

VERMONT SUPREME COURT  
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Case No. 22-AP-041

*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**

JULY TERM, 2022

In re D.C., Juvenile	}	APPEALED FROM:
(R.C., Father* & A.C., Mother*)	}	
	}	Superior Court, Bennington Unit,
	}	Family Division
	}	CASE NO. 20-JV-00166
		Trial Judge: Kerry Ann McDonald-Cady

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

Parents appeal from the termination of their rights in D.C. They essentially challenge the trial court's assessment of the weight of the evidence. We affirm.

D.C. was born to parents in September 2020. Parents have two other children together and their rights in those children have been terminated. Mother has four additional children, all of whom have been removed from her care. Father's rights in another child were terminated as well. The court found that the main risk factors for mother included: a lack of capacity to execute parenting skills; inconsistent visitation; substance-abuse issues with alcohol; lack of engagement with the Department for Children and Families (DCF) and service providers; and issues of domestic violence with father. Father's risk factors included: lack of engagement with DCF and service providers; inconsistent visitation; substance-abuse issues with alcohol; struggles with anger management; and issues of domestic violence with mother.

D.C. was taken into custody at birth pursuant to an emergency care order. Although DCF requested continued custody at the temporary care hearing, the court placed D.C. with mother in September 2020 pursuant to a conditional care order (CCO). The CCO was vacated in early October 2020 after DCF expressed concern about mother's capacity to meet D.C.'s daily needs, including failing to follow safe sleep practices. A DCF case worker found numerous safety hazards in D.C.'s crib, including blankets and pillows inside the crib along with cat hair and cat litter. Mother had seven cats inside her one-bedroom apartment.

In January 2021, D.C. was adjudicated as a child in need of care or supervision (CHINS). DCF's case plans contained numerous action steps for each parent. Mother was required, among other things, to show that she could parent D.C., meaning that she would attend all visits, feed and change D.C. as needed, and follow the recommendations of providers to meet his needs. Mother was also required to continue attending mental-health counseling. Father was required, among other things, to attend all visits with D.C., complete a psychosexual assessment, provide a copy of the assessment to DCF, and follow any recommendations for treatment. DCF sought to terminate both parents' rights at initial disposition. Following a hearing, the court granted its request.

The court's findings are essentially unchallenged on appeal. The court found that D.C. has been living with the same foster family since he was seven-weeks old; he was sixteen-months old at the time of the court's decision. D.C. was thriving in his foster parents' care, and they were meeting his needs.

Mother missed numerous visits with D.C. while he was in custody, which had a negative impact on the Family Time Coaching she received via Easter Seals and led to a reduction of her visitation time. DCF tried several shared parenting meetings with both mother and father, all of which were unsuccessful. Mother's last appearance at Family Time visits was in August 2021 and Easter Seals stopped providing services to mother in October 2021 due to her lack of engagement. When mother did attend Family Time visits, she struggled to meet D.C.'s needs. She could not retain the skills taught to her, such as holding D.C. while she bottle-fed him, or demonstrate those skills without prompting. Mother was not consistently engaged with D.C. during visits and did not ask questions about his development.

The DCF caseworker expressed concern about mother's inconsistent attendance at visits and her cognitive capacity to parent. The case worker noted that mother had been referred to Family Time coaching in prior cases and those services were similarly closed due to lack of engagement. The caseworker observed that mother had limited interactions with D.C. during visits despite the modeling offered by service providers. Mother also failed to recognize hazards to D.C., including choking hazards. The caseworker questioned mother's commitment to learning how to parent given her lack of attendance and engagement with Easter Seals and particularly given that mother was aware through her prior cases how important it was to be engaged in these services. Mother also failed to follow through with developmental disability services offered to her, leading to that service being closed in November 2021. Additionally, mother stopped working with a mental-health therapist.

The court noted that, overall, mother's disposition case plan goals were the same goals as in prior case plans and mother had not demonstrated her ability to parent D.C. despite repeated attempts to provide her the opportunity to do so. Mother blamed DCF and felt she did nothing to warrant the removal of her children from her care.

Turning to father, the court found that his visits with D.C. went very well. Father came prepared for the visits and he was fully engaged with D.C. He was willing to take recommendations offered by the visit supervisor and demonstrated that he could care for D.C. during visits. D.C. was excited to see father and sad when they parted. Father cancelled numerous visits, however, which was a concern. Father made progress in other areas as well.

He completed a mental-health assessment and attended therapy addressing his mental health and substance use, although he missed some meetings and had not completed his mental-health counseling. He was better able to manage his anger and he was maintaining his sobriety.

Based on these and other findings, the court concluded by clear and convincing evidence that termination of parents' rights was in D.C.'s best interests. It concluded that all the statutory best-interest factors supported termination of mother's rights. It found that mother did not fully nurture her bond with D.C. due to inconsistent visitation and limited engagement during visits that did occur. She did not play a constructive role in D.C.'s life. Mother failed to take advantage of the most accessible case-plan goal—attending visits—and she lacked insight into how missed visits diminished her ability to bond with D.C. D.C. was well-adjusted to his foster home and happy and playful in the company of his foster parents. D.C.'s routine was much more limited with mother and his demeanor was markedly different during their visits. The court found that the evidence overwhelmingly showed that mother could not resume her parental duties within a reasonable time. It explained that mother had been involved with DCF since 2012 when two of her children were removed from her care due to neglect. Despite multiple services being offered, mother had not engaged with her service providers over the course of approximately nine years, resulting in five other children being removed from her care, including D.C. Mother's lack of parenting capacity at times placed D.C. at risk and mother continued to lack insight into why D.C. was removed from her care. The court found that D.C. had been in custody all his life and currently needed permanency.

The court found that father presented a closer case. It recognized that father and D.C. shared a loving bond but concluded that this was outweighed by the remaining factors, all of which supported termination. As previously noted, D.C. was well-adjusted to his foster home. He was not connected to father's home or community; his visits with father occurred at a neutral location. D.C. had not been raised in the home parents shared. D.C. did not have a relationship with father's family.

Father became very engaged in addressing his case-plan goals as of January 2021. He stopped drinking and had maintained his sobriety. His sobriety helped improve his relationship with mother. He completed a mental-health and substance-abuse assessment and attended weekly substance-abuse counseling group sessions. He had nearly completed an anger-management class. He had been able to better regulate his anger, even under stress, which was a dramatic change. Father also completed a parenting class and benefitted from it. The court found, however, that father had not taken full advantage of the opportunity to demonstrate his parenting skills due to missed visits with D.C. Between January 2021 and December 2021, father cancelled twenty-seven of seventy-two visits and he lacked insight into how his inconsistent attendance negatively affected his ability to reunify with D.C. The court further found that father's delay in completing a psychosexual evaluation also had a negative effect on his ability to assume his parental duties. It explained that father was substantiated for sexual abuse as a minor and he was convicted of sexual misconduct. DCF sought the psychosexual evaluation to help assess the risk that father posed to D.C. DCF could not conduct that analysis here because it was provided with the report just before trial. The court found that the late submission of this report was due to father's lack of follow-through. The court explained that, during D.C.'s time in custody, father had only achieved visits twice a week for one hour for fourteen months. It would take time for DCF to review the psychosexual assessment and assess

father's risk to D.C. Father would also need significant time to work toward achieving overnight visits. The court concluded that father could not make the necessary progress within a reasonable time as measured from D.C.'s perspective given D.C.'s need for permanency.

Finally, as noted above, the court found that father and D.C. had a loving bond that was parental in nature. D.C. was also bonded with his foster family who consistently met his daily needs. The court concluded, however, that father's continuing relationship with mother and the risk that she posed to D.C. supported the termination of father's rights. If D.C. was reunified with father, he would also be reunified with mother as parents lived together as a couple. Reunification with mother was not in D.C.'s best interests given the danger it posed. Mother lacked the capacity and was unwilling to learn critical parenting skills to keep D.C. safe. The court concluded that father did not appreciate the risk that mother posed to D.C. and blamed DCF for removing D.C. from mother's care. It concluded that father's love for D.C. and D.C.'s love for father was not sufficient to overcome parents' inability to ensure D.C.'s basic safety needs and meet D.C.'s need for consistent parenting. Both parents appeal from this decision.

As the trial court explained, parental rights may be terminated at initial disposition where the court finds by clear and convincing evidence that termination is in a child's best interests. 33 V.S.A. § 5318(a)(5); In re N.L., 2019 VT 10, ¶ 9, 209 Vt. 450. To determine the best interests of a child, the court must consider the factors set forth in 33 V.S.A. § 5114, the most important of which is the likelihood that the natural parent will be able to resume their parental duties within a reasonable time. See In re B.M., 165 Vt. 331, 336 (1996). As long as the court applied the proper standard, we will not disturb its findings on appeal unless they are clearly erroneous; we will affirm its conclusions if they are supported by the findings. In re G.S., 153 Vt. 651, 652 (1990) (mem.). "We leave it to the sound discretion of the family court to determine the credibility of the witnesses and to weigh the evidence." In re N.L., 2019 VT 10, ¶ 9, 209 Vt. 450 (quotation omitted).

Both parents argue on appeal that the court should have weighed the evidence differently. Father argues that he can parent D.C. and that this, along with his bond with D.C., should have outweighed the other statutory factors. He contends that his bond is more significant than his continued relationship with mother and his late disclosure of his psychosexual assessment.

These arguments are unpersuasive. The court recognized the progress father had made and his loving bond with D.C. It concluded, however, that the balance of the statutory factors supported termination of father's rights. See In re M.B., 162 Vt. 229, 238 (1994) (recognizing that "[p]ublic policy . . . does not dictate that the parent-child bond be maintained regardless of the cost to the child"). We need not repeat the court's findings here. We leave it to the trial court to weigh the evidence. See In re S.B., 174 Vt. 427, 429 (2002) (mem.) ("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 . . . parental rights . . ."). While father disagrees with the court's conclusions, he fails to demonstrate any abuse of discretion.

Mother similarly argues that the court erred in assessing the evidence. Mother first argues that D.C. could not be CHINS because she was awarded conditional custody of him for a short period in September 2020 and, according to mother, there were only vague allegations of domestic violence. Mother contends that the court placed too much weight on the past and

asserts that she made more progress in this case than in prior cases where other children were removed from her care. Mother also argues for the first time on appeal that DCF should have provided her with different services than in her prior juvenile cases.

There was no error. At a CHINS merits hearing, the State must prove by a preponderance of the evidence that a child is in need of care or supervision. In re L.M., 2014 VT 17, ¶ 19, 195 Vt. 637. The court made numerous findings of fact in support of its CHINS decision, none of which mother challenges on appeal. The findings support the court's conclusion that D.C. was CHINS.

In reaching its conclusion, the court expressed concerns about parents' relationship and the risk that that relationship posed to D.C. Mother initially lied about father living in the home and father appeared under the influence during several visits from DCF; father was also belligerent and refused to let DCF enter the home at one point. Mother had obtained multiple temporary relief-from-abuse orders against father, which were vacated after mother failed to appear at the final hearings. The court recounted mother's significant history with DCF, including the removal of six of her children from her care; it identified the risk factors at issue in those cases. Based on its findings, the court concluded that the State established that D.C. was without proper parental care at the time of his birth. It noted that parents' residual rights in another child had been recently terminated; mother had failed to engage in services during prior cases; and multiple children were removed from her care due to neglect and/or risk of neglect. The court also credited DCF's concerns that mother could not parent an infant due to her inexperience and cognitive challenges. The court acknowledged that mother was more engaged at the time of D.C.'s birth than she had been previously, but it found that the danger posed by father's presence in the home tipped the scales. The court recounted in detail the concerns associated with father's presence in the home. It also noted father's refusal to engage in the case plans for two other children, leading to the termination of his rights in these children. It cited concerns about father's volatile temper and his mental health stability. The court found that, as of D.C.'s birth, father still posed a threat to mother's safety and a significant risk of harm to D.C.

Like father, mother simply wars with the trial court's assessment of the evidence. It is well-established that the trial court can consider parents' treatment of other children in determining risk of harm. See In re J.C., 2016 VT 9, ¶ 7, 201 Vt. 192 (recognizing that "[t]he State is not required to demonstrate that the child has suffered actual harm, but rather is subject to a risk of harm" and that it is "well settled that the family court may rely on evidence of the treatment of a sibling in concluding that a child is a CHINS" (brackets and quotation omitted)); see also In re J.J.P., 168 Vt. 143, 148 (1998) ("The court may rely on evidence of a parent's treatment of siblings to show a pattern of abuse and neglect, and a general inability to protect the children from harm."). We leave it to the trial court to determine how much weight to give this evidence. The court recognized that mother was more engaged at the time of D.C.'s birth than in prior cases but it nonetheless determined, based on the evidence discussed above, that D.C. was CHINS. While mother contends that father did not pose a risk to D.C., the court determined otherwise. It found that father's volatile temper, substance use, and mental health instability posed a significant risk to the child. Mother fails to show that the court erred in finding D.C. to be CHINS.

Turning to the termination-of-parental-rights decision, the court’s unchallenged findings, recited above, amply support its conclusion that all of the statutory factors support termination of mother’s rights. Mother was responsible for failing to attend visits and engage in services, and the court found the evidence overwhelming that she could not parent D.C. within a reasonable time. Mother did not challenge the appropriateness of the services offered to her below and we reject her attempt to do so for the first time on appeal. See In re A.M., 2015 VT 109, ¶ 28, 200 Vt. 189 (concluding that parent “waived argument by failing to raise it below” and reiterating that “[t]o properly preserve an issue for appeal a party must present the issue with specificity and clarity in a manner which gives the trial court a fair opportunity to rule on it” (quotation omitted)). There was no error in the court’s decision.

Affirmed.

BY THE COURT:

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Harold E. Eaton, Jr., Associate Justice

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William D. Cohen, Associate Justice

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Nancy J. Waples, Associate Justice