson for quite some time because she did not believe he had the experience to override a therapist's recommendation.

¶24 When determining a parent's unfitness and likelihood of changing under § 41-3-609(1)(f)(ii), MCA, "the question is not merely whether a parent has made progress or would make some progress in the future, but whether the parent is likely to make enough progress within a reasonable time to overcome the circumstances rendering her unfit to parent." *In re A.B.*, 2020 MT 64, ¶ 27, 399 Mont. 219, 460 P.3d 405. A court must consider specific factors articulated in § 41-3-609(2), MCA, when determining whether a parent's conduct or condition is likely to change in a reasonable time. These factors include the "emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time," and "excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child." Section 41-3-609(2)(a), (c), MCA; *see In re X.M.*, ¶ 29. The needs of the child are always paramount to the parent's rights when considering what constitutes a reasonable time. *In re D.F.*, 2007 MT 147, ¶ 43, 337 Mont. 461, 161 P.3d 825. When determining the parent's ability to care for the child in the future, we have consistently held that a district court is required to assess the past and present conduct of the parent. *In re J.C.*, 2003 MT 369, ¶ 11, 319 Mont. 112, 82 P.3d 900; *In re I.M.*, 2018 MT 61, ¶ 34, 391 Mont. 42, 414 P.3d 797; *In re C.B.*, 2014 MT 4, ¶ 23, 373 Mont. 204, 316 P.3d 177; *In re S.C.L.*, 2019 MT 61, ¶ 9, 395 Mont. 127, 437 P.3d 122. Because a court cannot predict the future in making this determination, it must, to some extent, rely on a person's past conduct. *In re S.C.L.*, ¶ 9.

¶25 Taking into consideration that the Department has been involved with this family since 2014, the District Court concluded:

> The conduct and conditions that led to all of the removals of these children over the course of the last almost 6 years, are the same conduct and conditions that are present today. [Mother] continues to be challenged by her chemical dependency issues, her mental health issues, and her parenting deficiencies. This renders her unfit, unable, or unwilling to safely and adequately parent these children within a reasonable time.

The District Court also concluded and determined, pursuant to § 41-3-609(2), MCA:

> The conduct or condition of birthmother is unlikely to change within a reasonable time. Continuation of the parent child relationship between these two children and birthmother will likely result in continued abuse and neglect. The conduct and condition of birthmother renders her unfit, unable, or unwilling to provide these two children with adequate parental care.

¶26 The District Court and the Department acknowledge that Mother may have made some progress and done better with the assistance of the Department and with mental health, substance abuse, and parenting professionals; however, testimony also indicated that Mother needed time to work on her treatment and that continued Department intervention would be necessary for a long time before it was in the Children's best interest for Mother to parent them. The District Court acknowledged that Mother's expert witness, Dr. Michael Bütz, a clinical forensic and neuropsychologist, struggled with the question of whether Mother was likely to change in a reasonable time. However, the record clearly demonstrates that the court and other witnesses, including the court appointed special advocate and the guardian ad litem (GAL), were convinced Mother would need an unreasonable amount of time to change her behavior. Most telling

for the GAL was Dr. Bütz's testimony. Dr. Bütz testified that Mother would be preoccupied with a newborn infant and that she would "need a lot of help, reintroducing supervised visitations during this time, [and] reintroducing gradual overnights at this time," and he believed this would have to be a gradual process over the next three to six months. Dr. Bütz stated that after six months, the Department could start making meaningful reintroduction between Mother and the Children. The GAL stated in his report, "There is the maxim that the best predictor of future behavior is past behavior. Even if this maxim is ignored at the expense of [the Children, they] cannot wait . . . for the chance that [Mother] will do the things she needs to do." CPS Karly South, the current CPS assigned to the case, agreed. She testified that the Children did not have any more time and the longer the case went on, the harder it would be on both of them. She testified that the Children were "not well." The Children had been out of the home for close to two years on the date of her testimony.

¶27 This Court will not consider whether the evidence could support a finding different from that made by a district court, and we will not substitute our judgment for that of the fact-finder regarding the weight given to the evidence. *In re L.S.*, 2003 MT 12, ¶ 10, 314 Mont. 42, 63 P.3d 497. The District Court properly took into consideration Mother's history and her inability to conform her condition and conduct. The same concerns that prompted the Department's involvement in the present matter—untreated chemical dependency, continued drug use, parenting issues, and instability resulting in Mother's inability to provide the necessary care for the Children—prompted the Department's previous involvement. The Department could not return the Children

to Mother's care under the circumstances when, over the course of six years and three consecutive DN proceedings, Mother continued to struggle with ongoing mental health, addiction, and parenting issues. The court also considered numerous witnesses testifying to the effect that Mother would not be able to parent the Children within a reasonable time, many of which stressed the importance of the Children's need for permanency and stability immediately.

¶28 Though Mother may have made progress under Department supervision, Mother cites to no testimony that she was, at that time, fit and able to parent the Children, or that her unfitness was likely to change within a reasonable time. Indeed, she concedes that she was noncompliant with her treatment plan, and her own expert put any hope for safely and consistently parenting the Children at months, if not years, down the road. What constitutes a "reasonable time" in this case was largely dependent on G.C.'s and A.C.'s need for permanency, and the Children were out of time. Though her progress and current ability to parent her third child were certainly factors the court could have, and did, consider,[9] testimony supported the court's finding that Mother's conduct or condition rendering her unfit to parent G.C. and A.C. was unlikely to change within a reasonable time. The District Court was in the best position to weigh the evidence of Mother's past and present conduct, and we will not replace its judgment with our own. Clear and convincing evidence supported the District Court's findings and conclusions.

[9] The District Court noted in its Findings of Fact that Dr. Bütz testified that "under the circumstances, and particularly the pregnancy of [Mother] at the time, that it would be a long time waiting until after the birth of her third child before [Mother] would be able to safely parent her children." This finding was not clearly erroneous and is supported by the evidence.

Thus, all statutory criteria have been met. The court correctly and within its discretion terminated Mother's parental rights to A.C. and G.C.

¶29 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶30 Affirmed.

Justice

We concur:

Justices