



*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 B.T., Juvenile	}	APPEALED FROM:
(H.T., Mother* & M.T., Father*)	}	
	}	Superior Court, Bennington Unit,
	}	Family Division
	}	CASE NO. 20-JV-00192
		Trial Judge: Kerry Ann McDonald-Cady

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

Parents appeal from the termination of their rights in daughter B.T. We affirm.

B.T. was born in June 2019. Parents initially lived with B.T. in New York, and New York Child Protective Services (CPS) had concerns about parents' homelessness and their inability to safely care for B.T., including their use of physical discipline. Parents moved to Vermont while a New York CPS assessment was pending. The Vermont Department for Children and Families (DCF) began working with the family in July 2020. In September 2020, father was arrested for allegedly assaulting B.T. The criminal division found probable cause for an aggravated domestic assault charge against father based on reports from two witnesses. These witnesses observed father scream obscenities at B.T. while parked in a McDonald's parking lot. Father exited the car, still screaming, and shook and punched B.T., who was in her car seat. Mother was in the front seat during the alleged assault. The criminal division imposed a condition of release prohibiting father from having any contact with B.T., which remained in place throughout the juvenile proceedings.

B.T. was taken into the emergency custody of DCF and remained there following a temporary-care hearing. Father was extremely resistant to meeting with the DCF caseworker; he refused to meet in person and would not return phone calls. When the DCF caseworker did connect with father, he was angry and difficult to calm down or redirect, which made it difficult for her to discuss case plan goals with him. In March 2021, parents admitted that B.T. was a child in need of care or supervision (CHINS). While parents denied that father assaulted B.T., they acknowledged that father was charged with assaulting her and that witnesses reported that mother failed to protect B.T. Mother also admitted that, due to her health, she relied upon father to assist her in caring for B.T.

DCF prepared disposition case plans that contained numerous steps for parents with a goal of reunification with parents in six months. The court adopted the disposition report and

approved the reunification goal. By August 2021, DCF changed the goal to adoption and moved to terminate parents' rights. Following a hearing, the court granted its request.

The court's findings are essentially unchallenged on appeal. Mother and father are a couple who live together. They denied that they posed any safety risks to B.T. and they denied that father assaulted B.T. Parents had unstable housing and moved between hotel rooms. They declined housing that was offered to them. Parents made little progress in addressing the case-plan goals. Father's anger presented a significant issue in this case. B.T. was visibly afraid of men. Father was very angry in all his interactions with the DCF caseworker, and he could not deescalate; he also left the case worker angry voicemail messages. Service providers declined to work with father due to his angry and menacing behavior. Father consistently denied all safety concerns raised with him by the caseworker. Father took a parenting class but gained no insight from it; he told the DCF caseworker that he learned not to hit your kid because you would leave bruises. Father accepted no responsibility for B.T.'s removal from parents' care; he did not ask the caseworker about B.T. Father stopped participating in an anger-management class because he did not think he needed it. He also failed to complete a developmental assessment.

Mother similarly failed to make progress in addressing the case-plan goals. She was not bonded with B.T. and had limited interactions with her during visits. When mother approached B.T. for a hug, B.T. physically pushed mother away. Mother lacked insight into what she needed to work on, despite having completed a parenting class. She struggled during supervised visits and was at times rough with B.T., causing the child distress. She did not call B.T. by name, despite prompting. By June 2021, Family Time Coaching was terminated due to mother's lack of progress, and Easter Seals services were also closed. Mother's contact with B.T. was reduced to two days per week of supervised visits. Mother stopped participating in mental-health treatment after May 2021. She did not complete a developmental assessment. She did not follow through with her medical doctor to ascertain what was causing her physical discomfort. The caseworker observed, however, that mother's mobility issues did not appear to interfere with her parenting; instead, it was mother's lack of a bond with B.T. and her lack of parenting skills that had a negative impact on her visits with B.T.

At the time of the termination hearing, parents lived in a rodent-infested motel room, which they acknowledged was unsafe and inappropriate for B.T. Father's anger remained uncontrolled at the time of the termination hearing. When a DCF caseworker visited parents at their motel room, father became frustrated when their dog whimpered in excitement. When the caseworker asked if she could pet the dog, father told the dog to shut up, said he would shove the dog in the bathroom, and then became even angrier and raised his hand as if to strike the dog. The dog stopped whimpering and began to cower. Father become very tense and red in the face, and he moved from a sitting position to a standing position.

The court found that B.T. made significant progress in her foster home and was bonded to her foster parents. Through time and effort, she overcame her fear of her foster father. The foster family also successfully worked with an occupational and physical therapist to develop B.T.'s gross motor skills. The foster parents love B.T. and would like to adopt her if possible.

Based on these and other findings, the court concluded that parents stagnated in their ability to parent B.T. As reflected above, father continued to lack insight into his anger and the risk that it posed to B.T. He gained no benefit from anger-management counseling or a parenting class. He remained angry and refused to discuss or acknowledge child safety risks. He stopped mental-health counseling because he believed he no longer needed it, despite the

overwhelming evidence to the contrary. He demonstrated no willingness to change. Father also failed to complete a developmental assessment despite having seventeen months to do so. His housing was unsafe and unstable. The court found father's case-plan goals were within his control and they could have led to progress in his case, even if visiting with B.T. was outside of his control.

Mother similarly failed to make progress. She lacked parenting capacity and mental-health stability. Mother did not recognize B.T.'s needs during visits and they had limited interaction with one another. Mother did not demonstrate any benefit from engaging in parenting education services. Mother chose to live in a location that impacted and limited the time she had to devote to important case-plan goals; because of her housing choices, she spent hours traveling by bus to visit with B.T. Her mental-health treatment was a very important case-plan goal as the evidence showed that mother lacked an understanding of the risks to her and B.T.'s safety due to father's anger. Mother was discharged from her mental-health counseling due to a lack of follow-through; she attended only three appointments despite a recommendation for weekly appointments. Mother believed that she had a close relationship with B.T. despite the overwhelming evidence to the contrary, which raised further concerns about her mental-health stability.

Turning to the best-interest factors, the court concluded that they all supported termination of parents' rights. It reiterated that B.T. was bonded with her foster family, and they were meeting her needs. Mother's visits with B.T. were not nurturing. Father had no contact with B.T. after September 2020, and he made no attempt to seek modification of his conditions of release to allow such contact. More significantly, father did not seek out information about B.T. from DCF, even when given the opportunity to do so. The court also found it compelling that B.T. exhibited a fear of men, including her foster father initially. Based on the evidence related to father's anger, the court found by clear and convincing standard that B.T. was exposed to father's anger, which caused her fear of men.

B.T. was well-adjusted to her foster home. She did not have a community or home while living with parents. Her visits with mother occurred in a supervised office setting due to safety concerns raised by mother's conduct during visits. Parents' current home was unsafe for B.T. The court concluded that neither parent could resume parenting B.T. within a reasonable time. It explained that B.T. had been in her current foster home for seventeen months, which was half of her life. She needed permanency and a stable, consistent care provider. Providing additional time to parents to work on case plan goals would not result in safe reunification.

Despite many opportunities to develop a bond with B.T. and learn parenting skills, mother failed to consistently avail herself of those opportunities. B.T. did not identify mother as her parent. Mother also failed to recognize or acknowledge that father had a significant issue with anger that posed a risk to B.T. As support for this conclusion, the court cited father's angry behavior during parents' monthly meetings with DCF, as well as the testimony of another DCF caseworker. The court found it significant, moreover, that father had gestured to strike at what he claimed was his emotional support animal, which provided insight into the degree of his mental-health instability. It also illustrated mother's inability to recognize the risks posed by his behavior. As previously noted, father gained no benefit from parenting class or mental-health counseling, and he believed he had no anger-management issues. Mother remained with father and sought to coparent with him, which further demonstrated her inability to parent B.T. within a reasonable time. For his part, father had no personal knowledge of B.T.'s needs, and he did not seek out any information about B.T. He was a stranger to her.

Finally, the court found that father did not play a constructive role in B.T.'s life and that mother's lack of parenting capacity resulted in unconstructive, and at times traumatic, contact with B.T. Mother's bond with B.T. did not improve over the seventeen months that B.T. was in custody because mother did not nurture that bond or understand B.T.'s needs. The court found that providing mother more time to work on her case-plan goals would not improve her parenting capacity and would only be detrimental to B.T.'s welfare. The court thus concluded that termination of parents' rights was in B.T.'s best interests. This appeal followed.

Parents argue on appeal that the court's decision turned on father's alleged assault of B.T. in September 2020 and that the court only found by a preponderance of the evidence that father assaulted B.T. They maintain that, without a finding of assault by clear and convincing evidence, father could not have posed a threat of harm to B.T., and he therefore had no need to comply with the case plan goals. According to parents, father's failure to comply with the case-plan goals consequently did not establish his inability to parent B.T., and, if he can parent B.T., it follows that mother can parent B.T. as well. Parents also note that father's lack of contact with B.T. was out of father's control.

We find these arguments unpersuasive. At the outset of its decision, the court described the witnesses' reports of the assault that formed the basis of probable cause for the charge of aggravated domestic assault. The court noted that there was no testimony from witnesses at the hearing with personal knowledge of the incident other than from mother, who denied it occurred. Given this, the court found the allegations of the assault only by a preponderance of the evidence.

It is evident, as set forth in detail above, that the court's decision did not turn on father's alleged assault of B.T. Instead, it turned on father's demonstrated failure, after B.T. was in DCF custody, to control his anger and otherwise make any progress in his case-plan goals. His angry outbursts are documented above, and his anger remained uncontrolled at the time of the termination hearing. The court found by clear and convincing evidence that B.T. was exposed to father's anger, which caused her fear of men. Father lacked insight into the risk his behavior posed to B.T., as did mother. Father failed to meet any of his other case-plan goals. The court's termination of mother's rights did not rest solely on her decision to remain with father. Like father, mother failed to make any progress in addressing the case-plan goals, including failing to nurture a bond with B.T. or gain any parenting skills.

The court here "made its determination based on evidence produced at the termination hearing and applied a clear and convincing evidence standard." In re A.W., 167 Vt. 601, 604 (1998) (mem.) (finding no error in trial court's reference to several findings made at earlier stage of proceeding by preponderance-of-evidence standard where court made independent findings based on evidence presented at termination hearing by clear-and-convincing-evidence standard and its decision was based on those findings). Its findings are well-supported by the record, and they amply support the court's conclusion that termination of parents' rights was in B.T.'s best interests. See In re A.F., 160 Vt. 175, 178-79 (1993) (explaining that in reviewing termination decision, this Court defers to trial court's findings of fact unless clearly erroneous and will uphold trial court's conclusions if supported by findings). To the extent that parents attempt to challenge their stipulation that B.T. was CHINS, that issue is not before us in this appeal. See In re C.P., 2012 VT 100, ¶ 17, 193 Vt. 29 (rejecting parents' attempts to collaterally challenge CHINS order in TPR proceeding). In any event, father's anger issues, aside from the alleged assault, were manifest in this case. They posed an obvious risk to B.T., including causing her to fear men, which the court found by clear-and-convincing evidence. Father's failure to address

his anger issues, and his failure to address the other case-plan goals, established stagnation and supports the conclusion that he cannot parent within a reasonable time. There was no error.

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