VERMONT SUPREME COURT
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Case No. 2020-264

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

OCTOBER TERM, 2021

In re A.G. & O.G., Juveniles	}	APPEALED FROM:
(K.A., Mother* & J.G., Father*)	}	
	}	Superior Court, Washington Unit,
	}	Family Division
	}	CASE NOS. 246-12-16 Wnjv & 247-12-16 Wnjv
		Trial Judge: Kirstin K. Schoonover

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

Mother and father appeal the termination of their parental rights to daughter A.G., who is eight years old, and son O.G., who is seven years old. We affirm.

The court made the following findings in its termination order. Mother and father have been in a relationship since 2011. A.G. was born in 2012. Genetic testing showed that she is not father's biological child. However, father has acted in that role since her birth and was adjudicated a de facto parent in September 2019. O.G. was born in 2014 and is father's biological child.

Mother has been diagnosed with various conditions including cerebral palsy, visual and hearing impairments, autism, and post-traumatic stress disorder (PTSD). She was under a voluntary guardianship with her adoptive mother until 2013.

The family has been the subject of two prior neglect proceedings. In 2013, the Department for Children and Families (DCF) filed a petition alleging that A.G. was a child in need of care or supervision (CHINS) after mother reported to a social worker that she had slapped baby A.G. and did not want her. A.G. was found to be CHINS due to mother's inability to provide proper parental care. Mother and father engaged in services, and custody of A.G. was discharged to mother in 2014. Then, shortly after O.G. was born in 2014, mother reported to her mental-health worker that the family was about to be evicted and that father was aggressive toward A.G. and had twisted and yanked her arms and dragged her by the shirt. DCF filed a

second CHINS petition, which was dismissed at the merits stage in January 2015 because the parents had participated in services. The court encouraged mother and father to stay active with service providers, but the parents made clear that they would not engage with DCF absent court involvement.

This case began in December 2016 when mother reported to her mental-health case manager that father had spanked A.G. for wetting the bed and made the child stand in a cold shower for a long time. She reported that father routinely struck A.G. and that A.G. flinched when people approached. Mother reported to DCF that father was emotionally and financially abusive toward her and that she was "emotionally crashing" and could not be around the children. DCF filed a CHINS petition, and the children were placed in DCF custody. A contested merits hearing took place in April 2017. The court found that there was insufficient evidence to make a finding regarding the shower incident, but concluded that A.G. and O.G. were CHINS because mother admitted that she was unable to properly care for the children on her own while father was working, father was aware of mother's difficulties and saw mother yell at and strike A.G. but did not intervene, and father yelled at mother and used derogatory language in front of the children.

The children were placed with an experienced therapeutic foster family with whom they resided throughout this proceeding. When they entered foster care, A.G. was four years old and O.G. was nearly three years old. Both children were very small for their ages. They would stand, sit, or lie frozen for long periods and were largely mute. Evaluations of both children after they entered custody showed that they had significant mental-health issues that were likely the result of childhood trauma. A.G. demonstrated an unusual lack of fear around strangers and acted inappropriately around her peers by engaging in aggressive behaviors and sexualized touching. O.G. had social and emotional deficits and also displayed aggressive behaviors such as clapping in A.G.'s face. Father stated that he used this as a disciplinary tool.

In July 2017, the court issued disposition orders adopting DCF's case plans for both children. A.G.'s case plan had concurrent goals of reunification with mother or adoption by September 2017. O.G.'s case plan had concurrent goals of reunification with either parent or adoption by the same date. The case plans included recommendations for both parents to engage in team meetings and be open to feedback from service providers, to prioritize the health, safety, and wellbeing of the children, to engage in individual counseling to understand their own roles and the role of their relationship in the children's trauma, and to have safe and stable housing by August 2017.

The family initially had supervised visitation for four days each week. The children began having overnight visits with their parents in the fall of 2017. They resisted going to visits, with A.G. stating that she did not feel safe and that her parents were fighting. The children exhibited symptoms of stress, including stomachaches and headaches, nightmares, and aggressive behaviors at daycare. Father seemed indifferent to the children's behaviors and denied that those behaviors had anything to do with him. Mother admitted that she and father continued to argue in front of the children and that she drank alcohol to cope with stress.

In February 2018, parents expressed interest in assuming the responsibility for taking the children to their medical appointments. The foster mother prepared a list of upcoming

appointments, which DCF shared with parents. However, parents were never able to handle this task, even with support from DCF, and the children missed important appointments. In October 2018, DCF removed this responsibility from parents.

In April 2018, overnight visits were suspended when A.G. was found to have bruises on her back and arm, which a doctor believed were the result of being grabbed. Mother told DCF that she and father continued to argue in front of the children and father engaged in excessive physical discipline of the children and emotionally abused her. Mother subsequently filed a relief-from-abuse complaint reporting physical, sexual, and emotional abuse by father, and moved out of the apartment she shared in Waterbury with father. Two weeks later, mother withdrew the complaint. She testified at the termination hearing that her allegations had been true but that it was easier to withdraw the complaint than face father's constant bullying. After this incident, mother was homeless for approximately six months. In January 2019, she obtained an apartment in Rutland. Father moved in with his uncle in Wolcott.

Despite this turmoil, the parents consistently attended visits and team meetings. However, father's behavior caused team meetings to be chaotic and unproductive. He was unable to accept feedback, took everything personally, and focused on himself and blaming others rather than on the children's needs. Mother complained that she was unable to raise her own concerns because father dominated the meetings. After meetings, father would bombard DCF with angry emails. DCF brought in a facilitator and increased the frequency of meetings to address these issues, to no avail. DCF recommended that father engage in individual counseling, which he did. Father had been in DCF custody as a child. However, he denied that he had any personal trauma or that he was responsible in any way for the children's situation.

In September 2018, the State filed petitions to terminate parental rights to both children.

In February 2019, O.G. underwent occupational therapy evaluations and was found to have tactile sensitivity, meaning that he found touch to be threatening or dangerous. He also had a 25% delay in social-emotional skills and relationships. He exhibited a range of behavioral difficulties at school, including swearing, kicking, spitting, blowing his nose at others, and slamming his body into objects. He required one-on-one support to get through the school day. He was determined not to have autism but was diagnosed with unspecified trauma and stressor related disorder, anxiety, impulse control disorder, enuresis, and encopresis. At team meetings, when O.G.'s behaviors were discussed, father would state, "I never saw that with me."

A.G. began seeing a licensed clinical psychologist in 2017. By 2019, her PTSD symptoms had diminished, but she continued to have anxiety and disinhibited social disengagement disorder, an attachment disorder that children develop after experiencing neglect. She violated others' personal boundaries by, for example, putting her hands up other people's shirts and trying to follow other children into the bathroom. She engaged in unwanted touching of her peers as well as sexualized behavior that suggested she had experienced sexual abuse. She also had trouble regulating her emotions. Her therapist recommended a set of rules for all caregivers to follow with A.G., including not allowing her to sleep in anyone else's bed. Despite this, father continued to let her sleep in his bed. Father testified that he believed A.G. was sexually abused but did not know by whom or when. He felt that DCF treated her like a criminal and overemphasized the rules.

In March 2019, father began having overnight visits with the children on Sundays. The children's behaviors initially escalated as a result, but later stabilized with help from the foster parents and the children's therapist. Mother stopped all in-person visits with the children in September 2019. In May 2020, she began meeting with them remotely using a video conferencing program, but she was unwilling to meet them in person due to the pandemic.

In July 2019, father went to visit mother and they had sex, resulting in mother becoming pregnant. Mother testified that father coerced her, while father said it was consensual. Mother did not tell DCF about the pregnancy until December 2019. The baby was born in March 2020. At the time of the termination hearing, mother lived in Rutland with the baby. She was able to care for the baby with the assistance of her adoptive mother and local services.

The termination hearing took place over nine days from February to August 2020. The court heard testimony from father and mother as well as other family and care providers, DCF workers, and various psychological experts. Following the conclusion of testimony, the court issued a written decision in September 2020 terminating both parents' rights. The court found that mother and father had stagnated in their progress toward resuming a parental role. Although each had made some improvement, it was insufficient to address the issues that led to the children being placed in DCF custody. The court then considered the factors set forth in 33 V.S.A. § 5114(b) and concluded that termination was in the children's best interests. Both parents appealed.

After the appeal was fully briefed and had been scheduled for argument in February 2021, father filed a motion asking the family court to vacate the termination order based on 33 V.S.A. § 5113(a) and (b). Father argued that he had learned that the foster family was no longer willing to adopt the children and that the children would be moved to a different placement, and that this constituted either a change in circumstances or a reason to vacate the order under Vermont Rule of Civil Procedure 60. We granted father's request to stay the appeal and remanded for the family court to consider the motion to vacate. Mother also filed a motion to vacate, echoing father's arguments but seeking return of the children to her instead of father.

After remand, father filed motions for a protective order to prevent DCF from placing the children out of state, to establish a guardianship with himself and his uncle as guardians, for a conditional custody order giving him custody, to stay the termination order, and for a permanency planning hearing and finding of no reasonable efforts. He sought a court order allowing him to depose the DCF social worker assigned to the case and to depose the children's therapists and providers. He also filed a renewed motion to vacate the termination order under Rule 60 based on newly discovered evidence of the children's potential change in placement; fraud upon the court by the foster mother, who had indicated she was willing to adopt; and "mistake" in the form of findings by the court that he claimed were unsupported by evidence.

The family court initially issued an entry order denying relief under § 5113(a) and scheduled a hearing on changed circumstances pursuant to § 5113(b). It subsequently reversed itself, concluding that it could not modify the termination order based on changed circumstances, and stated that it would allow parents to present evidence solely on the issue of whether the order should be vacated under § 5113(a) pursuant to a Rule 60(b) motion. The court held that father was no longer a party as a result of the termination order and therefore lacked standing to bring

his motions for a protective order, permanency planning hearing, and conditional custody order. It denied father's request for a guardianship for lack of jurisdiction, explaining that guardianship petitions must originate in the probate court. The court denied father's motion to stay the termination order, holding that such relief was unavailable once father appealed the order. It likewise denied father's motion for discovery, holding that while limited discovery might be available in connection with a Rule 60(b) motion, father had failed to explain how his requested discovery related to his pending Rule 60(b) motion.

The court held a hearing on the Rule 60(b) motion in April 2021. The court subsequently denied the motion in a written order, concluding that father had not presented any evidence of mistake or fraud and had not identified any "newly discovered evidence" that would justify vacating the termination order. The court concluded that relief was also not available under Rule 60(b)(6). It explained that the need for finality was great and that the post-termination change in placement was not an extraordinary circumstance. Quoting case law in which this Court has stated that termination of parental rights does not depend on the likelihood of adoption, the court reasoned: "If termination does not depend on the availability of any permanent placement option, then a change in a permanent placement option cannot serve as a basis for relief from a [termination-of-parental-rights] Order." The court further explained that although it had weighed the children's strong relationship with the foster parents in its termination order, that relationship was not its primary consideration in terminating parents' rights. Finally, the court held that even if a change in placement could justify relief under Rule 60(b)(6), the parents had not demonstrated any significant change in their own circumstances that would indicate that placement with them was in the children's best interests. Both parents appealed the court's decision, and we consolidated the appeals with the direct appeal for review.

We begin by addressing parents' arguments pertaining to the merits of the original termination order. When considering whether to terminate parental rights after initial disposition, the family court must conduct a two-step analysis, determining first whether there has been a substantial change in material circumstances that justifies modification of the existing disposition order, and then whether the best interests of the children require termination of parental rights. In re D.S., 2016 VT 130, ¶ 6, 204 Vt. 44. In conducting the best-interests analysis, the court must consider four statutory factors: the children's relationships with parents, siblings, foster parents, and any other significant individuals; the children's adjustment to their homes, schools, and communities; the likelihood that a parent will be able to resume or assume parental duties within a reasonable amount of time; and whether the parent has played and continues to play a constructive role in the children's welfare. 33 V.S.A. § 5114(b). The most important factor is the likelihood that the parent can resume parental duties within a reasonable time. In re B.M., 165 Vt. 331, 336 (1996). If the court applied the proper standard, we will uphold its findings on appeal unless they are clearly erroneous and will affirm its conclusions if they are supported by the findings. In re G.S., 153 Vt. 651, 652 (1990) (mem.).

Father first challenges the court's determination that he was unlikely to be able to resume parenting within a reasonable time. Father claims that the fact that he had the children for a weekly overnight visit at the time of the hearing required the court to find that he was, per se, able to resume—and in fact had resumed—parental duties. We disagree. The inquiry regarding resumption of parental duties goes beyond matters of routine daily care and control of a child. It requires the court to consider whether a parent will be able to properly care for the child on a

full-time basis, meeting not just basic needs of food and shelter, but also the child's developmental, medical, and emotional needs. See 33 V.S.A. § 5102(16)(A) (defining legal custody for purpose of CHINS proceedings as right to routine daily care and control as well as rights and responsibilities over medical care and decisions, living situation, education, and legal actions). Father's attempt to analogize his situation to that of a parent awarded part-time physical rights and responsibilities in a child custody case is unpersuasive. At the time of the hearing, DCF had legal custody of the children due to neglect by both parents. Father had court-ordered visitation; he did not have legal custody and was not exercising full parental duties as contemplated by 33 V.S.A. § 5114(a)(3).

Moreover, the family court's conclusion that father, who had never been the primary caregiver, was unable to resume parenting within a reasonable amount of time is supported by the findings and evidence. The court found that the children's negative behaviors escalated each time overnight visits with father were resumed. When given the responsibility for transporting the children to medical appointments, father was unable to handle the task, in part because he was unwilling or unable to engage constructively with DCF and other team members. Most importantly, the court found that the children had complex mental-health issues requiring specific supports and that father was unable to acknowledge these needs or to follow basic recommendations from the children's therapist to address them. Furthermore, father would eventually be required to move out of his uncle's house if he obtained custody of the children, and he did not appear to be employed at the time of the hearing. Based on these findings, which are supported by the evidence, the court did not err in concluding that he was unable to assume the role of primary caregiver within a reasonable time, notwithstanding his ability to perform some parental functions for some of the time. Cf. In re D.F., 2018 VT 132, ¶ 41, 209 Vt. 272 (affirming conclusion that father would not be able to resume parenting within reasonable time, despite following case plan recommendations and making some progress, where father had not taken full responsibility for pre-petition behavior and continued to exhibit controlling behavior and to subject mother to emotional abuse).

Father claims that the court violated his right to due process by terminating his parental rights for failing to admit to unproven abuse. He argues that the court never identified what he did to harm the children. Father overlooks the court's findings that he subjected the children to excessive physical discipline, constantly fought with mother, and failed to intervene when mother was unable to properly care for the children and physically abused them herself. These behaviors were identified at the CHINS merits stage and continued to be raised throughout the case. The court also found that the children had been traumatized and neglected when they were in father's care. Father took no responsibility for their trauma, and therefore he could not learn or make any progress in ensuring that such abuse and neglect did not occur again. The court's findings are supported by the evidence and, in turn, support its conclusion that father was unable to resume parental duties within a reasonable time.

Father also argues that the court misapplied the first two best-interests factors by failing to consider the impact of the termination decision on the children's attachment to father's home and extended family. Father claims that the court gave too much weight to the children's attachment to their foster home and not enough weight to their relationships with their extended family.

We see no error. The court was required to consider "the interaction and interrelationship of the child with his or her parents, siblings, foster parents, if any, and any other person who may significantly affect the child's best interests" as well as "the child's adjustment to his or her home, school, and community." 33 V.S.A. § 5114(a)(1)-(2). Under the first factor, the court properly considered the children's relationships with both parents and the foster parents. Father does not identify "any other person who may significantly affect the child[ren]'s best interests" or point to any specific evidence that there is such a person. Id. § 5114(a)(1) (emphasis added). Contrary to father's claim in his brief, he presented very little evidence below about the children's adjustment to his uncle's home or the children's relationships with their extended family. Father does not challenge the court's finding that he would soon have to move out of his uncle's home if the children returned to his custody and therefore would have to adjust to a new home and community. The court applied the appropriate standard, and its conclusions are supported by its findings. We therefore decline father's invitation to reweigh the best-interests factors. See In re D.F., 2018 VT 132, ¶ 30 ("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 a parent's rights." (quotation omitted)).

We next consider the arguments presented by mother regarding the termination order. First, mother challenges the court's statement that if she were given custody, "the parents would likely re-unite." She argues that the finding is speculative and the court's use of the word "likely" indicates that it did not make the finding by clear and convincing evidence. Mother's argument fails for several reasons. First, the court made the statement as part of its resumption-of-parental-duties analysis, which necessarily requires the court to make some predictions about the parent's "prospective ability to care for the child." See In re D.S., 2014 VT 38, ¶ 22, 196 Vt. 325. Furthermore, the court stated explicitly in its decision that its findings were based on clear and convincing evidence. Finally, the finding is supported by the record, which shows that mother had difficulty disentangling from father and had lied about the status of her relationship in the past. Mother and father represented to DCF that they had ended their relationship in 2018. However, father continued to visit mother and they conceived another child together in July 2019. Mother did not reveal the ensuing pregnancy to DCF until she was six months pregnant. During her testimony, mother referred to communications that she had with father in the present tense, although she also stated that she had not had contact with him since March 2020. Testimony from mother and other witnesses showed that mother and father communicated frequently by text message after they had purportedly broken up, and that their messages were consistent with a continuing romantic relationship. She also testified that she expected that father would be in her life if A.G. and O.G. returned to her care. This evidence supports the court's finding that mother and father would likely reunite if she were granted custody.

Mother challenges the court's finding that her reluctance to reinitiate in-person visits with the children was "likely a recognition that she simply cannot do it" as speculative and not supported by the evidence. The record belies this claim. Mother admitted that she was not comfortable parenting A.G. and O.G. on her own for more than four hours. She was at that time caring for a new baby and required extensive support. She voluntarily chose to stop in-person visits with A.G. and O.G. in September 2019. She did not accept DCF's subsequent offers of more visits. At the time of termination, she had not seen the children in person since Christmas of 2019. DCF asked her to create a plan for how she would care for the children and her new baby if she regained custody, but she did not do so. These findings, which mother does not

challenge, show that mother's reluctance to see the children began well before the COVID-19 pandemic and support its determination that mother may have concluded, consciously or not, that she was not able to resume parental duties under the circumstances.

Finally, mother argues that the court erred in finding that O.G. was "more indifferent to mother" and "did not miss her when she stopped visits." The court was describing the testimony of the foster mother, who stated that A.G. missed mother and was very upset when mother didn't come to visits, but O.G. "seems kind of indifferent" and that "it's harder to read him as far as his affect for [mother]." The foster mother went on to opine that O.G. might be upset but simply manifested his feelings differently than his sister. The court's findings accurately reflect the foster mother's statements, but even if they did not, the statements were not essential to the court's weighing of the best-interests factors, which was based on findings that both children missed and loved their mother. See Guibord v. Scholtz, 2006 VT 22, ¶ 10, 179 Vt. 623 (mem.) ("We will not reverse the court's decision based on an erroneous finding if it was not essential to the decision.). We therefore decline to reverse on this basis.

We turn to the arguments raised by parents regarding the family court's denial of their motions to modify or vacate the termination order. First, both parents argue that the court erred in holding that the termination order could not be modified based on changed circumstances under 33 V.S.A. § 5113(b), because their appeal from the termination order was still pending. Parents are incorrect; as we have repeatedly held, termination orders are not subject to motions to modify based on changed circumstances, regardless of the timing or the basis of the motion. See In re C.L., 2021 VT 66, ¶ 37 (reaffirming "that § 5113(b) does not apply to a termination order, even if that order is currently the subject of an appeal"); see also In re P.K., 2017 VT 3, ¶ 15, 204 Vt. 102; In re A.W., 2013 VT 107, ¶ 12, 195 Vt. 226. Contrary to parents' arguments, this Court's remand order, which simply directed the court to address father's combined motion to modify or vacate the termination order in the first instance, did not implicitly authorize the family court to ignore this rule. The court therefore correctly denied parents' motions to modify the termination order under § 5113(b).

Next, parents argue that the court erred in denying relief under Rule 60(b). Although parents do not specify which provision of Rule 60 applies to them, they appear not to challenge the court's conclusion that they failed to show mistake, newly discovered evidence available at the time of trial, or fraud. See V.R.C.P. 60(b)(1)-(3). Thus, we assume that their claim falls under Rule 60(b)(6), which permits the court to vacate a final judgment "for any other reason justifying relief from the judgment." V.R.C.P. 60(b)(6). "The rule is not an open invitation to reconsider matters concluded at trial, but should be applied only in extraordinary circumstances." John A. Russell Corp. v. Bohlig, 170 Vt. 12, 24 (1999) (quotation omitted). We will affirm the family division's denial of a Rule 60(b)(6) motion unless the moving party shows that the court abused its discretion. Penland v. Warren, 2018 VT 70, ¶ 6, 208 Vt. 15.

Parents argue that the court erred in suggesting that as a matter of law, a change in placement could never serve as a basis for relief under Rule 60(b)(6). Assuming without deciding that this statement was incorrect, it was not the sole or even primary basis for the court's decision. The court explained that although it had considered the children's relationship with their foster parents in the termination order, as required by 33 V.S.A. § 5114(a)(1) and (2), the foster relationship was not its primary consideration in terminating parents' rights. Rather, it

was the parents' inability to resume parenting within a reasonable time that weighed most heavily in favor of termination. The court went on to consider the merits of parents' Rule 60(b)(6) argument and concluded that even if a change in placement could justify vacating the termination order, parents had not shown that such relief was appropriate under the circumstances. The court noted that the children's change in placement was unfortunate but not extraordinary, and parents had presented no evidence that either of their situations had changed such that a placement with them would be in the children's best interests. The court acted within its broad discretion in denying relief on these grounds.

Father claims that he was hamstrung from presenting relevant evidence by the court's denial of his request for discovery into the children's current circumstances. After remand, father filed a motion requesting permission to depose or interview the DCF social worker assigned to the case and to speak to or depose the children's therapists and providers. The court ruled that father was not entitled to discovery under Vermont Rule for Family Proceedings 2 because he was no longer a party. It further ruled that even if father was entitled to limited discovery in connection with his Rule 60(b) motion, father had failed to tie his discovery request to that motion. It concluded that father was seeking information relevant to a motion to modify disposition, which he lacked standing to pursue.

Father argues that as the biological parents, he and mother were parties under 33 V.S.A. § 5102(22), and the court therefore erred in denying discovery on that basis. We need not address the question of father's post-termination party status because we conclude that the court acted within its discretion in denying father's requested discovery on the basis it did not relate to the substance of his Rule 60(b) motions. Father's initial motion argued simply that the termination order should be vacated because it was based on the children's adjustment to their foster home and the foster parents' ability to provide specialized care for the children, and that placement would be changing. Father's renewed Rule 60(b) motion alleged that the foster mother had committed fraud upon the court and that the court had been mistaken in some of its findings in the termination order. He stated in that motion that he had sufficient information in hand to support these allegations. Father's concurrently filed discovery motion sought information about the children's current circumstances but did not explain how the requested information related to meeting his burden under Rule 60(b). Since the court lacked authority to modify the termination order based on changed circumstances, and parents lacked standing to challenge the children's placement after termination, the requested information appeared to be irrelevant. See In re C.L., 2021 VT 66, ¶ 37; In re R.B., 2015 VT 100, ¶ 19, 200 Vt. 45, 54 (explaining that parents lack standing to challenge post-termination placement decisions). Father's pleadings did not provide a meaningful explanation as to why he needed the information for his Rule 60(b) motion. The court therefore did not abuse his discretion in denying the request. See Record v. Kempe, 2007 VT 39, ¶ 9, 182 Vt. 17, 21 ("Discovery rulings such as this are discretionary, and discretionary rulings are not subject to review if there is a reasonable basis for the court's action." (quotation omitted)).

We further note that although the court repeatedly stated that father was not a party, it nevertheless treated him as one and addressed his motions on their merits. We therefore disagree that father was denied due process. Furthermore, it was father's lack of standing, not his party status, that governed the court's responses to his motions. The court correctly ruled that after termination, father lacked standing to request a conditional custody order to father's uncle or to

otherwise be involved in decisions concerning the children's placement. In re R.B., 2015 VT 100, ¶ 19; see also In re A.D.T., 174 Vt. 369, 374 (2002) ("Upon termination . . . , [DCF] has no obligation to include that parent in further case planning for the child, allow visitation, or make any efforts to reunify the child with the parent."). Father has therefore failed to show that the alleged error requires reversal.

Father further argues that the court erred in prohibiting him from asking the DCF worker at the Rule 60(b) hearing about how the children were presently faring, and in excluding as irrelevant case plan notes containing details about their current emotional and mental health circumstances. However, father fails to explain how the alleged error was prejudicial. See State v. Spooner, 2010 VT 75, ¶ 15, 188 Vt. 356, 362 ("We review trial courts' evidentiary rulings deferentially and reverse only when there is an abuse of discretion resulting in prejudice."). Central to the court's decision on parents' Rule 60(b) motions was the lack of evidence to show that the parents' circumstances had changed such that they would be able to resume parenting with a reasonable amount of time. See In re B.M., 165 Vt. 331, 336 (1996) (stating that "most important factor" in assessing children's best interests is likelihood that parent can resume parental duties within reasonable time). Father did not attempt to introduce any evidence to show that he had addressed the underlying issues that supported termination of his rights. Although father argues that the court could have considered placement with his uncle instead, neither DCF nor the children's attorney had requested such a placement, and the children's guardian ad litem opposed it. Absent evidence that would support placement with the parents or another family member, the court acted within its discretion in concluding that the Rule 60(b) motion was essentially futile.

Affirmed.

BY THE COURT:

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Beth Robinson, Associate Justice

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Karen R. Carroll, Associate Justice

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William D. Cohen, Associate Justice