VERMONT SUPREME COURT
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Case No. 22-AP-005

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

JUNE TERM, 2022

In re G.D. & R.P., Juveniles	}	APPEALED FROM:
(A.D., Father* & K.P., Mother*)	}	
	}	Superior Court, Franklin Unit;
	}	Family Division
	}	CASE NOS. 144-9-20 Frjv; 196-11-20 Frjv
		Trial Judge: Martin A. Maley

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

Parents appeal the termination at initial disposition of their parental rights to two-year-old R.P. and one-year-old G.D. We affirm.

The Department for Children and Families (DCF) has been involved with mother and father for many years. Both parents were placed in DCF custody when they were children. R.P. was born to parents in August 2019. Immediately after R.P.'s birth, the Grand Isle State's Attorney filed a petition alleging that she was a child in need of care or supervision (CHINS). That petition was dismissed by the court. A month later, the State filed a second petition, which resulted in the court issuing emergency and temporary-care orders transferring custody of R.P. to DCF. A merits hearing was originally scheduled for January 2020 but was continued twice. A case plan was prepared in March 2020 and a permanency plan was filed in August 2020.

Meanwhile, in September 2020, G.D. was born. By that point, parents had moved to Franklin County. The State filed a petition alleging G.D. was a CHINS because mother had a previous sexual-assault substantiation and had not engaged in treatment, G.D.'s sibling R.P. was in DCF custody due to mental-health concerns and substance abuse, parents had not met R.P.'s nutritional needs when she was a baby, and neither parent had made progress in mental-health treatment or parenting skills. The court granted an emergency care order transferring custody to DCF. In October 2020, the parties agreed to transfer R.P.'s case to Franklin County.

A permanency hearing was held in December 2020 at which the court adopted a goal of reunification with both parents by February 2021 and adopted the permanency case plan submitted by DCF with certain modifications.

Later in December 2020, the court commenced a merits hearing, but the hearing did not conclude because the State indicated it needed more time to present evidence. In June 2021, parents stipulated to the merits of both petitions. The facts supporting the stipulation as to R.P. were that R.P. was admitted to University of Vermont Medical Center for poor weight gain and systolic heart murmur. Neither parent had engaged in the plan of services requested by DCF, placing R.P. at risk. The facts supporting the stipulation as to G.D. were R.P.'s hospital admission as well as parents' lack of acceptable housing and failure to make sufficient progress in counseling or parenting skills. In August 2021, DCF filed petitions to terminate parents' rights to both children. No timely disposition hearing was held.

The court held a one-day hearing in November 2021. Mother appeared remotely, and her attorney was present in the courtroom. Father appeared late due to a medical issue. Based on the testimony presented at the hearing, the court found that neither parent had adequately addressed the issues that led to the children entering DCF custody. It stated, "[w]hile there was insufficient court oversi[ght] in these matters this court observes that DCF worked diligently to support the parents and provided a clear outline of goals and expectations for the parents to achieve reunification with their children."

The various case plans prepared by DCF had similar action steps. Among other recommendations, parents were expected to engage in a Nurturing Parents course and Family Time Coaching, follow provider recommendations for feeding the children, attend all medical and dental appointments, obtain safe and stable housing, continue substance abuse treatment, and engage in mental-health counseling. In addition, mother was expected to apply for and attend the Lund program. The court noted that parents had continued to engage in substance abuse treatment, but found that parents had otherwise failed to meet most of the case-plan expectations. Both parents admitted that they had significant mental-health issues, including schizophrenia for father and PTSD for mother. However, DCF was unable to determine whether father ever engaged in treatment and mother did not begin therapy until 2021. Parents were also expected to maintain safe and stable housing. In July 2020 they were living in a small, crowded, and unsafe trailer in the backyard of father's parents' home. Later in 2020, they moved into father's parents' unfinished basement, which DCF determined was not suitable for children. Mother's application to the Lund program was denied in February 2021 after mother indicated that she did not want to attend that program. By the time of the hearing, mother was residing in a motel.

Various services were provided to help mother and father improve their parenting skills. Visits with the children were interrupted for two months in 2020 due to the pandemic, but by the summer of 2020 parents had supervised visits three times a week. Visits became more frequent for a period after G.D. was born. However, parents subsequently became inconsistent in their attendance. Parents' visits were eventually separated to allow them to build skills independently and to reduce aggressive behavior between them.

Mother successfully completed Family Time Coaching after two years. However, mother's visits with the children decreased over time and at the time of the hearing she was having one visit per week with the children. Father did not attend Family Time Coaching consistently and was terminated from the program. Father had not seen the children since June 2021. Mother and father were frequently late to visits and required significant support to care for R.P. The foster parents reported that the children had sleep disturbances and other behaviors after visits. After one visit in July 2021 R.P. returned home very upset, biting, screaming, and acting aggressively toward her sister. After another visit with mother in September 2021, R.P.

was completely nonresponsive. The foster parents were sufficiently concerned that they called DCF for assistance and sought medical intervention. R.P. eventually recovered and appeared to be her normal self.

Neither parent attended any of the children's medical appointments. Mother refused to follow some of the pediatrician's recommendations for feeding R.P. Parents had not been consistently able to interact safely with each other, and therefore were unable to coparent the children. They were not able to independently provide services for the children and had not developed a financial plan for their support.

The court found that mother and father did not have a consistent and healthy relationship with the children and did not play a constructive role in their lives. In contrast, R.P. and G.D. were strongly bonded to their foster parents and each other, and the foster parents were committed to adopting both children. The court found that mother and father would not be able to assume parental duties within a reasonable time because they each had significant unaddressed mental-health issues, father had failed to successfully complete parent coaching, neither parent had safe and stable housing, neither parent had developed a financial plan for caring for the children, both had been inconsistent with visitation, and neither parent had demonstrated they were able to meet the needs of the children without support from DCF. The court concluded that termination of parental rights was in the children's best interests. Both parents appealed.

The court may terminate parental rights at the initial disposition stage in a CHINS case if it finds by clear and convincing evidence that termination is in the best interests of the child. In re J.T., 166 Vt. 173, 177 (1997). The court must consider the statutory criteria in assessing the child's best interests. 33 V.S.A. § 5114(a). The most important factor is whether the parent will be able to assume or resume parenting duties within a reasonable period of time. In re J.B., 167 Vt. 637, 639 (1998) (mem.). We will uphold the court's findings unless they are clearly erroneous. In re J.T., 166 Vt. at 177.

We first address mother's arguments on appeal. Mother claims the court erred in finding that she lacked stable housing because at the time of the hearing she was living in a state-funded hotel room. Mother argues that the evidence showed she was actively working to find housing but had been stymied by a shortage of available rental housing. We see no error in the court's finding. A family-needs specialist who worked with mother testified that mother did not have permanent housing during the pendency of the case. At the time of the hearing, mother had obtained a motel room with the assistance of Voices Against Violence, but the specialist described this arrangement as "temporary." Similarly, a DCF worker testified that mother had moved into a motel room and was working with a case manager to identify long-term housing. The case worker testified that mother continued to reside in the motel because she was homeless. Mother told the DCF worker that she couldn't find an apartment because they were hard to find and because she had a dog and cat that she refused to give up. However, mother had been offered a trailer and an apartment and had turned them both down. This evidence supports the court's finding that mother had not obtained stable long-term housing.

Mother and father both argue that mother was deprived of due process because mother's attorney refused to be present with her in the courtroom due to her unvaccinated status.[*] "[S]tate

[*] In his brief, father makes several arguments on mother's behalf. Neither mother nor the State objected to father's standing to raise these arguments, which are fully briefed. We

intervention to terminate the relationship between a parent and the child must be accomplished by procedures meeting the requisites of the Due Process Clause." Santosky v. Kramer, 455 U.S. 745, 753 (1982) (quotation and alterations omitted). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." In re C.L.S., 2021 VT 25, ¶ 19 (quoting Mathews v. Eldridge, 424 U.S. 319, 333 (1976)). "The provision of counsel to both parents and children is required by statute and is an important part of ensuring that termination proceedings are conducted fairly and accurately." In re L.H., 2018 VT 4, ¶ 11, 206 Vt. 596.

The record does not support mother's claim that she was deprived of the assistance of counsel. Both mother and her attorney appeared remotely at the hearing. The court asked mother's attorney if mother understood that she had a right to be present in the courtroom. The attorney responded, "I believe she does, Your Honor. She has indicated to me that she is not vaccinated and . . . I informed her that I would not be there if she was not vaccinated, but she was welcome to be there." The court asked mother if she was comfortable proceeding remotely. Mother stated, "I'm going to have to be, but you know, like, I really don't want this to happen." The court then told mother that she had a right to appear in person regardless of her vaccination status. It acknowledged her comment that she did not want the termination proceeding but explained that the hearing had to go forward. The court asked mother again whether she preferred to appear in person or remotely. Mother responded, "I'm going to stay right here so people can't see me cry." The court then began the hearing. Both mother and her attorney were present throughout the proceeding. At one point, mother requested to go into a breakroom so that she could consult her attorney privately. The court went into recess, and after the two conferred by phone, the hearing resumed.

This record demonstrates that mother was provided with assistance of counsel at the termination hearing. There is no indication that mother was unable to communicate effectively with counsel or that counsel's defense of mother was hampered by her decision to appear remotely. Mother did not express a desire to appear in person, and she does not articulate how the outcome of the hearing would have been different if counsel had appeared in person. We therefore find this claim to be without merit.

We turn to father's arguments on appeal. Father first claims that the court erred in several of its findings. Like mother, he argues that the court erred in finding that mother lacked stable housing. As we concluded above, this finding was supported by the record. Father next argues that the court erroneously found that he and mother planned to co-parent the children. This claim fails because the court did not make such a finding. Instead, it found that parents had not been able to interact safely with each other and therefore were unable to co-parent the children. Father also asserts that the court erroneously found that a permanency plan had been approved in December 2020. Again, the record belies this claim. At the December 7, 2020, permanency hearing for R.P., the court expressly approved the permanency case plan submitted by DCF in August 2020. We therefore see no error in these findings.

Father contends that the court erred in failing to make any findings regarding father's medical condition, which, he asserts, impacted his ability to resume parenting. However, there was virtually no evidence presented regarding the nature of father's illness or how it affected his

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accordingly address the arguments on their merits. See In re J.G., 2010 VT 61, ¶ 12 n.1, 188 Vt. 562 (mem.).

parenting ability. The only testimony on this issue was from the family-needs specialist, who stated that father frequently called out sick from visits "because he was up all night or he was not feeling well. He didn't really specify in-depth of what that illness was." When father's attorney asked the specialist if father had shared with her that he had hepatitis C, she stated that he had "minimally shared that with me . . . but that was never a reason why he said he was ill." Father did not present any evidence regarding his condition or argue that it was material to the issues before the court. The court was not required to make a finding in favor of father based on this circumstantial record. See In re M.E., 2019 VT 90, ¶ 20, 211 Vt. 320 (noting that trial court is not required to believe all testimony not directly contradicted or make findings on every item of evidence presented).

We also reject father's argument that the court failed to make an individualized assessment of each parent in analyzing their respective abilities to resume parenting within a reasonable time. While many of the court's findings applied to both parents, the record supports these findings, including that neither parent had secured stable housing or was able to independently care for the children on their own. Further, the court made findings specific to each parent. As to father, the court found that he was living in unsafe housing, had not visited the children for months, and had not attempted to address his significant mental-health issues. The court acknowledged that mother had made some progress, as evidenced by her successful completion of Family Time Coaching. But her visits with the children had decreased over time, she had barely begun to treat her own mental-health issues, she did not have stable housing or a financial plan to care for the children, and she had not demonstrated an ability to independently care for them without supervision. These findings are supported by the record and in turn support the court's determination that neither parent was able to resume or assume a parental role within a reasonable time, which is "the most important factor" in the best-interests analysis. In re J.B., 167 Vt. at 639.

Father contends that parents were deprived of due process because of the delays in the case. We agree that there were significant delays and that the court did not comply with the timelines set forth in the statute. See 33 V.S.A. §§ 5313, 5317 (requiring CHINS merits hearing to be held within sixty days of petition and disposition hearing to be held within thirty-five days of merits adjudication). Over a year and a half elapsed between the filing of the petition in R.P.'s case and the merits adjudication, and disposition took another five months. However, the statutory time limits are "directory and not jurisdictional." In re M.B., 158 Vt. 63, 67 (1992) (quotation omitted) (holding delay of more than one year between filing of petition and merits hearing did not deprive mother of due process). Parents were made aware at the beginning of the case of the issues that led to state intervention and received extensive services and supports for over two years. Parents have therefore not demonstrated how the delays altered the outcome here; if anything, parents received extra time and resources to improve their situation. See In re H.T., 2020 VT 3, ¶ 27, 211 Vt. 476 (concluding delay of two-and-a-half years between merits adjudication and disposition order was harmless error because parents were on notice of deficits they needed to address and received comprehensive services and supports throughout period).

Father argues that because termination was sought at initial disposition, mother was never afforded a chance to challenge DCF's recommendation that she undergo a psychosexual evaluation. He argues that this recommendation was unfounded because it was based on a substantiation for sexual abuse from 2004, when mother was sixteen years old. The record shows that this was not the sole basis for the recommendation, however. Mother had also been the victim of sexual abuse by a family member when she was a child and was substantiated in

2018 for placing a ten-month-old at risk of sexual harm. DCF recommended the evaluation because it was concerned that mother's victimization and offending behaviors had never been addressed. In any event, the court did not rely on mother's childhood substantiation or her failure to submit to a psychosexual evaluation in its analysis of the children's best interests. Father therefore has not demonstrated that mother's inability to litigate that aspect of the proposed case plan made a significant difference to the outcome in this case.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

William D. Cohen, Associate Justice