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. 2020-225

DECEMBER TERM, 2020

In re H.B., Juvenile (S.G., Mother*)	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
	}	Family Division
	}	
	}	DOCKET NO. 51-3-17 Rdjv
		Trial Judge: David A. Barra

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

Mother appeals from the termination of her rights in son H.B. H.B.'s father has not been identified. Mother argues that the court's findings and conclusions are insufficient to support its decision. We remand for additional findings.

H.B. was born in March 2017 when mother was seventeen years old. The Department for Children and Families (DCF) worked with mother before H.B.'s birth, including creating a safety plan. Shortly after H.B.'s birth, DCF filed a petition alleging that H.B. was a child in need of care or supervision (CHINS). In its supporting affidavit, DCF alleged that mother had a history of impulsive and erratic behavior, she had resisted medical treatment for her own safety, and she was not currently in treatment for her psychiatric issues. Mother had not followed the agreed-upon safety plan.

H.B. was taken into emergency DCF custody and, following a temporary care hearing, he was continued in DCF custody. In May 2017, mother stipulated that H.B. was CHINS. She agreed that her undertreated and untreated mental health issues, along with her failure to follow the agreed-upon DCF safety plan, put H.B. at risk of harm. The court approved DCF's disposition case plan, which had concurrent goals of reunification with mother or adoption. The case plan required, among other things, that mother: attend the Lund Family Program; refrain from risky behaviors; refrain from yelling and swearing during all meetings and medical appointments; engage in psychiatric care for medication management and follow recommendations; demonstrate safe and appropriate behavior; and demonstrate safe and appropriate parenting.

In December 2018, H.B. was placed in mother's custody pursuant to a conditional custody order (CCO). The CCO required that mother continue to live in a DCF-approved residence, work with recommended service providers, not expose H.B. to risky individuals, and continue to participate in her own mental health treatment. The CCO was revoked in March 2019 because mother was no longer living in DCF-approved housing, she was in a relationship with a convicted sex offender who was noncompliant with treatment, she had disengaged from her recommended service providers, and she was not seeing any providers. In May 2019, the court held another disposition hearing and approved a case plan with a goal of reunification with mother. The case

plan included specific action steps consistent with the initial case plan requirements set forth above and it recognized that H.B. was at risk of emotional trauma and attachment disorder if mother could not parent him due to her mental health and noncompliance issues. In September 2019, mother expressed her desire to terminate her parental rights and DCF amended the case plan accordingly. A new case plan with a goal of adoption was approved.

The court found that H.B. had been involved with DCF his whole life. He had been connected to his current foster mother since he was taken into custody, even during the period mother had custody under the CCO. He had not been apart from his foster mother for more than twelve consecutive nights. The foster mother had a positive relationship with H.B. and wanted to adopt him if possible.

The court found that in the three years that H.B. had been in DCF custody, mother had not demonstrated an ability to provide him with a safe and stable environment or meet his physical, medical, and emotional needs. It found that the same conditions that led to H.B. coming into custody in March 2017—mother's impulsivity, erratic behavior, and anger issues—persisted at the time of the court's July 2020 decision. Mother had not sought recent treatment for any of her psychiatric issues; she was not employed; she had not secured safe and stable housing; she had not been involved in H.B.'s daily needs, his medical care, or his development. She moved to South Carolina during these proceedings and did not see H.B. for four months between December 2019 and March 2020. Mother had recently returned to Vermont and she was living in temporary housing with the father of her second child and another couple, one of whom was a registered sex offender. Mother's youngest child had also been taken into DCF custody shortly after her birth in July 2020. This child and H.B. were in the same foster home.

The court identified the statutory best-interest criteria in its decision but engaged in little analysis. It found that H.B. had adjusted well to his foster home and had a good bond with his foster mother and her family; he was flourishing in this stable and safe environment. The court concluded, without explanation, that there was no likelihood mother could resume her parental duties within a reasonable time. The court stated that it had considered all the statutory best-interest factors and concluded that they all supported the termination of mother's rights. Mother appeals.

Mother argues that the court failed to adequately explain its decision to terminate her rights. She asserts that the court's findings were too sparse to support its conclusions and notes that it failed to expressly find a change of circumstances. She complains that, in large part, the court merely recited the statutory best-interest factors without explaining how it arrived at its conclusions. Mother contends that she should have been afforded more time to improve her parenting skills because the delay would not have placed H.B. at risk of physical or emotional harm.

When, as here, the termination of parental rights is sought following a disposition order, the trial court must first find that there has been a substantial change in material circumstances, and second, that termination of parental rights is in the child's best interests. In re B.W., 162 Vt. 287, 291 (1994); see also 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).

To determine the best interests of a child, the court must consider four statutory factors. See 33 V.S.A. § 5114. The most important factor is the likelihood that the natural parent can resume his or her parental duties within a reasonable time. See In re B.M., 165 Vt. 331, 336 (1996). "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.). "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 correctly asserts that the court's findings and conclusions are sparse. While we consider the findings sufficient to establish changed circumstances and to support its conclusions as to most of the best-interest factors, we cannot discern the basis of the court's conclusion as to the most important best-interest factor: whether mother could parent H.B. within a reasonable time. See E.J.R. v. Young, 162 Vt. 219, 225 (1994) ("It is crucial that findings indicate to the parties and to this Court, if an appeal is taken, what was decided and how the decision was reached." (quotation and alteration omitted)). We therefore remand for an explanation from the court as to how it reached its conclusion on this factor.

First, the court's failure to expressly find a change of circumstances is harmless error "because changed circumstances were manifest in this case." In re D.C., 2012 VT 108, ¶ 16, 193 Vt. 101 (citing In re R.W., 2011 VT 124, ¶ 17, 191 Vt. 108 (noting that harmless error standard has been employed in termination cases and that court error warrants reversal only if substantial right of party is affected)); see also In re M.M., 159 Vt. 517, 522 (1993) ("An explicit finding of changed circumstances is not required to uphold a modification order; [r]ather, the changed circumstances test is met when the findings in the case are replete with facts sufficient to meet the required standard." (quotation omitted)); In re C.L., 151 Vt. 480, 482 (1989) ("This Court has never held that the absence of an explicit finding as to changed circumstances requires the reversal of a modification order . . . .").

As set forth above, the court found that the same issues that led to H.B. being taken into custody in March 2017 persisted at the time of the July 2020 hearing in this case. Indeed, these same issues led to the removal of mother's second child in July 2020, as mother acknowledged at the hearing. The court's findings show that mother did not comply with the goals of the case plan: she was not addressing her mental health needs; she did not have safe and stable housing; she had not been meeting H.B.'s daily needs. In fact, mother left Vermont for four months leading up to the termination hearing and had little or no contact with H.B. during this time. All these findings are supported by the record and they establish that mother had stagnated in her ability to parent. As in In re C.L., "[w]hile we agree that it is the better practice to enunciate clearly that changed circumstances have been found, the findings in this case are replete with facts sufficient to meet the required standard. Inasmuch as the child[]'s best interests are of paramount importance in this kind of proceeding, we will not reverse the trial court's disposition on a technicality." 151 Vt. at 483.

We reach a different conclusion with respect to the court's conclusion that mother could not parent H.B. within a reasonable time. In evaluating this factor, the question is not whether H.B. would be harmed if mother were given more time to gain parenting skills, as mother posits. Instead, the court must engage in a "forward-looking" analysis and consider mother's "prospective ability to parent [H.B.]." In re D.S., 2014 VT 38, ¶ 22, 196 Vt. 325 (quotation omitted). "Of course, past events are relevant to this analysis." Id. The court must measure the reasonable period from the child's perspective, mindful of considerations such as a "child's young age or special needs." Id. In this case, H.B. has been in DCF custody and connected to his current foster mother

since birth; mother stagnated in her ability to parent and conceded at the hearing that she could not presently parent H.B. Notwithstanding these facts, the court was required and failed to discuss mother's prospective ability to parent H.B. While the evidence could support its conclusion on this point, it must explain how it reached its decision to allow for meaningful review. We therefore remand this case to the trial court to allow it to engage in the necessary analysis.

Finally, we consider the court's findings sufficient to support its conclusions as to the remaining statutory best-interest factors, including that: H.B. had adjusted well to his foster home and his foster mother was meeting his needs; he had a good bond with his foster mother and her extended family; he was in a home with his sibling; mother engaged in behavior that placed H.B. at risk and created a turbulent and unsettled living situation for him, resulting in the revocation of the CCO; mother then left the state for four months and had little to no contact with H.B. during this time; and she had not been involved in his daily needs, medical care, or development. The court was not required to "couch its findings in the precise language of [the best-interests statute], as long as it is evident that the court fully considered the four criteria set forth therein." In re G.V., 136 Vt. 499, 502 (1978). This case is not like In re J.S., 168 Vt. 572, 575 (1998) (mem.), cited by mother, where we expressed concern about a "court's near verbatim adoption of the State's proposed conclusions of law." The court here made findings based on the evidence and its findings support its conclusions regarding the statutory best-interest factors with the exception of the most important factor.

Remanded for additional findings as to whether mother can parent H.B. within a reasonable time.

BY THE COURT:

____
Harold E. Eaton, Jr., Associate Justice

____
Karen R. Carroll, Associate Justice

____
William D. Cohen, Associate Justice