VERMONT SUPREME COURT
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Case No. 2021-109

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

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

Mother appeals from the trial court's order, on remand, terminating her parental rights with respect to H.B. We affirm.

H.B. has been in the custody of the Department for Children and Families (DCF) since shortly after his birth in March 2017. DCF moved to terminate mother's rights in October 2019. Following a contested merits hearing in July 2020, the trial court concluded that mother stagnated in her ability to parent and that termination of her rights was in H.B.'s best interests. Mother argued in her first appeal that the trial court failed to adequately explain its termination decision. We upheld the court's stagnation determination and its evaluation of three of the four statutory best-interest factors. See In re H.B., Juvenile, No. 2020-225, 2020 WL 712172 (Vt. Dec. 4, 2020) (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/documents/eo20-225.pdf [https://perma.cc/ZKF3-62CJ]. The record showed that mother failed to address the issues that brought H.B. into DCF custody three years earlier. She did not "[seek] 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"; "[s]he moved to South Carolina during the[] proceedings and did not see H.B. for four months"; she was living in a home with a registered sex offender; and her "youngest child had also [recently] been taken into DCF custody." Id. at *2.

Although we found changed circumstances "manifest" in this case, we could not "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." Id. at *3. On this point, the court simply stated its conclusion without any supporting explanation. We described the standard used to evaluate this best-interest factor, emphasizing that, as distinct from its stagnation analysis, the court must "engage in a forward-looking analysis and consider mother's prospective ability to parent H.B," mindful that "past events are [also] relevant to this analysis." Id. (quotation omitted) (brackets

omitted). We found that the evidence could support the court's conclusion on this point, noting that "H.B. ha[d] 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." Id. at *3-4. But we determined that the court needed to "explain how it reached its decision to allow for meaningful review." Id. at *4. We thus remanded the case "to the trial court to allow it to engage in the necessary analysis." Id.

Following our remand order, mother moved to vacate the termination of her parental rights under Vermont Rule of Civil Procedure 60(b); she also separately moved for an evidentiary hearing in connection with our remand. Mother argued that the TPR order should be vacated because "the available evidence regarding [her] current and prospective ability to resume parental responsibilities was not available at the time of the original [TPR] hearing" and it was therefore "newly discovered." She also asserted that the order should be vacated under the catch-all provision of Rule 60(b)(6) because it would be inequitable to adjudicate the TPR petition "based partially on evidence elicited nearly one year after the original hearing on the matter." Mother argued that she was entitled to a hearing on her request. With respect to her second motion, mother argued that the existing record was inadequate to allow the court to make findings regarding her ability to parent H.B. She also argued that this Court's remand order contemplated a new evidentiary hearing because the mandate directed the trial court to assess if mother "can" parent H.B. rather than whether she "could" parent him. DCF opposed mother's requests.

The court denied mother's motions. It found that the remand order required only an additional explanation of its conclusions, not a new evidentiary hearing. Specifically, it had been directed to engage in an explicit analysis of "the most important best-interest factor: whether mother could parent H.B. within a reasonable time," and no further evidence was required to accomplish this task. Because there was no need to hold a further evidentiary proceeding, the court concluded that mother's proffered basis for vacating the TPR order failed. The court subsequently issued its order on remand. It incorporated the findings it made in its initial decision and made numerous additional findings in support of its conclusion that mother could not parent H.B. within a reasonable time. This appeal followed.

Mother first argues that the trial court failed to follow this Court's mandate. According to mother, the trial court was directed to determine if she "can" parent H.B., which required an evidentiary hearing as to her present circumstances. Assuming this argument fails, mother asserts that the court should have held an evidentiary hearing to determine if strict adherence to the mandate was appropriate and in H.B.'s best interests in light of the specific circumstances of this case. She contends that the trial court erroneously felt constrained by this Court's mandate to base its decision on nine-month-old evidence. She also argues that the court had authority to hold an evidentiary hearing on her motion to vacate under 33 V.S.A. § 5113 as the termination order was not "final" due to the remand and ongoing proceedings to terminate the father's parental rights, and because the child had not yet been freed for adoption.

We find these arguments without merit. The court correctly interpreted our remand order to require an additional explanation of its conclusion based on the evidence presented at the TPR hearing. The limited scope of the remand order is clear from our decision. See, e.g., Coty v. Ramsey Assocs., Inc., 154 Vt. 168, 171 (1990) (recognizing that in remand proceedings, trial court is "acting pursuant to our mandate" and is thus "limited to following our specific directions as interpreted in light of the opinion"). We upheld the court's termination decision on all points but one. On this point, we "remand[ed] for an explanation from the court as to how it reached its conclusion." In re H.B., 2020 WL 712172, at *3. Implicit in our decision was that the

explanation would be based on the existing record evidence. In fact, we recognized that there was sufficient evidence in the record to support the court's conclusion. We remanded only for an explanation of how the court arrived at its decision. We did not direct the court to hold a new evidentiary hearing and nothing in the language of our mandate suggests otherwise.

We similarly reject mother's assertion that the court erred by adhering to our remand order in the face of circumstances she contends warranted departure from our mandate. As indicated above, the trial court is generally constrained on remand "to follow our specific directions as interpreted in light of the opinion," and "[w]hen a case is remanded, our decision is the law of the case on the points presented throughout all the subsequent proceedings." State v. Gomes, 166 Vt. 589, 590-91 (1996) (mem.) (quotations omitted). Nonetheless, we recognize that a "departure from the law-of-the-case doctrine is warranted "in exceptional circumstances such as where there has been . . . a substantial change in the facts or evidence giving rise to the dispute in the matter, or where the prior holding was clearly erroneous and would create a manifest injustice if followed." Id. Mother made no such showing here. She simply asked the court to vacate the TPR decision to allow her to present "new evidence" and argued that it would be inequitable not to hold a new evidentiary hearing. She made no showing of "a substantial change in the facts or evidence," id., and she did not argue or show that adhering to our mandate would result in "manifest injustice." Id. She merely speculates on appeal that, based on the trajectory of the TPR hearing, the facts might now be different.

Finally, we conclude that the court did not err in denying mother's motion to vacate the TPR order and declining to hold a new evidentiary hearing. Mother rightly argues that the trial court had jurisdiction to entertain her motion to vacate pursuant to 33 V.S.A. § 5113(a) and Rule 60(b). The court did not suggest otherwise. Instead, it considered mother's motion on the merits and rejected it. We see no error in the court's decision.

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