*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. 2020-045

JUNE TERM, 2020

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| In re C.T., Juvenile<br>(C.C., Mother* & D.T., Father*) | } | APPEALED FROM: |
| | } | Superior Court, Franklin Unit, |
| | } | Family Division |
| | } | DOCKET NO. 249-10-18 Frjv |
| | | Trial Judge: Howard E. Van Benthuysen |

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

Parents appeal from the termination of their rights relative to C.T., born in May 2013. They essentially challenge the trial court's evaluation of the weight of the evidence. We affirm.

In October 2018, C.T. was taken into emergency custody of the Department for Children and Families (DCF) at mother's request. C.T. was subsequently adjudicated as a child in need of care or supervision. Following a disposition hearing, the court adopted a case plan and continued C.T. in DCF custody. In September 2019, DCF moved to terminate parents' rights. Following a hearing, the court granted its request.

The court made numerous findings, including the following. The family lived in New Hampshire after C.T. was born. Mother was the child's primary caregiver. In September 2018, the New Hampshire child-protection agency opened an investigative case regarding mother's allegedly unsafe supervision of C.T. Shortly thereafter, mother obtained a domestic-violence protection order against father, which required father to move out. Father relocated to California to stay with his mother. In October 2018, mother moved to Vermont to marry a woman she had known for three weeks. Mother's wife struggled with serious mental health issues, including suicidal ideation and repeated suicide attempts, and had in the past been accused of sexual abuse of children. Her own children had been removed from her care. Additionally, mother's wife was also on probation for violating an abuse-prevention order. Mother testified that she had no concern about C.T. being around her wife. She does not believe that her wife sexually abused other children.

As indicated above, mother asked DCF to take temporary custody of C.T. in October 2018 and C.T. has remained in custody since that time. C.T. has severe developmental delays and medical issues; she was not yet potty trained at age six. She was uniquely vulnerable to abuse in that she had no sense of boundaries and had very limited verbal ability. C.T. was making good progress in her foster home. After C.T. was placed in DCF custody, mother's wife continued to struggle with serious mental health issues and she attempted suicide multiple times, including by swallowing a razor blade, swallowing batteries, and attempting to hang herself. Mother revealed to DCF that her wife said she felt more of a "spark" with C.T. than she did with mother. Mother refused to leave her wife or follow a safety plan designed to protect C.T. She continued to believe that her wife posed no safety hazard

to C.T. As to father, who lived in California, the court found that he did not take any of the actions steps that DCF recommended, including obtaining a domestic violence assessment. He had never parented C.T. or been her primary caretaker; it found that he did not contribute to her support or upbringing.

Based on these and other findings, the court found that both parents had stagnated in their ability to parent and that termination of parents' rights was in C.T.'s best interests. It explained that both parents made minimal progress in addressing the requirements of the case plan, including understanding C.T.'s significant and profound needs. Mother showed no insight into the danger that her wife posed to C.T. Father had no contact with C.T. since August 2018 beyond brief perfunctory phone calls and he made no effort to see her. He had not built a relationship with her during her time in DCF custody. The court noted that father also showed a lack of involvement with his other children. It further found that father misled investigators, who were engaged in a home study, regarding his living arrangements.

The court evaluated the statutory best-interests factors in detail and concluded that they all favored termination. As to the most important factor, it concluded that neither parent could resume their parental duties within a reasonable time. Father had not seen C.T. for seventeen months and he had not built any relationship with her since she was placed in DCF custody. Mother had not made progress on the case plan and, as stated above, she continued to lack insight into C.T.'s needs. She did not recognize the risk of harm that her wife posed to C.T. The court found that C.T. had been in DCF custody for fifteen months and she could not continue to wait for parents to improve. Both parents appeal from the court's termination order.

Father challenges the court's stagnation finding. He contends that he was involved in C.T.'s life before he moved to California and that he made efforts to comply with the case plan. He asserts that he could not afford to visit C.T. He appears to suggest that DCF is responsible for his failure to comply with the case plan.

Mother argues that she provided adequate care for C.T. while C.T. was in her care. She states that she is aware of her wife's mental health issues and has a plan to protect C.T. Mother further asserts that she shares a loving bond with C.T.

We find no error. The court may terminate a parent's rights if it finds a substantial change in material circumstances since the issuance of the disposition order and concludes, based on its evaluation of four statutory factors, that termination is in a child's best interests. In re B.W., 162 Vt. 287, 291 (1994); 33 V.S.A. §§ 5113, 5114. A substantial change in material circumstances is most often found when "the parent's ability to care properly for the child has either stagnated or deteriorated over the passage of time." In re B.W., 162 Vt. at 291 (quotation omitted). "Stagnation may be shown by the passage of time with no improvement in parental capacity to care properly for the child." Id. (quotation omitted). "As long as the court applied the proper standard, we will not disturb its findings unless they are clearly erroneous, and we will affirm its conclusions if they are supported by the findings." In re G.S., 153 Vt. 651, 652 (1990) (mem.).

The court's findings amply support its conclusions here. With respect to father, the court's decision did not turn on whether he cared for C.T. before he moved to California. Instead, it was based on father's failure to make significant progress in addressing the case plan. As set forth above, the court found, among other things, that father did not obtain a domestic violence assessment and he misled authorities about his living situation. DCF is not responsible for these shortcomings. The court recognized that father regularly called C.T. but it concluded that these perfunctory calls did not serve to build a relationship with C.T. The court did not blame father for being poor, as he suggests. It made the supported finding that father had not seen C.T. in person for fifteen months. To the extent

that father made some progress in addressing the case plan goals, that does not undermine the court's conclusion. See In re B.W., 162 Vt. at 291 ("[T]he mere fact that a parent has shown some progress in some aspects of his or her life does not preclude a finding of changed circumstances warranting modification of a previous disposition order." (quotation omitted)). The court did not err in concluding that father had stagnated in his ability to care for C.T.

Mother's arguments are similarly without merit. In reaching its decision, the court recognized that mother had been C.T.'s primary caregiver before she was placed in DCF custody. Its stagnation conclusion was based on mother's failure to make progress in addressing the case-plan requirements during the fifteen months that C.T. was in DCF custody. That conclusion is well supported by the court's findings and the evidence. As the court explained, despite regular visits, mother still had not gained the insight necessary to parent C.T. She did not comprehend the range of services that C.T. needed nor did she possess a reasonable understanding of what it meant for C.T. to be in a safe family environment. Perhaps most significantly, mother failed to acknowledge the danger that her wife posed to C.T. based both on her history and her untreated severe mental health issues, the latter of which involved repeated calls to police and rescue squads, self-harm, and extended hospital stays. While mother claims to be able to keep C.T. safe, the court found otherwise and its decision is supported by the evidence.

To the extent that mother challenges the court's evaluation of the statutory best-interests factors, that challenge also lacks merit. The court applied the appropriate standard and its findings and conclusions are supported by the record. Among other things, the court concluded that mother could not play a positive or constructive role in C.T.'s life given her lack of insight into the negative effect that her wife's behavior would have on C.T. and the threat her wife posed to the child. Essentially, the court explained, mother chose her wife over C.T. In reaching its conclusion, the court recognized that mother had affection for C.T. but found that her love was no substitute for understanding C.T.'s multiple needs and significant delays. See In re M.B., 162 Vt. 229, 238 (1994) (recognizing that "[p]ublic policy . . . does not dictate that the parent-child bond be maintained regardless of the cost to the child").

Both parents' arguments essentially turn on the court's assessment of the credibility of witnesses and the weight of the evidence, matters reserved exclusively for the trial court. In re A.F., 160 Vt. 175, 178 (1993). Such arguments are unpersuasive. "Our role is not to second-guess the family court or to reweigh the evidence, but rather to determine whether the court abused its discretion in terminating mother's parental rights . . . ." In re S.B., 174 Vt. 427, 429 (2002) (mem.). Parents fail to show any abuse of discretion here.

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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William D. Cohen, Associate Justice