

*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. 2018-324

JANUARY TERM, 2019

In re E.C. & B.C., Juveniles	}	APPEALED FROM:
(C.B., Mother*)	}	
	}	Superior Court, Chittenden Unit,
	}	Family Division
	}	
	}	DOCKET NOS. 435-12-16 Cnjv & 77-2-17 Cnjv

Trial Judge: Kirstin K. Schoonover

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

Mother appeals an order of the superior court, family division, terminating her parental rights with respect to two of her children. We affirm.

The two children who are the subject of this proceeding are E.C., born in November 2010, and B.C., born in October 2013. At the time the Department for Children and Families (DCF) filed separate petitions alleging that they were children in need of care or supervision (CHINS), E.C. and B.C. were in the custody of their father because mother was incarcerated. Mother, who was forty-three years old at the time of termination hearing, had a long history of substance abuse that led to her involvement in the criminal justice system and intermittent incarceration since the age of twenty-five. In addition to E.C. and B.C., mother had three older children, but she was unable to parent them and eventually lost custody of them due to her drug use and incarceration. Mother was E.C.'s primary parent for the first three years of his life, at which point she was incarcerated, and father became the primary parent for both E.C. and B.C.

While living with father, the children bounced around to different caregivers, including family and friends. At one point, the children were placed in DCF custody due to father's inability to care for them. In June 2016, after the children were returned to his care, father moved to Florida with them. In October 2016, father brought E.C. to Vermont and left him with E.C.'s twenty-two-year-old half-sister before returning to Florida. Mother saw E.C. at that time, but she could not care for him because she was participating in a residential drug treatment program with Northern Lights. In December 2016, DCF filed a petition alleging that E.C. was CHINS because his half-sister had no legal rights to the child and thus could not enroll him in school or obtain needed medical services and financial support.

Father kept B.C. with him in Florida until February 2017, when he was arrested and incarcerated for assaulting his girlfriend. The girlfriend drove B.C. to Vermont and left her with the half-sister. As with E.C., the half-sister had no legal authority to obtain services for B.C. That month, DCF filed a petition alleging that B.C. was CHINS. At this time, mother had just completed the Northern Lights program and had contact with the children while they lived with the half-sister.

Although she was aware on some level that the children were not being treated properly, she never called DCF or the police.

The children stayed with the half-sister pursuant to a conditional custody order until June 2017, when DCF learned that police had executed a drug raid at the half-sister's house and found that she was in possession of narcotics and was trafficking in drugs. The family division granted DCF's request for custody of E.C. and B.C. In July 2017, father entered a CHINS merits stipulation with respect to both children. A disposition hearing was held in September 2017. Mother, who was incarcerated at the time for violating probation, appeared by telephone. The family division adopted a disposition case plan that called for reunification with either parent by March 2018, or adoption. The plan of services called for mother to follow all Department of Corrections conditions, remain clean and sober of all substances, actively participate in individual substance abuse counseling, actively participate in mental health counseling to address her past trauma and current issues impacting her substance abuse and ability to parent, actively participate in parent education services, sign all releases, attend all family visits sober, attend all court hearings and team meetings, submit to random urine analysis upon DCF's request, and maintain safe and stable housing.

In August 2017, the time period during which mother had to wear an electronic tracking device was extended because she tested positive for cocaine. In September 2017, she was incarcerated for violating probation conditions. She served some of her time doing a residential drug treatment program at Valley Vista, which she completed in late October 2017. Two days after being discharged from the program, mother was not present for a scheduled home visit with E.C. and B.C. In early November 2017, mother missed two shared parenting meetings, the latter time due to her re-incarceration for not complying with her probation conditions. She had missed three mandatory risk-reduction group sessions and some clinic appointments and had not charged her tracking device. Upon entering the prison facility for a five-day sanction, she was discovered wearing a fake bladder containing urine she planned to use for a urine analysis. She admitted that cocaine would have been detected in the urine analysis. This led to a longer incarceration. Mother served part of her sentence doing the Tapestry residential drug treatment program, which she completed in May 2018.

Meanwhile, in December 2017, DCF filed petitions seeking to terminate mother's and father's parental rights with respect to both E.C. and B.C. The hearing on the petitions was held in July 2018. A month later, the trial court issued its decision granting the petitions, concluding that there had been a substantial change of circumstances due to stagnation and that the children's best interests warranted terminating mother's and father's parental rights. See 33 V.S.A. § 5113(b) (providing, in relevant part, that court may modify previous order "on the grounds that a change in circumstances requires such action to serve the best interests of the child"); 33 V.S.A. § 5114(a) (setting forth best interest factors for modifying previous order). Only mother appeals the decision.

On appeal, mother argues that the family division erred in terminating her parental rights because the court's findings do not reflect her significant progress in complying with the case plan in the months before the termination hearing and thus do not support the court's conclusion that her parenting ability had stagnated. Specifically, mother contends that the court failed to note significant changes in the Tapestry program that, for the first time, provided her with Suboxone and in-depth counseling to uncover the root causes of addiction. Mother notes that she is attending AA meetings regularly and has had no positive drug tests since completing the program, that she has a stable home life with her fiancé and is working in his family business, and that there is room for the children in her home. She argues that, given the very different treatment experiences she

has had recently and the significant progress she has made, the record does not support the court's conclusion that her parenting ability has stagnated.

We conclude that the record supports the court's finding of stagnation by clear and convincing evidence. "The threshold finding of a substantial change of material circumstances is most often found when the parent's ability to care properly for the child has either stagnated or deteriorated." In re J.G., 2010 VT 61, ¶ 10, 188 Vt. 562 (mem.) (quotation omitted). "Stagnation can be shown either by the passage of time with no improvement in parental capacity to care properly for the child or where the improvement is so insignificant that it is unlikely the parent will be able to resume parental duties within a reasonable time." Id. (quotation omitted); see In re B.W., 162 Vt. 287, 291 (1994) ("[T]he mere fact that a parent has shown some progress in some aspects of his or her life does not preclude a finding of changed circumstances warranting modification of a previous disposition order." (quotation omitted)).

Here, the family division expressly acknowledged the progress that mother had made since her May 2018 discharge from the Tapestry program. The court noted that mother relapsed while living with her fiancé, which led to her placement at Valley Vista and eventually in the Tapestry program. The court recognized that in the two-to-three months between her discharge from that program in May 2018 and the termination hearing in July 2018, mother regularly attended AA meetings, was taking Suboxone, was engaging in weekly therapy sessions aimed at addressing her past trauma that was a trigger for her drug use, and was living with her fiancé while working in his family business. The court stated that there was "no doubt" mother was doing better after her discharge from the Tapestry program; however, the court noted that the progress did not begin until two months after the reunification date established in the case plan, March 2018. The court found that throughout most of the time since the children were adjudicated CHINS mother was unable to maintain her sobriety and, as a result was repeatedly incarcerated, resulting in her not seeing the children since October 2017 and failing to meet other case plan expectations aimed at enabling her to reach a point where she could parent the children. The court determined that mother's recent progress was untimely and inadequate in light of the disposition case plan and the significant needs of the children, who were finally settled in loving homes after years of turmoil. The court commended mother for her recent progress, but noted that mother had been in the community for only a few months and that she had a long history of addiction, incarceration, treatment, and relapse. In short, the court recognized mother's recent progress, but concluded that, notwithstanding that progress, there was stagnation in her ability to parent the children from the time of the CHINS petitions to the termination hearing. The record supports these findings, which in turn support the court's conclusion that mother's ability to parent the children stagnated.

Affirmed.

BY THE COURT:

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Marilyn S. Skoglund, Associate Justice

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Beth Robinson, Associate Justice

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Karen R. Carroll, Associate Justice