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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-197

SEPTEMBER TERM, 2017

In re K.H., Juvenile	}	APPEALED FROM:
	}	
	}	Superior Court, Washington Unit,
	}	Family Division
	}	
	}	DOCKET NO. 141-9-15 Wnjv
		Trial Judge: Kevin W. Griffin

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

Mother appeals from the termination of her rights in daughter K.H. She argues that the evidence does not show, and the court did not explicitly find, that she is unfit to parent K.H. We affirm.

K.H. was born in October 2010. In June 2014, mother left K.H. in Vermont with her maternal grandmother and her grandmother's partner. Mother was living in Illinois at the time, and she never returned to Vermont to regain custody of K.H. In September 2015, the Department for Children and Families (DCF) filed a petition alleging that K.H. was a child in need of care or supervision (CHINS). The court issued an Emergency Care Order, but before it could be served, grandmother and her partner fled Vermont with K.H. The custodians were arrested and returned to Vermont. K.H. was placed in foster care, where she remains.

Following a merits hearing, the court determined that K.H. was CHINS. Neither parent attended the CHINS hearing. In December 2015, DCF moved to terminate parents' rights. The court terminated father's rights at the initial disposition hearing. At the time of the disposition hearing, mother was living in Illinois. She had no plans to return to Vermont. Nonetheless, the court adopted a modified plan of services to facilitate mother's reunification with K.H. and approved concurrent case plan goals of reunification with mother or adoption.

In August 2016, DCF renewed its request to terminate mother's parental rights based on mother's lack of engagement in services. In an April 2017 decision, the court granted its request. The court took judicial notice of the findings from the CHINS and the disposition order, which had been made by clear and convincing evidence. The court found that mother was severely traumatized as a child but she lacked insight into the trauma's impact on her personal development. After turning eighteen, mother moved to Illinois. In May 2006, mother was convicted of one felony count of soliciting a minor for prostitution. The conviction stemmed from mother's solicitation of men to have sex with a minor. Mother pled guilty to the charge but downplayed her involvement. Mother was incarcerated for several years and released on probation. Mother failed to register as a sex offender and was convicted of an additional crime. She was placed on probation, which was set to expire in June 2016. Since her release from prison, mother has not had stable housing.

Mother was K.H.'s primary caretaker for the first three years of K.H.'s life. She confirmed that her initial plan was to leave K.H. with grandmother for several months. Mother knew that grandmother's partner had mental health problems, but she did nothing to resume caretaking responsibility for K.H. Mother had no face-to-face contact with K.H. during the fourteen months that K.H. was with grandmother, but she did keep in touch by phone and Skype. After the CHINS petition was filed, mother had one visit with K.H. Given mother's criminal history, she was asked by DCF to complete a psychosexual evaluation, but she did not do so. Because mother lacked stable housing, DCF could not complete a home study with the Illinois authorities. Once K.H. came into DCF custody, mother never established consistent contact with her, nor did she take meaningful steps to resume care for K.H.

The court described various events that occurred with respect to mother during the fourteen-month period that K.H. was with grandmother, including a pregnancy and the loss of that child. Mother has another son, who was adopted by an aunt. Three of mother's children died prematurely through no fault of mother. Mother acknowledged that she needed to "address some issues" but she had little interest in counseling. As indicated above, mother has had minimal contact with K.H. She participated in six phone calls with K.H. after the court adopted a plan of services; her last phone contact with K.H. was in October 2016. The court found that mother did little to comply with the plan of services, and her efforts to remain in touch with K.H. or DCF were minimal.

Mother returned to Vermont in November 2016. She was staying with relatives and was unemployed. Mother believed that, given time, she could resume parenting K.H. She had not seen K.H. since February 2016. Due to her prolonged absence from K.H.'s life, the court found that mother had little knowledge of K.H.'s developmental, educational, medical, or emotional needs. Mother understood that she must rebuild a relationship with K.H. but thought she could do so within six months.

K.H. has been with the same foster parents since May 2016 and was thriving in their care. The foster parents were strong advocates for K.H.'s needs. They have provided K.H. with love, support, and stability.

Based on these and other findings, the court concluded that mother had stagnated in her ability to parent. As set forth above, mother had visited K.H. once since June 2014; she did little to comply with the case plan; and she lacked an understanding of the impact that her abandonment had on K.H. Turning to the statutory best-interest factors, the court found that they all supported termination of mother's rights. As to the most important factor, the court found that the record amply supported the conclusion that mother could not resume parental duties now or in the future. Mother appealed from the court's order.

Mother argues that the evidence does not support and the court did not explicitly find that she is unfit to parent K.H. She cites Santosky v. Kramer, 455 U.S. 745, 755 (1982) and In re N.H., 135 Vt. 230, 236-37 (1977), to support her assertion that this finding is required. Mother explains that she has returned to Vermont and is seeking employment and stable housing. She acknowledges her minimal contact with K.H., but she notes that she was K.H.'s primary caregiver until June 2014. According to mother, there is no evidence that she cannot parent K.H., just that she has not.

Mother misunderstands the law. The court did not need to make an explicit finding that mother was unfit. As we have explained, Santosky "stands for the proposition that whatever measure of 'unfitness' a state requires to terminate parental rights must be shown by clear and

convincing evidence. The Vermont Legislature has chosen the best-interest criteria contained in 33 V.S.A. § 5114(a), which encompass both directly and indirectly the question of parental fitness." In re D.C., 2012 VT 108, ¶ 22, 193 Vt. 101. The most important statutory best-interest factor—and "the one that most directly addresses parental fitness"—is the likelihood that the natural parent will be able to "resume parental duties within a reasonable period of time." See id.. We note that while we have used the word "unfitness" in prior decisions, including In re N.H., we have made clear that our use of this word "is not treated as a legal term of art required by this Court or by Santosky." Id. ¶ 26.

The court applied the appropriate standard here, and its findings amply support its conclusion that termination of mother's rights was in K.H.'s best interests. See In re G.S., 153 Vt. 651, 652 (1990) (mem.) (explaining that as long as trial court applied proper standard, its findings will stand unless clearly erroneous and its conclusions will stand where supported by findings). As set forth above, mother visited K.H. once since June 2014; her phone contact was inconsistent and limited; she did little to comply with the case plan; and she lacked an understanding of the impact that her abandonment had on K.H. The court evaluated each of the statutory best-interest factors, and as to the most important statutory factor, it concluded that mother had no ability to parent K.H. now or in the future. Mother cites evidence that she believes supports a conclusion that she could parent K.H., but her argument is unavailing. "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 . . . ." In re S.B., 174 Vt. 427, 429 (2002) (mem.). We find no abuse of discretion here.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Beth Robinson, Associate Justice