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. 2019-053

MAY TERM, 2019

In re A.L. & R.L., Juveniles	}	APPEALED FROM:
(E.L., Mother* & R.L., Father*)	}	
	}	Superior Court, Rutland Unit,
	}	Family Division
	}	
	}	DOCKET NO. 86/87-4-17 Rdjv
		Trial Judge: Cortland Corsones

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

Parents appeal from the trial court's order terminating their parental rights. Parents executed voluntary relinquishments of their rights below and the court engaged in a colloquy with parents before accepting their written documents. Mother now argues that she was reluctant to relinquish her rights and the court should not have terminated her rights on the day they were relinquished. Father argues that he did not voluntarily relinquish his rights and that the court should have granted his subsequent request to reopen the proceedings. We affirm.

Mother and father are the parents of R.L., born in September 2011, and A.L., born in August 2013. The Department for Children and Families (DCF) has been involved with the family since approximately 2014. DCF received recurring reports of R.L. and A.L. being discovered unsupervised outside parents' home and at a gas station/convenience store.

The children were taken into DCF custody in April 2017. Parents stipulated that the children were without proper parental care because they "had been repeatedly discovered left unattended in the neighborhood without any parental supervision whatsoever." Parents did not attend the disposition hearing or the post-disposition review hearing. In April 2018, DCF moved to terminate parents' rights. A two-day hearing was scheduled for late January 2019.

At the outset of the TPR hearing, mother's attorney stated that there was a chance that the matter could be resolved without a contested hearing and he asked for more time to discuss a Post-Adoption Contract Agreement (PACA). After a recess, parents' attorneys stated that both mother and father were prepared to voluntarily relinquish their rights with a PACA. Before taking another recess to complete the paperwork, the court emphasized that parents' relinquishment must be voluntary and that it was prepared to go forward with the contested hearing if parents did not want to voluntarily relinquish their rights. After the recess, the parties indicated that they wanted to proceed with a voluntary relinquishment accompanied by PACAs. The court heard testimony from the foster parents to establish the grounds for the

PACAs. The court then reviewed the agreements and documents with parents on the record. Mother stated that she signed the documents voluntarily, that she had sufficient time to review them with her attorney, and that she understood them. Father made the same statements to the court. The court then reviewed in detail the rights that parents were giving up by not having a contested hearing. Parents had no questions for the court. They agreed again several times that they had voluntarily decided to relinquish their parental rights.

Toward the end of the court's colloquy with parents, father stated that he had "no other choice" but to relinquish his rights. The court responded that father in fact had "a very significant choice" in that he could proceed to a contested hearing. While father predicted that he would "lose," the court assured him that that wasn't necessarily true and that it had not prejudged the case. The court stated that it would go forward with the contested hearing, reiterating that father was entitled to such a hearing. Father replied, "Just go on with it," meaning the relinquishment, and the court responded that it would not do so. Father replied, "Yep. I voluntarily give up my rights." Mother added that she "just want[ed] to go home."

The court then stated:

> THE COURT: All right. I'm going to explain this to you again. You've got the right to a hearing. I'm happy to give you—
>
> FATHER: I know.
>
> THE COURT: —a hearing. I haven't prejudged this case in the least. If you want to have your hearing, you're entitled to it. If you want to truly voluntarily relinquish, you can, but it has to be truly voluntary on your part.
>
> FATHER: I voluntarily give up my rights.
>
> THE COURT: Okay.
>
> FATHER: —to [R.L.] and [A.L.].
>
> THE COURT: All right. You're sure?
>
> FATHER: Yes.
>
> THE COURT: Okay.

The children's guardian ad litem (GAL) then expressed her opinion that it was in the children's best interests for parents to voluntarily relinquish their rights and that the PACAs were in the children's best interests. The court concluded that, in view of all of the records on file, the GAL's position, and parents' voluntarily relinquishments, it was in the children's best interests to terminate parents' rights to the children except as called for in the PACAs. It found that neither parent could resume their parental duties for the children within a reasonable time. It accepted the voluntarily relinquishment of both parents and approved the PACAs as being in the children's best interests.

On what would have been the second day of the scheduled contested hearing, mother filed a notice of appeal. A few days later, father filed a motion to reopen, stating that he now felt that he had been pressured into agreeing to the voluntary relinquishment. The court denied the motion, explaining that it had gone carefully through the colloquy with father to ensure that his relinquishment was voluntary. The court also found that it would be detrimental to the children, who needed permanency, to reopen the case. It explained that father had voluntarily relinquished his rights on the first day of a scheduled two-day TPR hearing. If a two-day trial had to be rescheduled, it would take an additional six months to have a hearing. Mother did not challenge voluntariness below. Father appealed.

Mother argues that she was "hesitant" to relinquish her rights. Citing In re E.F., a juvenile delinquency case, mother asserts that if a parent hesitates or expresses doubt about waiving his or her rights, the process must cease and more time given to assure voluntariness. 2004 VT 79, 177 Vt. 534 (mem.). That is not the holding of E.F. and we find E.F. inapposite here. Cf. id. ¶ 1 (holding that family court's failure to conduct a Vermont Rule of Criminal Procedure 11(c) colloquy in juvenile-delinquency case constituted plain error). Even assuming arguendo that mother preserved her right to challenge the voluntariness of her relinquishment and that she articulates a correct legal standard, her argument fails. The court explained in detail to mother what she would be giving up and the record revealed no hesitancy whatsoever on mother's part. The court did not err in accepting mother's voluntary relinquishment of her parental rights.

We reject father's argument as well. Father contends that the court should have granted his motion to reopen the case because it was not clear that he was voluntarily relinquishing his rights and he tried to undo his action within days of the proceeding. Father relies on a dissenting opinion in In re E.A., 2007 VT 122, 183 Vt. 527 (mem.) (Johnson, J., dissenting), to support his position.

In E.A., the parents filed a notice of appeal, asserting that the relinquishment of their rights had not been voluntary. A dissenting Justice argued that the notice of appeal should have been treated as a motion to reopen and that the trial court should be given the opportunity, in the first instance, to consider parents' argument that they had been under duress when they relinquished their parental rights. Id.

Putting aside that father relies on a dissenting opinion, the trial court in the instant case did consider father's argument that his relinquishment was not voluntary, and the court rejected it. The record amply supports the court's decision. As recounted above, the court emphasized that any relinquishment must be voluntary; it advised father of the rights he was giving up by relinquishing his rights; father indicated that he understood; the court reiterated that father was entitled to a contested hearing if his decision was not voluntary; and father responded, "I voluntarily relinquish my rights." The court inquired if father was sure, and father assured the court that he was. The court was not obligated to reopen the case simply because father later changed his mind about relinquishing his rights. It expressly found, moreover, that reopening the case was not in the children's best interests. See 33 V.S.A. § 5113(a) (authorizing family court to modify or vacate termination decision in accordance with Vermont Rule of Civil Procedure 60 or to "amend, modify, set aside, or vacate an order on the grounds that a change in circumstances requires such action to serve the best interests of the child"); Penland v. Warren, 2018 VT 70, ¶ 6 (explaining that court has discretion in ruling on Rule 60 motion and

that Rule 60 "does not protect a party from tactical decisions which in retrospect may seem ill advised" (quotation omitted)).

Affirmed.

BY THE COURT:

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice