

*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. 2019-251

NOVEMBER TERM, 2019

In re C.S., A.S., R.S., Juveniles	}	APPEALED FROM:
(A.B., Mother* & C.S., Father*)	}	
	}	
	}	Superior Court, Washington Unit,
	}	Family Division
	}	
	}	DOCKET NOS. 233/234/235-12-16
		Wnjv

Trial Judge: Kirstin K. Schoonover

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

Mother and father appeal termination of their parental rights to their children C.S., A.S., and R.S., born in November 2008, June 2011, and January 2015, respectively. On appeal, mother argues that the trial court failed to give due consideration to the parties' current circumstances. Father contends that the evidence does not support the court's finding that parents will not be able to resume parenting within a reasonable time and that termination was in the children's best interests. We affirm.

The court found the following facts. Father has a long history of drug use and criminal activity. Father admitted he was a heroin addict by age fourteen. After father and mother began living together and had children, father continued to use alcohol and drugs and routinely left the home for long periods of time, leaving mother to care for the children alone. The Department for Children and Families (DCF) received reports in September 2016 that the children were not being properly supervised, the house was "disgusting," and both parents were using crack cocaine. In October 2016, during a period father was absent, mother asked some friends<sup>1</sup> to watch the children for a few days. When she came to get the children, one of the friends found the condition of the apartment was "awful." There were dirty dishes and food strewn about, R.S. had no clothes on, and the children were anxious. Mother was upset and crying and said that she had been raped. The friend took the children. Although mother asked to have R.S. back the next day, she then returned R.S. to the friend's care after one day. In the following year, mother did not ask for the children back and the friends cared for the children. In December 2016, mother was arraigned on four criminal charges. During that time, father did not attempt to care for the children and was abusing substances and homeless.

In December 2016, the State filed petitions alleging the children were children in need of care or supervision (CHINS) because they had been abandoned and were without proper parental care. The children were placed in the conditional custody of the couple who had been caring for

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<sup>1</sup> The friends were father's half-brother and his wife.

them. Following a contested hearing, the court found that the children were CHINS. At the time of the disposition hearing in March 2017, DCF recommended concurrent goals of reunification with either parent or guardianship with the friends. At that point, the children had already been in conditional custodians' home since October 2016 and parents had not taken steps to reunify. Mother had not maintained consistent contact, had pending criminal charges, and her whereabouts were unknown. Father had been unable to stay sober and was homeless. Among other things, the case plan required parents to have regular contact with the children, engage in substance-abuse assessments, follow treatment recommendations, not use substances not prescribed, and engage in family team meetings. In addition, father was required to find and keep safe and stable housing.

In September 2017, the conditional custodians decided they could no longer commit to permanency for the children and DCF placed the children in foster homes. The children's paternal grandfather and his wife (grandparents) expressed a desire to adopt the children. Grandparents were approved as a placement and children moved in around June 2018.

In October 2017, DCF submitted a disposition plan with a goal of termination based on parents' failure to make progress on the case plan goals. Father had tested positive for various drugs in March and April 2017 and was arrested for possession of narcotics and incarcerated until May. In October 2017, father began medically assisted treatment and visits with the children. Father, who had been living with his father, had to move out so that the children could be placed in grandparents' home. Father chose to relocate to a different town where he was homeless. Animosity arose between father his father, impeding father's ability to see the children. Father did not stay in touch with DCF and was unable to stay sober. He tested positive for marijuana and cocaine in June 2018. He admitted to cocaine use in September 2018 and January 2019. He even admitted at the termination hearing that after the first day of the hearing he bought Vicodin from someone off the street. His visits with the children were minimal. He did not attend the children's extracurricular or school activities or medical and dental appointments. As of August 2018, neither parent was visiting the children. After that date, father had his first visit in December 2018. At the time of the final hearing, father was receiving medically assisted treatment, was homeless, and refused to provide DCF with the address where he was staying.

Mother stopped contact with the children in early April 2017 and did not contact DCF until July 2017. Mother had telephone contact with the children in August 2017 and three visits in September. She canceled a meeting in October and then DCF lost contact with her. Mother continued to struggle with criminal activity and substance abuse. She was arrested and charged with failing to appear and violating probation. She tested positive for cocaine in July 2018 and attempted outpatient treatment but was discharged for lack of attendance. Mother went to a hospital because she was suicidal, then subsequently left a treatment program after a few days against medical advice. Mother's whereabouts were unknown from August 2018 until March 2019. Mother had no in-person contact with the children after July 2018. At the time of the final hearing, mother was living with her grandmother and working. She testified that she was no longer abusing substances, and the trial court found this was likely so. Mother was not engaged in treatment. She planned to reconcile with father and reunite with the children. She was contacting the children via FaceTime.

The children made progress in grandparents' home. When they arrived, they had behavioral struggles. C.S. was defiant, A.S. was quiet, and R.S. had night terrors. These behaviors subsided over time. The children made progress in school and in relationships. Parents' long absences affected the children. C.S. stated that he hated his mother and did not want to see her. The children all have counselors, which grandparents encourage. The children love their grandparents and grandparents are willing to adopt.

The court found that there was a change of circumstances due to parents' stagnation. The court found that father had made only minimal progress with the case plan. He had limited contact with the children, and was unable to abstain from abusing drugs, obtain stable housing, or maintain steady employment. Mother engaged in criminal behavior, had limited contact with the children (including no in-person contact since July 2018), did not comply with mental-health counseling, and failed to participate in family-team meetings.<sup>2</sup>

The court further found that termination of parents' residual parental rights was in the children's best interests. The children are comfortable and happy with their grandparents, and are well adjusted to the grandparents' home, school, and community. The children do not trust parents because parents have not followed through on promises. Mother has been largely absent from the children's lives and has not engaged in mental-health counseling. Father is homeless, unemployed, and has not demonstrated an ability to abstain from abusing drugs. Parents play a limited role in the children's lives due to their absence. The court concluded that parents would not be able to resume parental duties within a reasonable period of time. Both parents now appeal the termination decision.

When there is a prior disposition order, to terminate parental rights, the family court must find by clear and convincing evidence that there is a change in circumstances and that termination is in the children's best interests. See 33 V.S.A. § 5113(b) (allowing modification of order based on a change in circumstances "to serve the best interests of the child"); *Id.* § 5114 (providing statutory best-interests criteria). The most important factor is whether the parent will be able to resume parenting duties within a reasonable period of time. *In re J.B.*, 167 Vt. 637, 639 (1998) (mem.). On appeal, we will uphold the family court's conclusions if supported by the findings and affirm the findings unless clearly erroneous. *Id.*

On appeal, mother argues that the evidence does not support the court's finding that mother's progress had stagnated. A change of circumstances due to stagnation occurs when a parent "has not made the progress expected in the plan of services for the family despite the passage of time." *In re D.M.*, 2004 VT 41, ¶ 5, 176 Vt. 639 (mem.). Mother claims that the causes and conditions that brought the children into DCF custody have been resolved, pointing to evidence she presented at the termination hearing that she was engaged in therapy, her mental state had improved, she was sober, and she had resolved her criminal issues.

The evidence supports the court's finding that over the course of proceeding mother had made very little progress towards the case plan goals that included maintaining regular contact with the children, engaging in recommended substance-abuse treatment, complying with Department of Corrections conditions, and attending and engaging in family team meetings. Since October 2016, mother had very limited contact with the children and no in-person contact since July 2018. This lack of contact negatively impacted her relationship with her children. The substance-abuse assessment mother completed recommended that mother have mental-health counseling, which she had not done. Moreover, she engaged in criminal behavior and left the area

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<sup>2</sup> The court also found that mother failed to participate in a substance-abuse assessment. This finding is not supported by the evidence. It is, however, harmless. The court acknowledged elsewhere in its findings that mother completed a substance-abuse assessment and found that the assessment recommended substance-abuse and mental-health counseling. Mother did not engage in these recommended services. Moreover, the court's determination that mother's progress had stagnated was based primarily on mother's continued criminal behavior, her failure to maintain consistent contact with the children, her failure to address her mental-health issues, and her lack of engagement with family team meetings.

for a period during which her whereabouts were unknown. Mother did not engage in family team meetings. All of these findings are supported by the record. See In re A.F., 160 Vt. 175, 178 (1993) (“When findings are attacked on appeal, our role is limited to determining whether they are supported by credible evidence.”).

The fact that mother made some progress prior to the termination hearing did not preclude the court from finding that overall mother’s progress had stagnated. “A finding that a parent has made some progress does not, however, preclude a finding of changed circumstances.” In re B.M., 165 Vt. 331, 336 (1996). The court noted mother’s progress but found that, given mother’s past behavior, the court had no assurance that the stability would continue. Moreover, the court found that this progress was “far too late and nascent” for the court to rely on, given the length of time that the children had been in custody. The record amply supports these findings.

Father argues that termination is not in the children’s best interests because the court erred in finding that he and mother would not be able to resume parenting within a reasonable time. Father asserts that mother’s recent progress indicates that soon parents will be able to reunite with the children and successfully parent them. The evidence demonstrated that at the time of the final hearing, father was homeless, unemployed, and continued to struggle with addiction. Moreover, he had limited contact with the children and did not have a significant relationship with them. Mother also had been largely absent from the children’s lives and her absence impacted her relationship with the children. Mother’s recent progress did not provide assurance that she would continue to maintain stability. The children require permanence to develop and grow. The limited success in some areas was insufficient when weighed against the children’s strong need for permanency. This evidence supports the court’s finding that parents would not be able to resume parenting within a reasonable time as measured by the children’s needs.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice