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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-138

JULY TERM, 2017

In re H.P., Juvenile	}	APPEALED FROM:
	}	
	}	Superior Court, Orange Unit,
	}	Family Division
	}	
	}	DOCKET NO. 46-8-15 Oejv
		Trial Judge: Timothy B. Tomasi

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

Father appeals from the termination of his parental rights in son H.P. Mother voluntarily relinquished her rights. Father argues that the court made a clearly erroneous finding, and erred in assessing the statutory best-interest factors. We affirm.

H.P. was born in October 2007. The family has a long history with the Department for Children and Families (DCF) based on concerns with parents' drug abuse and domestic violence. H.P. was taken into custody several times prior to the instant case, but custody was returned to parents and later to father alone. In late August 2015, DCF filed a petition alleging that H.P. was a child in need of care or supervision (CHINS); he was taken into DCF custody based on father's continued drug use and lack of housing. In March 2016, father stipulated that H.P. was CHINS. In June 2016, father was charged with aggravated domestic assault with a weapon, aggravated domestic assault, and violation of conditions of release, following an incident with mother. That same month, at disposition, DCF moved to terminate father's rights. Following a hearing, the court granted DCF's request.

The court made numerous findings, including the following. Father has a long history of drug abuse, and he continued to use illicit drugs throughout these proceedings. Visit supervisors believed that father was under the influence during visitation with H.P. DCF referred father to parenting classes and family time coaching, but father refused to participate. Father did not ask H.P.'s foster parents about scheduled medical visits or school conferences regarding H.P., nor did he attend those events. Father has a lengthy criminal history. With respect to the criminal incident referenced above, the court credited testimony by a police officer that, when he arrived on the scene, both mother and father appeared to be under the influence of drugs. Father was sweating profusely, he was very angry, he refused orders from the police, was up and down with his emotions, screamed, and spit water around the processing room when he was taken into custody. Police found weapons and drug paraphernalia in father's home. The criminal charges remained pending at the time of the court's termination decision.

At the time of the TPR hearing, Father lived in a camper in his mother's front yard. He indicated that H.P. could stay in the camper but that he intended to get an apartment if H.P. was returned to his care. By the time of the final hearing, however, father had not contacted subsidized housing providers or taken any other actions to locate an apartment. Father had no driver's license

and no car. He had been unemployed since 2009. Father acknowledged that he could not take H.P. back into his care at the time of the hearing. He asserted, however, that DCF should have provided him with additional assistance with housing and services. The court found that H.P. was doing well with his foster family and that his physical skills had improved significantly in their care.

Based on these and numerous other findings, the court concluded that father had stagnated in his ability to parent. He had not progressed beyond twice-weekly supervised visits. He had not taken steps to obtain an apartment or reliable transportation; he failed to obtain a job or disability benefits; and he failed to engage in parenting classes or family time coaching. Most importantly, the court found, father failed to overcome his personal drug dependency and its related inappropriate conduct. In a footnote, the court acknowledged father's complaint that DCF had not provided him with sufficient services. The court found that father did not identify the services that DCF failed to provide. It also noted that father failed to avail himself of many of the services that were offered by DCF; he failed to engage adequately and progress in the services in which he did participate; and he continued to abuse drugs, despite receiving treatment.[1]

The court thus turned to the statutory best-interest factors. As to the most important factor, the court concluded that father could not parent H.P. within a reasonable period of time. It noted that father had been provided two prior opportunities to resume his role as a full-time parent and each time, H.P. was returned to DCF custody, primarily due to father's drug use and the lack of parental responsibility that came along with such activities. During the course of the present case, father continued to use drugs, even after DCF moved to terminate his parental rights. His drug use contributed to his failure to engage in family time coaching and parenting classes, and various inappropriate behaviors toward DCF employees and police. The court also reiterated many of the points cited above regarding stagnation. The court explained that H.P. was young, and he had been in DCF custody nearly half of his life. He needed permanency now, and the "reasonable period" for father to be ready to parent him had come and gone. The court considered the remaining best-interest factors as well, and concluded that they all favored termination. This appeal followed.

On appeal, father challenges the court's assessment of the statutory best-interest factors. He cites the court's finding that a reasonable period had "come and gone," and asserts that the trial court failed to consider his prospective ability to parent H.P. Father also argues that the court failed to assess whether he might play a sufficiently constructive noncustodial role in H.P.'s life despite his inability to resume parenting within a reasonable period of time. Finally, father argues that the court erred in finding that he did not identify particular services that DCF should have provided to him. Father cites to his testimony at the hearing in support of this argument. He appears to suggest that termination of his rights was based on "factors beyond [his] control." In re S.R., 157 Vt. 417, 421-22 (1991).

To determine 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 period. See In re B.M., 165 Vt. 331, 336 (1996). 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

[1] The court later correctly acknowledged, in an amended order, that since DCF sought to terminate father's parental rights at disposition, it was unnecessary to consider whether there had been a change of circumstances requiring a modification of an initial disposition order. 33 V.S.A. § 5317(d).

findings. In re G.S., 153 Vt. 651, 652 (1990) (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 [father]'s parental rights." In re S.B., 174 Vt. 427, 429 (2002) (mem.).

We find no error here. The record shows that the court applied the appropriate standard in considering father's ability to parent H.P. As father notes, "[t]he reasonableness of the time period is measured from the perspective of the child's needs," and "the court's inquiry must be forward-looking, that is, the court must consider a parent's prospective ability to parent the child." In re D.S., 2014 VT 38, ¶ 22, 196 Vt. 325 (quotations omitted). "Of course, past events are relevant in this analysis." Id. ¶ 22. We find it "evident that the court engaged in a forward-looking analysis, even if its choice of words suggested otherwise." Id. ¶ 23 (reaching similar conclusion). The court's conclusion that father cannot parent H.P. within a reasonable period of time is amply supported by the findings recited above, including father's own testimony indicating he is unable to parent H.P. now.

As to father's second argument, the court was not required to consider whether he should continue to play a "noncustodial role" in H.P.'s life sufficient to warrant the denial of the termination of parental rights petition. Instead, the court appropriately considered the four factors set forth in 33 V.S.A. § 5114. The court concluded that notwithstanding father's love for H.P. and any bond they might share, termination of father's rights was appropriate. See In re M.B., 162 Vt. 229, 238 (1994) (recognizing that "[p]ublic policy . . . does not dictate that the parent-child bond be maintained regardless of the cost to the child"); see also In re G.F., 2007 VT 11, ¶ 20, 181 Vt. 593 (mem.) ("We have repeatedly rejected the claim . . . that the court must consider less drastic alternatives to termination once it has determined the parent to be unfit and unable to resume his or her parental responsibilities."). The court did not err in so concluding.

Finally, the court did not err in finding that father failed to identify any particular services that DCF should have provided to him. He did not in fact identify any services during his testimony, but rather testified that he would "drop dead" if any services were offered to him. The court also emphasized that father did not avail himself of services that were offered to him by DCF, and failed to fully engage in other services. Father's rights were not terminated based on factors beyond his control. We find no error in the court's decision.

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