

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. 2019-272

JANUARY TERM, 2020

In re B.D., Juvenile	}	APPEALED FROM:
(J.M., Mother*)	}	
	}	Superior Court, Chittenden Unit,
	}	Family Division
	}	
	}	DOCKET NO. 457-12-17 Cnjv
	}	
	}	Trial Judge: David R. Fenster

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

Mother appeals the termination of her parental rights with respect to her son, B.D. We affirm.

B.D. was born in August 2013. At that time, his parents were in a relationship, but they separated before the instant proceedings commenced. On December 12, 2017, after investigating concerns raised by the father of B.D.'s half-sibling, the State filed an emergency petition alleging that B.D. was a child in need of care or supervision. At a temporary care hearing the next day, the parties agreed to a conditional custody order (CCO) placing B.D. in the care of mother and his maternal grandmother. As the result of mother's violations of the CCO, the court issued another CCO in January 2018 that placed B.D. in the care of his paternal grandfather. Under another joint CCO with B.D.'s paternal grandfather and paternal great-aunt, the child began living with his great-aunt in March 2018.

At a March 12, 2018 merits hearing scheduled after mother failed to appear at a previous hearing, mother stipulated to an adjudication of CHINS based on, among other things, her history of opiate abuse, her experiencing severe emotional issues that caused poor judgment, and her having left B.D. and his half-sibling with father when father was hospitalized and unable to care for them. Mother failed to appear at the initial disposition hearing in May 2018, but she objected to a case plan in which the Department for Children and Families (DCF) recommended concurrent goals of reunification and adoption. At a later contested disposition hearing in August 2018, mother withdrew her objection, and the family division adopted DCF's May 2018 case plan. The parties agreed to continue the CCO keeping B.R. in the care of his paternal grandfather and great-aunt.

Mother did not appear for an October 2018 post-disposition-review hearing. At a January 2019 status conference, which mother also did not attend, the court noted that mother had not had contact with B.R. since October 2018. At that time, B.D. filed a petition to terminate mother's and father's parental rights. The petition was served on mother at a March 2019 status conference. At the beginning of the termination hearing in June 2019, father voluntarily relinquished his parental rights. Following the one-day hearing, the family division terminated mother's parental rights.

On appeal, mother argues that that the State failed to present clear and convincing evidence at the termination hearing to support the family division's order terminating her parental rights. She challenges several of the court's findings concerning mother's failure to comply with the case plan. Specifically, she argues that the court ignored evidence demonstrating that her ability to communicate with B.D. was the result of the great-aunt's intentional efforts to block that communication. Mother further argues that the Easter Seals parenting class she was supposed to attend was dependent on her having consistent visitation with B.D., which was being blocked by B.D.'s custodians. Mother also challenges the court's findings regarding mother's failure to sign releases and the status of her housing situation.

Upon review of the record, we conclude that clear and convincing evidence supports the family division's findings, which, in turn, support the court's conclusion that changed circumstances and B.D.'s best interests warrant terminating mother's parental rights. 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 in material circumstances and, second, whether termination is in the child's best interests"); In re A.F., 160 Vt. 175, 178 (1993) (stating that trial court has discretion to determine credibility of witnesses and weigh evidence and that trial court's findings will be upheld if supported by credible evidence); see also 33 V.S.A. § 5317(c) ("If the Court terminates the parental rights of one or both parents, the standard of proof on the issue of termination shall be clear and convincing evidence.").

The family division first determined that there had been a substantial change of circumstances because, notwithstanding the passage of a significant period of time, mother had failed to make progress expected in the plan of services that DCF had set out for her. Of primary concern for the court was mother's failure to fully engage with B.D. through visits and scheduled appointments. The court described mother's contact with B.D. as minimal. The court found that mother missed visits in August 2018 and did not visit B.D. at all between September 2018 and April 2019, well past the expected time for reunification. The court explicitly rejected mother's accusation that B.D.'s great-aunt had blocked mother's phone number and was denying her contact with B.D. The record supports the court's findings on mother's lack of contact with B.D.

At the May 2018 initial disposition hearing, B.D.'s great-aunt testified that mother had visited only once and called a couple of times since the beginning of that year. After the great-aunt described a telephone call during which mother threatened to get a lawyer, mother's attorney stated that mother was not "comfortable having visits at their home anyway." The court indicated that visits should be organized at the DCF office two times a week for two hours, as suggested by mother's attorney. At the August 14, 2018 disposition hearing, mother's attorney stated that mother was not having any contact with B.D. because DCF was not willing to approve mother's mother to supervise the visits. She further stated that mother did not get along with the B.D.'s guardians well enough to have them supervise. When the attorney for the State indicated that B.D.'s great-aunt was "reluctantly willing" to supervise mother's visits with B.D., mother's attorney stated that mother and the custodians did not get along well and that "it's probably not appropriate for them to supervise a visit between her and her son at this point." The State's attorney noted that the great-aunt had asked mother to contact the DCF case worker to get an approved supervisor, and that the case worker had agreed to work with mother to do so, but that mother had not followed up with DCF to make that happen. Mother's attorney would not say DCF was unwilling to work with mother, but she noted that DCF would not approve the only two people that mother had offered as potential supervisors—her mother and her brother.

At the termination hearing, B.D.'s great-aunt testified that after B.D. began living with her in March 2018, mother called a few times but did not visit him through the spring and into the summer of 2018. She further testified that in August 2018, a two-hour, twice-a-week visitation schedule was set up, but that after a couple of weeks, mother started canceling the visits for a variety of reasons. According to the great-aunt, mother did not contact her at all until November 2018 when mother sent her a text at 11:30 at night saying she wanted to explain to B.D. why she had not been contacting him. The great-aunt responded to mother that she could do that at one of B.D.'s counseling sessions. The great-aunt did not hear from mother again until mother appeared at a March 2019 hearing to request a resumption of visitation. On cross-examination, the great-aunt denied stopping mother from visiting, saying that mother "wasn't coming." In short, the record supports the trial court's findings that, for whatever reasons, mother made only minimal and sporadic efforts to contact B.D. from the time he came into State custody in March 2018 until the spring of 2019 shortly before the termination hearing. The record further supports the trial court's finding that this lack of contact was due to mother's failure to follow through on visits rather than the actions of other persons. A DCF caseworker testified that DCF had made efforts throughout the case to contact mother but often had trouble reaching her. The caseworker testified that mother had only sporadic contact with DCF, that she declined to sign all releases, and that she did not engage in DCF's recommended services, including an Easter Seals parent-education program that required consistent visits before it could begin.

This testimony supported the family division's findings that, in addition to not maintaining contact with B.D., mother violated the case plan by not keeping DCF updated on her contact information, by not signing releases that would enable DCF to assess engagement and progress in the case plan, and by failing to meet with an individual counselor until May 2019, six months beyond the timeframe for reunification. Mother has failed to undermine the court's finding that no other person prevented her from meeting these case plan goals.

Regarding B.D.'s best interests, the court examined each of the statutory factors and determined that termination of mother's parental rights was in B.D.'s best interests. See 33 V.S.A. § 5114. The court found that mother had had only minimal contact with B.D. in the past fifteen months and that she did not play a constructive role in his life. The court further determined that mother still lacked insight into her role in B.D. being removed from her care and that there was little likelihood she would be able to resume her parenting responsibilities within a reasonable period of time from the perspective of B.D., who was in significant need of stability. The record supports these conclusions.

Affirmed.

BY THE COURT:

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice