



*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**

SEPTEMBER TERM, 2021

In re A.S. & S.S., Juveniles } APPEALED FROM:  
(C.S., Father\*) }  
} Superior Court, Bennington Unit,  
} Family Division  
} CASE NO. 202-12-18 Bnjv

Trial Judge: Kerry A. McDonald-Cady

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

Father appeals termination of his parental rights to A.S. and S.S., born in February 2013 and March 2012, respectively. We affirm.

The family court found the following. In December 2018, the trial court granted a petition filed by the Department for Children and Families (DCF) for an emergency-care order and removed A.S. and S.S. from parents' care after law enforcement discovered hundreds of empty glassine bags used for heroin and cocaine and other drug paraphernalia in parents' home and accessible to the children. The children were placed with their maternal grandmother and have remained with her since. In February 2019, mother and father stipulated that the juveniles were children in need of care or supervision (CHINS) because they were without proper parental care. Mother and father both admitted to daily heroin use and allowing drug sales to take place when the children were in the home. The initial disposition order had a goal of reunification and the case plan included goals for father to engage in substance-abuse treatment, not use illegal substances, sign releases, attend meetings with DCF, not engage in criminal activity, attend family visits, and participate in parenting programs. Mother and father were homeless and DCF attempted to assist them in applying for housing. The housing voucher was eventually withdrawn due to parents' lack of engagement. Although they both initially completed an intake for substance-abuse treatment, they were unsuccessfully discharged due to lack of engagement.

In early 2019, father had visits with the children and was attentive. Mother and father were prohibited from having unsupervised contact with the children at maternal grandmother's home, but grandmother reported that parents went to the home when grandmother was not there; she was concerned they were using drugs at the residence. In May 2019, the court found that father placed the juveniles in fear of imminent harm and granted a protective order prohibiting father from, among other things, coming within 300 feet of the children or their residence with the maternal grandmother. The order remained in effect until March 2020.

By spring 2019, father stopped engaging with DCF and did not attend meetings or court hearings. He completed a parenting assessment with Easter Seals but did not follow through and was terminated from the program. Father was in and out of jail during 2019 and 2020 and at the time of the final hearing, father was incarcerated and expected to be released in June or July 2021.

In April 2020, the State filed a motion to terminate parental rights. Mother voluntarily relinquished her parental rights at the outset of the second hearing day. The hearing proceeded as to father. Following the hearing, the court found that there was a change of circumstances due to father's stagnation. The court explained that father had not made much progress on the goals in the case plan. The court further found that termination was in the children's best interests. The court found that the juveniles were closely bonded to their maternal grandmother and teenage stepbrother and stepsister who lived with them. Father had a limited relationship with the juveniles and his last structured visit with them was in May 2019. Father did not play a constructive role in their lives. Father would not be able to parent them in a reasonable period of time, especially given the children's mental-health needs and need for stability.

On appeal, father argues that the family court erred in its assessment of father's role in the children's lives.

To terminate parental rights after an initial disposition order is in place, the family court must first find by clear and convincing evidence that there was a change of circumstances, and that termination is in the child's best interests. In re B.M., 165 Vt. 331, 335-36 (1996). In assessing the child's best interests, the court must consider the statutory criteria. 33 V.S.A. § 5114. The most important factor is whether the parent will be able to resume parenting duties within a reasonable period of time. In re J.B., 167 Vt. 637, 639 (1998) (mem.). The reasonableness of the time period must be measured from the child's perspective. In re B.M., 165 Vt. at 337. On appeal, we will uphold the family court's conclusions if supported by the findings and affirm the findings unless clearly erroneous. In re A.F., 160 Vt. 175, 178 (1993).

Father contends that the court erred in its assessment of the statutory factors, in particular the first statutory factor regarding the children's interaction and interrelationship with various persons, including the parents, because the court did not describe the children's relationship with father in the context of its assessment of that factor. See 33 V.S.A. § 5114(a)(1). Although the court did not mention father in its paragraph specifically related to this factor, the court made multiple findings about father's relationship with the children. The court acknowledged that father was initially engaged with visiting the juveniles and had a close bond with them, but found father was not consistent in his visits. Father did not see the children for formal visits since the spring of 2019 due to his incarceration and the protective order. He did not pursue resuming visits after the protection order lapsed. Importantly, the court found that father lacked insight into how his lack of contact had negatively impacted the children. There was no error, as it is evident that the court considered father's relationship with the children in assessing the children's best interests.

Father also argues that the court mischaracterized maternal grandmother's role in the children's lives in indicating without basis in the record that she was committed to adopting them. The court's finding was that the maternal grandmother was committed to the children, including "providing permanency through adoption." The court went on to emphasize the importance to the children of remaining in a family with their teenage siblings who also lived with maternal grandmother. The relevant testimony described maternal grandmother as "very committed in ensuring that the children stay together" (referencing the juveniles in this case and

their two siblings). It does not expressly address her intent to adopt, or lack thereof. Any error in the court's finding as to maternal grandmother's commitment to herself adopting the children is harmless in this case, where the court's emphasis was on her commitment to keeping the children together with their older siblings—a matter that is squarely supported by the record—and the termination decision was driven first and foremost by father's lack of progress in improving his readiness to parent and the absence of meaningful contact with the children for a period of nearly two years. In this context, termination of father's rights did not depend on whether grandmother would adopt the children in the future. See In re E.B., 158 Vt. 8, 15 (1992) (explaining that termination of parental rights is not dependent on alternative placement).

Finally, father contends that the court erred in finding that he did not play an ongoing constructive role in the children's lives. He argues that the evidence shows that the lack of contact with father, rather than negative contact with father, harmed the children, and that the court erred by failing to consider whether there would be a father figure in the children's lives. The court's finding regarding father's role in the children's lives is supported by the evidence. The court found that father's behavior had negatively impacted the children, including his violation of the case-plan goal of not going to maternal grandmother's home and his continued use of illegal drugs and engagement in criminal activity. The court found that father's behavior had negatively impacted the children, father did not have the specialized parenting skills to meet the children's mental-health needs, and father had not sought to learn about the children in two years. Essentially, father asks us to reweigh the evidence and reach a different conclusion, which is beyond our role on appeal. See In re S.B., 174 Vt. 427, 429 (2002) (mem.) (explaining that role of appellate court is not to second guess family court or reweigh evidence). The court's findings regarding father's role in the children's lives and the statutory best-interests factors as a whole are supported by the record.

Affirmed.

BY THE COURT:

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice

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William D. Cohen, Associate Justice