

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. 2019-204

NOVEMBER TERM, 2019

In re A.R., Juvenile
(M.R., Father*)

} APPEALED FROM:
}
} Superior Court, Franklin Unit,
} Family Division
}
} DOCKET NO. 24-3-17 Frjv

Trial Judge: John L. Pacht

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

Father appeals from the termination of his parental rights in A.R. We affirm.

The Department for Children and Families (DCF) has been involved with father's family since 2009, when father physically assaulted his five-week-old son, throwing the child into a coffee table and fracturing his skull and ribs. Father pled guilty to aggravated domestic assault and was incarcerated. In 2014, father and mother relinquished their rights to this child and to another child. These children were adopted by paternal grandmother.

A.R. was born in August 2012. She has cystic fibrosis, a very serious, life-threatening medical disorder that requires daily intensive care. When A.R. was born, DCF filed a petition alleging that she was a child in need of care or supervision (CHINS) based on parents' substance abuse issues and father's history of domestic assault. The court issued a conditional custody order to mother. This CHINS petition was dismissed in August 2013 and DCF opened a Family Support case. The Family Support case was closed in 2015 because parents were engaged in services addressing their areas of concern.

A second CHINS petition was filed in March 2017. In the six months leading to this filing, father resumed using drugs and parents missed numerous medical appointments for A.R. A.R.'s health deteriorated significantly, endangering her life. Parents did not recognize that A.R. was in dire need of medical attention. A.R. was immediately hospitalized when her paternal grandmother brought her in for a medical appointment. She was taken into emergency DCF custody and a CHINS petition was filed based on allegations of serious medical neglect and the fact that, at the time the petition was filed, both parents were incarcerated. Father was released from jail shortly after the petition was filed; mother remained incarcerated until late April 2017. At the time the petition was filed, A.R. also exhibited troubling developmental and behavioral issues. She was placed in a foster home following her release from the hospital, where she has remained.

The court adjudicated A.R. as CHINS in August 2017. It found that she was at substantial risk of harm and that parents' substance abuse issues and father's mental health issues contributed

to parents' inability to provide her with adequate medical care. Father was incarcerated between the time of the drafting of the disposition case plan and the disposition order. He was charged with various crimes on separate occasions, including aggravated domestic assault on mother. When he was released on conditions, he was again charged with several crimes, including attempting to elude a police officer. In January 2018, he pled guilty to aggravated domestic assault and attempting to elude and was sentenced to 2-5 years, split to serve 18 months. His release date was April 29, 2019. Based on his criminal behavior and sentence release date, DCF no longer supported reunification with father at the time of the permanency hearing. The permanency case plan called for reunification only with mother with an extended goal date of August 2018. The court adopted the plan with the parties' agreement.

In August 2018, DCF moved to terminate parents' rights. Following a hearing, the court granted its request. As relevant here, it found that father failed make any progress since the CHINS petition was filed. He continued to use drugs, engage in acts of domestic violence, and engage in other criminal behavior. He had not yet addressed his serious mental health needs. His incarceration rendered him unavailable to parent A.R. in any real way. Indeed, since the CHINS petition was filed, father had not been able to take care of any of her daily needs. Twenty-six months had passed since father was involved in parenting A.R. and father admitted that, in the six months prior to A.R. being taken into custody, he was not caring for her well. The court found that, now that father had been released from jail, it would take time to see if he could remain drug-free, crime-free, and emotionally stable. As reflected in disturbing letters that he had written to the DCF caseworker, the court found that father's emotional stability remained a significant concern. The court found that father's ability to parent A.R. had not only stagnated but had in fact deteriorated.

Turning to the statutory best-interest factors, the court found that they all supported termination of father's rights. As to the most important factor, the court concluded that father could not parent A.R. within a reasonable time. As indicated above, he showed no improvement in areas of critical need and he demonstrated no ability to provide A.R. with the stability that she needed, both physically and mentally. In reaching its conclusion, the court cited A.R.'s age, her needs, the extremely serious issues she faced when coming into custody, and the stability she had been able to achieve since coming into DCF custody. The court found that A.R. was doing exceptionally well in her foster placement and had shown dramatic improvement in all areas of her development. For these and other reasons, the court terminated father's rights. Father appealed.

On appeal, father argues that the court erred in concluding that he could not parent A.R. within a reasonable time. He asserts that, since being released from jail, he is now highly motivated to remain drug-free and crime-free. Father also argues that court erred in finding that several letters he wrote to the DCF caseworker raised questions about his emotional stability. Finally, father contends that, notwithstanding the court's concern about A.R.'s "age, her needs, the extremely serious issues she faced when coming into custody, and the stability she has been able to achieve since coming into custody," there was no evidence to show that A.R. would be harmed by allowing him more time to make progress.

We find no error. The court applied the appropriate standard in reaching its conclusion and its decision is well supported by the record. See In re A.F., 160 Vt. 175, 177-78 (1993) (explaining that in reviewing termination decision, Supreme Court defers to trial court's findings of fact unless clearly erroneous and will uphold the court's conclusions if supported by the findings).

As set forth above, the court made numerous findings to support its conclusion that father could not parent A.R. within a reasonable time. Father does not challenge any of these findings as clearly erroneous. Instead, he argues that the court “overlooked” that he was now highly motivated to make progress. The court did not overlook this argument; it found the argument unpersuasive. “We leave it to the sound discretion of the family court to determine the credibility of the witnesses and to weigh the evidence.” *Id.* at 178. We find father’s argument concerning his letters to the DCF caseworker unavailing for the same reason. The court acted well within its discretion in concluding that these letters reflected father’s emotional instability.

Finally, the court was not required to find, as father asserts, that A.R. would be harmed if he was given additional time to make progress. We did not suggest otherwise in *In re D.A.*, 172 Vt. 571 (2001) (mem.), cited by father. In that case, we affirmed a trial court decision denying a petition to terminate a parent’s rights. The trial court there concluded that the parents had not been given a sufficient chance to show they could care for the child within a reasonable period of time, and that none of the other statutory factors concerning the child’s best interests outweighed this conclusion. *Id.* at 573. We did not suggest that any standard other than “best interests” applied to the termination decision. The trial court in this case concluded that termination was in the child’s best interests. In doing so, it applied the appropriate standard in evaluating whether father could parent A.R. within a reasonable time, as measured from A.R.’s perspective. The court appropriately focused on A.R.’s age, the length of time that she had been in DCF custody, her needs, and father’s lack of progress in addressing his parenting deficiencies. See *In re D.S.*, 2014 VT 38, ¶ 22, 196 Vt. 325 (explaining that “reasonableness of the time period is measured from the perspective of the child’s needs, and may take account of the child’s young age or special needs,” and recognizing relevance of past events in considering “parent’s prospective ability to parent” (citations omitted)). The court’s findings amply support its conclusion, and we find no error.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice