

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. 2020-072

JUNE TERM, 2020

In re E.J.D., Juvenile
(J.M.D., Mother*)

} APPEALED FROM:
}
} Superior Court, Franklin Unit,
} Family Division
}
} DOCKET NO. 185-12-16 Frjv

Trial Judge: Howard E. Van
Benthuisen

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

Mother appeals the family division’s termination of her parental rights with respect to her daughter, E.J.D. We affirm.

E.J.D., who was born in January 2004, is the seventh of mother’s children, all of whom have been the subject of termination orders and are no longer in her care. E.J.D. herself has been the subject of three petitions alleging she was a child in need of care or supervision (CHINS). Mother has not parented E.J.D. since 2013, when the child was nine years old. E.J.D. has been diagnosed with post-traumatic stress disorder, depression, anxiety disorder, irritable bowel syndrome, and extreme developmental and cognitive delays. After having been adjudicated CHINS a second time,* E.J.D. was placed in the care of her father. When he died in December 2016, the State filed a third petition. E.J.D. was adjudicated CHINS in April 2017 and placed in the custody of the Department for Children and Families (DCF). Following an August 2017 disposition hearing, the family division continued DCF custody in a therapeutic school setting, with concurrent goals of reunification with mother or another permanent placement. Since December 2017, E.J.D. has been in a therapeutic foster home with the same foster mother.

In September 2019, the State filed a petition to terminate mother’s parental rights, and a termination hearing was held over two days in January 2020. Following the hearing, the family division terminated mother’s parental rights, concluding that there had been a substantial change of circumstances due to stagnation of mother’s ability to care for E.J.D. and that termination of mother’s parental rights was in E.J.D.’s best interests, considering the statutory factors set forth in 33 V.S.A. § 5114(a). See In re D.F., 2018 VT 132, ¶ 29, 209 Vt. 272 (“When the termination of parental rights is sought after the initial disposition, the trial court must conduct a two-step analysis. The court must find first that there has been a change in circumstances; and second, that termination of parental rights is in the child’s best interests.” (citation omitted)).

* The first time was when E.J.D. was one day old.

Mother appeals to this Court, arguing that the family division did not make adequate findings to support its conclusion regarding one of the statutory best-interest factors—that mother does not play a constructive role in E.J.D.’s life. Mother acknowledges that she will not be able to parent E.J.D. within a reasonable period of time—the most important of the § 5114(a) factors, see *id.*; however, she contends that the evidence concerning her bond with E.J.D. demonstrates that she plays a constructive role in the child’s life and militates against terminating the only family relationship that E.J.D. has left. We conclude that the court’s findings support its challenged conclusion, as well as its decision to terminate mother’s parental rights. See *id.* ¶ 30 (“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.” (quotation omitted)).

This is not one of those “unusual” cases where “the balance of factors weighs against a termination of parental rights notwithstanding a parent’s inability to resume parental responsibilities within a reasonable time.” *In re J.M.*, 2015 VT 94, ¶ 14, 199 Vt. 627. The family division’s biggest concern with respect to the role mother has played, and continues to play, in E.J.D.’s life is mother’s longstanding and ongoing denial that her longtime partner, whom the court found mother continued to live with despite her denials, physically and sexually abused E.J.D. As the court found, mother’s continuing denial of the abuse, which the court found had occurred, has had a negative impact on E.J.D. and her relationship with mother. The court also questioned the family therapy with mother and E.J.D. to the extent that the therapist did not review the case history and thus could not achieve the goal of open and honest communication between mother and daughter needed to repair their relationship with respect to E.J.D.’s past abuse and mother’s denial of that abuse. Further, as the court found, although mother generally acted appropriately during visits, she had been unable to progress beyond four one-hour visits a month, and there was some evidence that the visits had a negative effect on E.J.D. when they did not go well. Mother does not challenge these findings, which support the court’s determination that mother’s acknowledged bond with E.J.D. did not overcome the statutory best-interest factors militating in favor of terminating mother’s parental rights.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

William D. Cohen, Associate Justice