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. 2019-189

NOVEMBER TERM, 2019

In re A.T., Juvenile	}	APPEALED FROM:
(S.F., Mother*)	}	
	}	Superior Court, Caledonia Unit,
	}	Family Division
	}	
	}	DOCKET NO. 62-12-16 Cajv
		Trial Judge: Howard E. Van Benthuysen

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

Mother appeals the termination of her parental rights with respect to her daughter, A.T. We affirm.

Mother has six children and has been involved with child welfare agencies in Maine and Vermont since 2005. When A.T. was born in July 2008, mother was living in Maine with A.T.'s father and mother's three older children. After being placed in state custody in Maine, two of the older children were adopted and the third was placed with her father. A.T. was in state custody in Maine from February 2012 until June 2015, when she was returned to mother's custody. At that time, mother moved to Vermont with A.T., A.T.'s younger sibling, who was born in October 2013, and the younger sibling's father, who is a registered sex offender. Mother's sixth child was born in October 2015 in Vermont.

The Department for Children and Families (DCF) first became involved with A.T. because of truancy. During the 2015-2016 school year, A.T. was absent fifty-one times and tardy another twenty-seven times. In December 2016, the State filed a petition alleging that A.T. was a child in need of care or supervision (CHINS). A.T. was adjudicated CHINS in February 2017, and in June 2017, the family division approved a disposition case plan that continued DCF custody and set a goal of reunification with mother. Mother appealed the CHINS adjudication, which a panel of this Court affirmed in October 2017. See In re A.T., No. 2017-268, 2017 WL 5012583 (Vt. Oct. 27, 2017) (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/documents/eo17-268_0.pdf [https://perma.cc/Z8XL-RTE7]. The adopted case plan called for a mental-health assessment of mother and required her to follow through on all recommendations of treatment providers to develop an understanding of how substance abuse and mental health symptoms had impacted her children's emotional development. The case plan also required mother to sign releases, participate in family-centered meetings, meet with a domestic violence specialist to assess treatment recommendations, and incorporate into family time recommendations from services providers concerning A.T.'s special needs.

In February 2018, DCF filed petitions to terminate mother's and father's parental rights with respect to A.T. and mother's two younger children. The termination-of-parental-rights (TPR) hearing was held over four days between January and March 2019. At the outset of the hearing, A.T.'s father voluntarily relinquished his parental rights. On the last day of the hearing, both mother and her husband, the father of the two younger children, relinquished their parental rights to those children.

On May 10, 2019, the family division issued an order terminating mother's parental rights with respect to A.T. The court concluded that mother's ability to parent A.T. had stagnated, thereby satisfying the threshold post-disposition requirement of showing a substantial change in material circumstances, and that termination of mother's parental rights was in A.T.'s best interests. See In re R.W., 2011 VT 124, ¶ 14, 191 Vt. 108 (stating that when state seeks to modify previous order by terminating parental rights, "the trial court must determine, first, whether there has been a substantial change of material circumstances and, second, whether termination is in the child's best interests"). In its findings of fact, the court noted that in April 2019, after the TPR hearing had ended, mother was with her husband in a car stopped by police only four days after she had obtained a temporary relief-from-abuse (RFA) order against him. Over mother's objection, the family division granted the State's motion to reopen the TPR hearing for a fifth day to give the State an opportunity to present evidence in support of the court's findings concerning the April incident. At an August 1, 2019 hearing, the State presented evidence supporting the court's findings regarding the incident. The court also permitted mother to testify as to matters other than the incident. Following the hearing, the court reaffirmed its findings concerning the April 2019 incident.

On appeal, mother argues that the family division misapprehended the record regarding her mental health stability and failed to make material findings reflecting the current circumstances following the August 1, 2019 hearing. Regarding her first claim of error, mother challenges the family division's statement concerning the testimony of a psychiatric nurse practitioner who met with mother on twelve or thirteen occasions, for up to thirty minutes, between December 2017 and February 2019. The court found that mother failed to follow through with the nurse practitioner's recommendation that mother engage in counseling. The court cited the nurse practitioner's testimony that mother had above-average insight into her mental health diagnoses and the management of illness, and that mother seemed stable during February 2019. The court noted, however, that the nurse practitioner conceded that the accuracy of her diagnosis was entirely dependent on information she received from mother. Further, in discussing its stagnation analysis, the court opined that the nurse practitioner's testimony about the stability of mother's mental health seemed "as more a moment of stability than a determination that she ha[d] reached an end-state in her mental health treatment."

Mother argues that the latter statement was inconsistent with the nurse practitioner's testimony that mother's mental health had been stable for a full year. She also argues that the statement lacks support in the record, given: (1) the absence of any evidence of mental health incidents since one that occurred at the DCF office in December 2017; and (2) a police officer's testimony at the August 1 hearing that mother was polite and compliant during an April 2019 traffic stop. We find no basis in this argument to reverse the court's termination order. Regarding the challenged court statement concerning the nurse practitioner's testimony, the nurse practitioner testified, when asked whether mother had made improvements during the past year in coping with stress, that she "would not categorize it as improvement" but rather that mother "ha[d] maintained

a stable level of mental health wellness." Asked on cross-examination how she could assess whether mother had maintained a stable level of mental health when she had not been in contact with mother's therapist, the nurse practitioner stated that her assessment of mother's "mental health is done in our visits," at which time "she reports to me if she is engaging in individual therapy, and I take that as truth." Further, asked whether she assessed patients' mental stability at "that moment in time," the nurse practitioner responded that she assessed "their mental status in that moment, but also ask[ed] them to convey to me any symptoms over . . . the period of time between when we've last seen each other."

Given this testimony and the fact that the nurse practitioner had seen mother for approximately a total of six hours in a fourteen-month period, the record supported the family division's challenged statement. See Clark v. Bellavance, 2016 VT 124, ¶ 12, 204 Vt. 111 (stating that deference is given to trial court's "determinations of fact and evaluations of credibility"). None of the other testimony, or lack thereof, cited by mother establishes any definitive evidence as to the status of her mental health. In any event, even if the court's statement misapprehended the recent status of mother's mental health, as mother claims, the remainder of the court's unchallenged findings and conclusions overwhelmingly support its termination order. The court concluded that during the more than two years that A.T. had been in state custody, mother had made minimal progress towards achieving case plan goals and that she continued to show a lack of insight into how her actions contributed to A.T.'s being taken into state custody. The court pointed out that mother had not been successful in maintaining safe and appropriate housing, had lost her public housing assistance, had remained unemployed and had not engaged in vocational rehabilitation, had been inconsistent in participating in counseling, had not completed a parenting class, had been inconsistent with parent-child contact until the state sought termination of her parental rights, and, despite repeatedly being in relationships involving domestic abuse, had reunited with her husband shortly after obtaining a RFA order against him. The court found that mother had a weak bond with A.T. and that A.T. had made great strides in foster care. The court determined that A.T. was in need of permanency after spending over half of her life in state custody in Maine and Vermont.

Mother argues, however, that the family division failed to consider her testimony at the August 1, 2019 hearing that she had a strong bond with A.T., whom she was continuing to see on a monthly basis, and that, in her view, terminating that contact would have a severe impact on A.T.'s well-being. According to mother, by not addressing this testimony, as well as the police officer's testimony that mother was nonconfrontational at a March 2019 traffic stop in which her husband was arrested, the court failed to make material findings reflecting the family's current circumstances.

We find no merit to this argument. Following the August 1 hearing, the family division issued an order addressing the testimony presented at that hearing, including much of mother's testimony. In relating the circumstances of the April 2019 traffic stop, the court was not obligated to note mother's demeanor during the stop. The court found that mother was no longer homeless because, after failing to attend a final RFA hearing concerning her husband, she was living with him again. As the court intimated at the hearing, her testimony that she had reunited with her abuser was unlikely to benefit her with respect to her readiness to care for A.T. Mother's testimony at the August 1 hearing also revealed that she was not participating in counseling at the time, that she had worked for a week but could not mentally handle it, and that she was planning to sell a litter of puppies to finance a down payment on a house. None of the testimony at the August 1

hearing, including mother's opinion as to the impact termination of her parental rights would have on A.T., undermined the family division's findings and conclusions in support of its termination order.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice