

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. 2020-188

NOVEMBER TERM, 2020

In re J.T., Juvenile
(C.T., Mother*)

} APPEALED FROM:
}
} Superior Court, Franklin Unit,
} Family Division
}
} DOCKET NO. 110-4-18 Frjv

Trial Judge: Howard E. Van Benthuisen

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

Mother appeals from the termination of her parental rights (TPR) in son J.T., born in 2010. She argues that the court improperly strayed from the record and failed to properly evaluate her relationship with J.T. We affirm.

J.T. was taken into the emergency custody of the Department for Children and Families (DCF) in April 2018. At the time, J.T. was living with a relative pursuant to a safety plan; he had been removed from father's care in December 2017 due to father's inability to care for him or meet his needs. The parties stipulated that J.T. was a child in need of care or supervision and, following a disposition hearing, he was continued in DCF custody with a case plan goal of reunification with a parent. In September 2019, DCF filed a petition to terminate parents' rights. The court held a hearing over three days between January and June 2020. The first hearing day lasted only a few minutes because mother claimed a medical emergency and was removed from the courthouse by emergency medical personnel.

In a June 2020 order, the court concluded that parents stagnated in their ability to care for J.T. and that termination of their rights was in J.T.'s best interests. Its findings, which are essentially unchallenged, reflect the following. Mother lived in Pennsylvania and periodically left J.T. with father in Vermont for months at a time. She did so in September 2017. Not long thereafter, DCF began receiving reports about J.T.'s poor hygiene, possible developmental delays, and concerns that mother, his legal custodian, was not present in Vermont. After repeated reports from the school that J.T. was coming to school smelling of urine and feces and was otherwise filthy, he was removed from father's care in December 2017 and placed with an aunt.

At the time, mother was in Pennsylvania after being arrested for failing to appear on an assault charge. At some point, mother returned to live in Vermont. She was intermittently homeless from 2017 until just before the final day of the TPR hearing. The court recounted mother's various living situations, including motels, the Samaritan House where she was evicted for drug use, and a substance-abuse rehabilitation center. In early April 2020, mother obtained an apartment. She claimed to be employed as the building's property manager but provided no corroborating evidence for this assertion.

Mother visited J.T. sporadically while he was in custody, leading to a reduction in her contact. By early 2020, mother's contact with J.T. was limited to one hour at the library twice a week, which transferred to online visits with the onset of the COVID-19 pandemic. Mother's visitation protocols included a prohibition on "future talk," such as making promises of gifts or events. Mother repeatedly violated these protocols. Mother agreed, and the court found, that J.T. became extremely disappointed when mother made promises that she could not keep and that this interfered with J.T.'s ability to learn at school. Mother agreed that J.T. was struggling at school and was "overwhelmed" by what was occurring. She agreed that J.T. worried if she would appear for visits.

Mother claimed to be disabled due to seizures, severe depression, and PTSD. She did not present testimony or documents from medical professionals to support this claim. Mother was informed by two different neurologists that her seizures had no discernable medical basis. Mother did not show the classic signs of a seizure during her episodes, such as unresponsiveness to pain stimulation or loss of bladder and bowel control; mother testified that she posted her "upcoming seizures" on Facebook. After mother was advised by a second neurologist in April 2020 that there was no medical basis for her seizures, mother claimed that her seizures were psychological in nature. She claimed to have conversion disorder. In a footnote, the court provided a definition of conversion disorder from the Cleveland Clinic. The court found that as of June 2020, mother had not yet obtained a psychiatrist to assist in addressing her mental-health issues. The court also recounted that mother had sought federal benefits for her alleged seizure disorder three times and been denied each time; she also sought preferential housing treatment based on her alleged seizures. Mother also made misrepresentations about J.T., asserting that he was blind when in fact he had an easily correctable lazy eye.

Mother struggled with substance-abuse issues and she had history of heroin and cocaine use. The court found that until very recently, mother had not had consistent success in addressing her substance abuse. She repeatedly tested positive for drugs, including heroin, cocaine, opiates, methamphetamine, and benzodiazepine. While mother claimed to have become sober in January 2019, she conceded that she relapsed on cocaine in March and April 2019 and tested positive for marijuana through January 2020. The court chronicled the various substance-abuse services that mother had engaged in, including finding that she was discharged from a doctor's care in February 2019 due to missed appointments. Mother testified, and the court found, that she did not follow through with treatment and that her seizures were exacerbated by her ongoing drug use.

Mother recognized that J.T. needed stability and that she was not always the most stable person. She vacillated between wanting to relinquish her rights and saying that she would do anything to stop J.T.'s adoption. Mother did not attend any of J.T.'s school meetings in 2020 and she did not reach out to the school to ask about him. Mother did not know who J.T.'s teacher was. She did not attend any of J.T.'s medical or dental appointments after J.T. came into DCF custody, almost two-and-a-half years before.

The court found that J.T. suffered in multiple ways while he was in father's custody in the fall of 2017. He was repeatedly assaulted in father's home; he was not potty trained at age seven and still wore pull-up diapers; and he was often without the EpiPen and inhaler he needed for physical safety. A school counselor testified to her numerous concerns about J.T.'s care, including his statement that he wanted to kill himself. Mother declined to allow a psychological examination of J.T., despite the school's request and J.T.'s obviously troubled behaviors.

J.T. was in a kinship foster home and he divided time between the homes of two relatives. When J.T. first arrived at his foster home, he had many concerning issues, including difficulty regulating his emotions and smearing feces on the bathroom wall; he did not know how to use eating utensils, he could not tie his shoes, he displayed poor hygiene, and he was bedwetting. He made vast improvements in his foster arrangement. He was doing better in school and he continued to steadily improve in health and behavior. After the second day of the termination hearing in this case, however, J.T. again began acting out at school and his behavior at home regressed. The court found that this seemed to follow renewed contact with mother, who discussed the TPR hearing and proceedings with J.T. during two phone calls.

J.T. was supposed to have at least one weekly phone call with mother but, most of the time, he refused to talk to her. Mother continued to engage in improper future talk, such as telling J.T. they would be reunited once she obtained housing and later telling him that she had obtained housing. J.T. said that he did not want to accept mother's calls to "punish her" and that he wanted to stay in his current foster placement. When J.T. did talk to mother on Mother's Day and mother's birthday, the calls had a negative effect on him, and his behavior deteriorated; he thereafter continued to refuse mother's calls.

Based on these and numerous other findings, the court concluded that mother had not made significant progress on the case-plan goals and recommendations and that she had stagnated in her ability to parent J.T. The court cited, among other things, mother's failure to obtain a psychiatrist. Given the seriousness of mother's claimed psychiatric illnesses and conditions, the court deemed her failure to obtain a treating psychiatrist during the more than two years J.T. was in DCF custody a significant shortcoming. The court also discussed mother's history of housing instability, substance abuse, and lack of employment. It concluded that mother would need a prolonged period of provable sobriety before she could claim victory over her longstanding substance-abuse problems. The court concluded that J.T. could not wait any longer for mother to make substantial progress on the case-plan.

Turning to the statutory best-interest factors, the court concluded that they all supported termination of mother's rights. With respect to J.T.'s interaction with mother, the court found it noteworthy that J.T. mostly refused mother's calls. When he did take her calls, his behavior deteriorated. The court noted mother's inconsistent contact with J.T. and her repeated engagement in future talk. It also cited mother's failure to attend any of J.T.'s school meetings or his medical or dental appointments. The court concluded that mother did not have the sort of constructive, positive, and helpful interaction with J.T. that was in his best interests.

As to the most important best-interest factor, the court concluded that mother could not resume her parental duties within a reasonable time. It explained that mother engaged in a variety of behaviors that had a negative impact on J.T. and she largely lacked insight into the effect her behavior had on J.T. She made false promises to J.T., which caused his behavior to deteriorate after months of progress. She failed to provide evidence that she suffered from the various psychiatric illnesses she described, and she was not working with a psychiatrist. The court stated that while the evidence presented at the hearing might cause a reasonable person to doubt whether mother's claimed seizures were bona fide, it was clear that there was no organic medical basis, including epilepsy, for mother's claimed seizures. It found that mother had not yet fully and adequately addressed her self-diagnosed mental-health issues. The court also noted mother's struggles to obtain sobriety and her failure to take other steps that would ensure that she was ready to parent J.T. It explained that J.T. was doing well in his current placement and he had made significant progress. After more than two years in DCF custody, he could no longer wait for

mother to achieve the goals of the case-plan. After addressing the remaining statutory factors, the court concluded that termination of mother's rights was in J.T.'s best interests. This appeal followed.

Mother first argues that the court found her testimony generally not credible in large part because it doubted that her seizures were real. She asserts that the court made contradictory findings about whether her seizures were genuine. Mother also takes issue with the court's definition of conversion disorder. She concedes that she was not prejudiced by the inclusion of this definition but argues that it raises the question of whether the court based any of its other findings on evidence outside the record. If it did, mother argues that this would be evidence of disqualifying bias.

We find no reversible error. The court did not deem mother's testimony generally not credible. In fact, many of the court's findings were based on mother's testimony, including some of the effects that her behavior had on J.T. The court addressed mother's alleged seizures in detail and its findings are not contradictory. While it expressed skepticism about the seizures, it did not find that mother was faking them. Mother testified, moreover, that her drug use exacerbated her seizures. The court credited mother's testimony on this point. Its use of the word "seizure" in this context is not inconsistent with its skepticism about the exact nature of the "seizures" mother claimed to experience. Even if the court erred in using a definition of "conversion disorder" from the Cleveland Clinic, any error was harmless, as the definition mirrors mother's own description of this disorder. See In re R.W., 2011 VT 124, ¶ 17, 191 Vt. 108 (noting that Supreme Court applies harmless error analysis in TPR cases and will reverse judgment only where error affects party's substantial rights). We reject mother's speculative argument that, because the court included this definition, it might have based other findings on evidence outside the record. Mother does not challenge any specific finding as clearly erroneous and we do not "comb the record searching for error." See In re S.B.L., 150 Vt. 294, 297 (1988) (recognizing that it is appellant's burden "to demonstrate how the lower court erred warranting reversal" and that Supreme Court "will not comb the record searching for error").

Mother next argues that the court misapprehended the record in evaluating her relationship with J.T. She asserts that the court's finding that J.T. did not want to talk to her on the phone does not support the conclusion that she failed to play a constructive role in his life or that J.T. did not want a relationship with her. Mother contends that the court engaged in speculation in finding that J.T.'s behavior deteriorated after calls with mother.

We reject these arguments. The court applied the appropriate standard in evaluating J.T.'s best interests and its conclusions are supported by its findings, which are in turn supported by the record. See In re G.S., 153 Vt. 651, 652 (1990) (mem.) (explaining that where trial court applied proper standard, its findings will stand unless clearly erroneous and its conclusions will stand where supported by findings). The court did not find that J.T. rejected any relationship with mother. It recognized that mother made some effort to be involved in J.T.'s life and that they shared some bond. The court nonetheless concluded that mother engaged in behavior that was harmful to J.T. As recounted above, she missed visits and engaged in future talk despite repeated warnings not to do so. This behavior had a negative effect on J.T., as mother herself acknowledged. The court found it noteworthy that J.T. refused her calls and that, in general, when he did talk to mother, his behavior deteriorated. Numerous witnesses testified about J.T.'s deteriorating behavior following his calls with mother. The court could reasonably infer from the evidence that there was a connection between J.T.'s behavior and his conversations with mother. See In re L.M., 2014 VT 17, ¶ 30, 195 Vt. 637 (recognizing that court may "draw upon its own

common sense and experience” (quotation omitted)); see also State v. Kerr, 143 Vt. 597, 603 (1983) (“[P]roof of facts includes reasonable inferences properly drawn therefrom.”). “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.). Mother fails to show any abuse of discretion here.

Affirmed.

BY THE COURT:

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice