VERMONT SUPREME COURT
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Case No. 21-AP-231

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

FEBRUARY TERM, 2022

In re S.S., A.S., L.S., Juveniles	}	APPEALED FROM:
(J.S., Mother* & J.S., Father*)	}	
	}	Superior Court, Bennington Unit,
	}	Family Division
	}	CASE NOS. 188-11-18 Bnjv; 189-11-18 Bnjv; 190-11-18 Bnjv
		Trial Judge: Kerry Ann McDonald-Cady

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

Adoptive parents appeal the family division's order terminating their parental rights in S.S., A.S., and L.S. We affirm.

Adoptive mother and adoptive father are the paternal grandparents of S.S., born 2008, A.S., born 2007, and L.S., born 2010. Grandparents adopted all three children in October 2014 after biological parents' parental rights were terminated.

In November 2018, a guidance counselor at the children's school reported to the Department for Children and Families (DCF) concerns that grandparents were neglecting and abusing the children. S.S. told the guidance counselor that grandmother would not allow her to eat and she would go to bed hungry, and that S.S. observed biological father sexually abuse L.S. The guidance counselor reported additionally that grandmother had requested that school staff monitor the children's food and water intake at school.

DCF investigated. In an interview, L.S. confirmed that biological father had sexually abused her on multiple occasions, that she reported the abuse to grandmother, and that grandmother told L.S. the sexual abuse did not happen and did not intervene. Biological father was then arrested and charged with aggravated sexual assault of a minor.

Grandfather denied any sexual assault had occurred and stated that L.S. was lying. Grandmother went a step further and brought L.S. to a hospital for a physical examination to prove that she had not been sexually abused. L.S. recanted her allegations in front of the doctor after being prompted by grandmother, who was in the room. Grandmother immediately requested that the doctor include in her report that L.S. had fabricated the assault allegations. However, when L.S. was alone with the doctor, L.S. asked the doctor for her phone number and

hid the paper in her pants pocket. The doctor reported these events to DCF, including her suspicion that L.S. had been coached.

Grandmother admitted to DCF that all three children had been having severe behavioral problems, including disturbing sexualized behavior and disruptive or violent conduct at school and at home. Grandmother admitted she had not reported any of this to DCF because she feared DCF would remove the children from grandparents' care.

The court issued an emergency order in November 2018 placing all three children in DCF custody. At a contested temporary care hearing in December 2018, the court continued all three children in temporary DCF custody. The court found that the children's mental health could not be protected if they were returned to grandparents' custody, in major part because it found grandparents had coached L.S. to recant her sexual-assault allegations and sought to have a doctor certify that L.S. had lied, demonstrating lack of ability or willingness to prioritize the children's well-being.

The court adjudicated all three children as children in need of care or supervision (CHINS) in March 2019. It found as follows. L.S. disclosed to grandmother and DCF that biological father had sexually abused her in the past. Grandmother denied any sexual abuse happened and did not intervene. In response to the DCF investigation, grandmother took active steps to try to prove that L.S. was not sexually abused. In doing so, grandmother sought to prevent her and her son (L.S.'s biological father) from going to jail at the expense of L.S.'s well-being. The court found further that when the emergency care order was issued, grandfather angrily yelled at the children. It found S.S. and A.S. were also at risk because both grandparents blamed the children for DCF removing them.

In April 2019 the court approved a disposition case plan with a goal of reunification with grandparents within six to nine months. The case plan goals for both grandparents included family coaching, parenting classes, Family Time visits, maintaining open and honest communication with DCF, and a family forensic evaluation. In October 2019 DCF filed a permanency case plan with a goal of reunification by February 2020, which the court approved. Following a status conference in January 2020, the court extended the timeline for reunification and ordered DCF to prepare a permanency report considering the family forensic evaluator's report. DCF filed that report in April 2020 along with a petition for reasonable efforts, which the court later granted. In August 2020 DCF filed a petition to terminate both grandparents' parental rights, asserting that grandparents had not made sufficient progress in addressing the concerns that led to DCF custody and the CHINS determination. At the same time DCF filed an amended permanency case plan recommending adoption for all three children. Both grandparents contested this goal and opposed the petition to terminate parental rights. Grandmother also moved to increase parent-child contact with S.S., who was in residential treatment at the time. The court held an evidentiary hearing in January 2021 on the motion to modify parent-child contact and DCF's reasonable efforts. The family division denied grandmother's motion but granted DCF's petition, finding that DCF had made reasonable efforts to finalize the reunification plan then in effect.

Following four days of hearings on termination of parental rights, the court terminated both grandparents' residual parental rights in May 2021. The court made extensive findings both on stagnation and the best-interest factors. It concluded that clear and convincing evidence supported both that there was a change in circumstances and that termination was in the children's best interests. The crux of the court's decision was that although grandparents had

participated in various programs and classes as part of the case plan, during the two-and-a-half years the children had been in DCF custody, grandparents had not made sustained changes in their parenting approach to become trauma-informed caregivers, and they had not demonstrated the ability to take responsibility for their actions, be open and honest with service providers, or meet the specialized mental-health needs of any of the three children.

On appeal, grandparents do not challenge the sufficiency of evidence or correctness of the court's findings. Instead, they argue their stagnation was due to circumstances beyond their control, namely, that DCF failed to communicate effectively with or timely provide court records to certain service providers. Grandmother also argues that the court committed reversible error by quashing her subpoena of the family forensic evaluator's file, which grandmother sought two months after the termination hearing.

To terminate parental rights after an initial disposition order is in place, the family division must first determine by clear and convincing evidence that there was a "change in circumstances," and then that termination is in the children's best interests. 33 V.S.A. § 5113(b). In assessing the children's best interests, the court must consider the statutory criteria. 33 V.S.A. § 5114(a). 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.). So long as the family division applied the correct legal standards, we will affirm its conclusions if supported by the findings and uphold the findings unless clearly erroneous. In re A.F., 160 Vt. 175, 178 (1993). We review rulings regarding discovery for abuse of discretion. LaMoria v. LaMoria, 171 Vt. 559, 560 (2000) (mem.).

The State asserts that grandparents' argument regarding stagnation was not properly preserved. Regardless of preservation, the argument is unpersuasive. Although two of grandparents' witnesses, therapist Barbara Hand and counselor Jennifer Haskins, testified positively regarding grandparents' progress, the court found that these service providers' opinions were premised on inaccurate or incomplete information. Grandparents blame DCF for this misinformation. Ms. Haskins and Ms. Hand did not learn about the background of family issues primarily from DCF or court records but instead from grandparents themselves. Grandparents were not transparent or fully truthful with these providers about the core issues that led to the children being adjudicated CHINS. Grandparents reported that the CHINS matter was based on abuse from a former foster parent rather than sexual assault by their son. They failed to accurately inform Ms. Haskins or Ms. Hand of the nature of L.S.'s disclosure regarding sexual assault or their reaction to her disclosure of denying and seeking to disprove L.S.'s allegation. It was within grandparents' control to provide accurate and truthful information to all of their service providers. Indeed, this was one of the goals of the disposition case plan, which they agreed to and the court ordered. Grandparents failed to do so.

Moreover, the record does not support that grandparents would have avoided stagnation if Ms. Hand and Ms. Haskins had had the benefit of all records from DCF and the court. Grandparents do not contend that DCF failed to communicate with the multiple other service providers, including the family forensic evaluator, who concluded that grandparents had continued to blame others for risks and trauma affecting the children, failed to take responsibility for how their own behaviors caused any harm to the children, not made any changes in their own parenting, and lacked the capacity to meet the particular mental-health needs of S.S., L.S., and A.S. Regardless of failed communication between DCF and certain providers, the evidence in favor of stagnation from all the other service providers was strong. We do not reweigh evidence on appeal; our role is limited to determining whether credible evidence supported the trial court's

findings. In re A.F., 160 Vt. at 178. And we will not speculate as to whether grandparents might have achieved better results under different circumstances. This exercise in hindsight would undermine the family division's "single-minded focus on the juvenile before the court." In re B.S., 166 Vt. 345, 353 (1997) (quotation omitted); see also id. ("The Legislature has not called for an open-ended inquiry into how the parents might respond to alternative [DCF] services and why those services have not been provided. Such an inquiry ignores the needs of the child and diverts the attention of the court to disputes between [DCF] and the parents.").

Grandmother also argues that the court erroneously quashed grandmother's subpoena of the family forensic evaluator's file, which grandmother sought two months after the close of evidence but while the termination-of-parental-rights decision was pending. Grandmother contends that DCF, who filed the motion to quash, did not have standing to object to the subpoena and that the subpoena was timely because it sought information related to new issues that arose in the evaluator's rebuttal testimony. Grandmother asserts that it was critical for her own expert to be able to review the information she subpoenaed because the court relied on the evaluator's assessment of grandmother in concluding that grandmother could not resume parenting duties within a reasonable period of time.

The State contends that grandmother did not properly appeal the court's order or give the trial court a meaningful opportunity to address her arguments. Irrespective of preservation, we reject grandmother's arguments. Grandmother's subpoena effectively sought to reopen discovery two months after the close of evidence, following a four-day merits hearing. She does not contend she had insufficient time to conduct discovery before trial and it is unclear why she did not seek access to the forensic evaluator's file during discovery. In any event, grandmother chose not to depose the forensic evaluator, had a full and fair opportunity to cross-examine the evaluator at the merits hearing, and did not call her own competing expert witness to testify. We fail to see how grandmother was prejudiced by the court quashing this eleventh hour subpoena. See In re M.B., 147 Vt. 41, 44 (1986) (holding that "[r]eversal is required only where the error complained of results in undue prejudice"). We thus need not address the propriety of DCF's objection.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

William D. Cohen, Associate Justice