

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

SUPREME COURT DOCKET NO. 2018-217

OCTOBER TERM, 2018

In re V.B. & A.B., Juveniles	}	APPEALED FROM:
(C.B., Mother* & D.B., Father*)	}	
	}	Superior Court, Franklin Unit,
	}	Family Division
	}	
	}	DOCKET NO. 126/127-8-16 Frjv
		Trial Judge: Martin A. Maley

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

Mother and father appeal from the termination of their residual parental rights in twins V.B. and A.B. They argue that their rights should not be terminated because it was unclear whether the children's foster parent would adopt them. Additionally, father argues that he should have been provided additional time to reunify with the children. We affirm.

The Department for Children and Families (DCF) has been involved with parents for many years, beginning when parents were placed in DCF custody as juveniles. Parents' oldest child, born in August 2014, was taken into DCF custody at birth, and in 2015 parents relinquished their parental rights in this child. DCF's primary concern has been parents' significant mental health issues and their volatile and unstable relationship.

When DCF learned that mother was again pregnant, it opened a juvenile assessment case and began family safety planning. The twins were born in June 2016 and discharged to parents' care. After several weeks, mother expressed frustration in caring for them and told a home health nurse to call DCF to take the children. On the same day, mother reportedly began to throw objects down the stairs. In August 2016, mother contacted police about a dispute with father. During the fight, mother took one of the babies and locked herself in the bathroom. Within days, the police were again called to the home regarding a report of a possible drug overdose. The following day, a support person went to the home. It was reported that mother was upset, stating that she could not care for the children, and she began throwing furniture down the stairs in proximity to the children. Father, the children, and the support person exited the house and called police. Mother came outside; she appeared to have cut herself, and she was throwing eggs into the driveway. Following this incident, DCF filed a petition alleging that the children were in need of care or supervision (CHINS).

The children were taken into DCF custody pursuant to an emergency care order. They were initially placed in father's custody pursuant to a conditional custody order (CCO), which required that mother not reside with father and that her visitation be supervised. The children were returned to DCF custody several weeks later due to allegations of mother's escalating behaviors and father's inability to protect the children.

Mother engaged in disturbing and threatening behavior during these proceedings, including at the DCF office. This led to a suspension of her participation in Family Time Coaching (FTC). Father did not attend FTC consistently, and he was discharged from the program. In addition to failing to appear, father failed to make progress in addressing the children's basic needs during visits. He inconsistently attended supervised visitation, and when visits were reduced as a result, he failed to meet the reduced expectations of contact.

DCF moved to terminate parents' rights in February 2018. Following a hearing, the court granted its request. The court found that in addition to mental health issues, both parents struggled with maintaining stable and suitable housing. At the time of the final hearing, parents were four months behind in the rent and facing eviction. DCF also had concerns about the habitability of the residence due in part to an overpowering smell of cat urine and the presence of twelve cats in the home. DCF also observed garbage and food on the floor. Parents refused to allow DCF to enter the home during most unannounced visits.

Both parents engaged in criminal conduct during the pendency of these proceedings. Mother was charged with domestic assault against father and disorderly conduct. Father has various convictions and is on probation. Mother did not obtain a mental health evaluation as directed. Neither parents maintained their mental health counseling, although father attended therapy in 2017. The court acknowledged that father made strides in some areas.

The children have been in the same foster home since September 2017, where they are thriving. The children are also close to the foster parent's extended family. While the foster mother was committed to the children's best interests, she had not yet decided if she would adopt them. The court made numerous additional findings, which we do not repeat here.

Ultimately, the court concluded that parents had stagnated in their ability to parent and that termination of their rights was in the children's best interests. As reflected above, it found that parents failed to adequately address the issues that led to the CHINS proceeding. Mother continued to struggle with significant unaddressed mental health issues. Neither parent established that they could meet the children's needs. Visitation, which was inconsistent, remained supervised. Parents lacked safe and stable housing, and their relationship was marked by violence. Father failed to participate in team meetings and failed to adequately address the domestic violence issues. The court also concluded that neither parent played a constructive role in the children's lives and neither demonstrated an ability to address the children's needs. Meanwhile, the children had adjusted well to their foster home, and their foster mother was meeting their needs. The court found no reasonable likelihood that parents could resume parenting duties within any reasonable time, and it was not reasonable for the children to wait for parents to show signs of improvement.

The court noted that, at the conclusion of the final hearing, it was informed that the children's guardian ad litem supported termination of parents' rights, but the children's attorney disagreed, arguing that the children would become "legal orphans." Counsel did not suggest that any of the statutory best-interest factors supported her argument. Instead, counsel focused on the fact that the children's foster parent had not yet committed to adopting the children. The trial court rejected this argument, finding that this Court had consistently found that a preadoptive home was not required before granting termination of parental rights. The court thus found no legal or factual support for this argument. Both parents appealed.

On appeal, parents argue that the court erred in rejecting the argument raised by the children's attorney above. They assert that there are cases where "a loving parental bond will override other factors in determining whether termination of parental rights is the appropriate

remedy,” In re J.F., 2006 VT 45, ¶ 13, 180 Vt. 583 (mem.), and that there could be a case where the evidence is “sufficient to support the finding that continued contact with [the parent is] important to the child,” In re J.M., 2015 VT 94, ¶ 9, 199 Vt. 627. They thus maintain that there is legal support for the argument raised by the children’s attorney and that the court withheld its discretion in considering the argument raised by the children’s attorney. Parents also assert that it is “pure speculation” to assume DCF can provide the children with a stable home before parents can. They also suggest that there might have been evidence regarding the children’s attachment to parents and that the court should have required the presentation of such evidence. Father further argues that he has made progress in many areas and because it is not yet clear if the children’s foster parent will adopt them, there is still time for him to resume his parental duties. He asserts that the court did not find that continuing visitation and working toward reunification with him would be harmful to the children.

We reject these arguments. The court applied the proper standard in considering whether parents’ rights should be terminated, and its decision is supported by its findings and by the record. See In re A.F., 160 Vt. 175, 178 (1993) (explaining that on review, trial court’s findings “will stand unless clearly erroneous,” and its “conclusions of law will be upheld if supported by the findings”). We have recognized that the court can consider the absence of an alternative placement in evaluating the statutory best-interest factors, particularly when considering “the interaction and interrelationship of the child with his or her . . . foster parents, if any,” and “the child’s adjustment to his or her home, school, and community,” 33 V.S.A. § 5114(a)(1), (2). In re J.M., 2015 VT 94, ¶ 11. In J.M., for example, we upheld the trial court’s conclusion that termination of a father’s rights was not in a child’s best interests where the father was “ ‘a consistent part’ ” of the child’s life and provided him “ ‘some emotional support,’ ” and the child had experienced and continued to experience turmoil and he had no other “significant personal relationships or supportive community.” Id. ¶ 6. Our recognition that the statutory best-interest factors allow for an evaluation of a child’s current relationships, however, does not undermine our repeated statement that “an alternative placement is not a prerequisite to termination of parental rights.” In re T.T., 2005 VT 30, ¶ 7, 178 Vt. 496 (mem.); accord In re E.B., 158 Vt. 8, 15 (1992) (“[T]ermination of residual parental rights does not depend on the existence of an alternative placement.”).

While there may be unusual cases where the balance of best-interest factors does not support termination despite a parent’s inability to resume parental responsibilities within a reasonable time, see, e.g., In re J.M., 2015 VT 94, ¶ 14, it is evident that this is not such a case. It is uncontested on appeal that parents did not play a constructive role in the children’s lives. Their interaction with the children was inconsistent, and it did not progress beyond supervised visitation. To the extent that parents had evidence of a strong parent-child bond, they failed to present it. This claim is undermined, moreover, by their inconsistent visitation and the fact that the children have been out of their care almost since birth. By contrast, the record shows that the children had a strong and healthy relationship with their foster parent and a close relationship with the foster parent’s extended family. Given our case law and the dramatically different facts present in a case like J.M., the trial court did not err in finding an absence of legal and factual support for counsel’s argument.

We reject father’s final argument, as well. The court recognized that father had made progress in some areas, but it concluded that he remained unable to meet the children’s needs for all of the reasons stated above. The court did not need to find that continuing visitation and working toward reunification with father would harm the children. Instead, it properly evaluated the statutory best-interest criteria in reaching its decision. To the extent that father challenges the court’s assessment of the weight of the evidence, that is a matter reserved exclusively for the trial court. In re A.F., 160 Vt. 175 at 178; see also In re S.B., 174 Vt. 427, 429 (2002) (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 mother's parental rights"). We find no error in the court's decision.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice