VERMONT SUPREME COURT
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Case No. 24-AP-017

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, 2024

In re A.B., Juvenile	}	APPEALED FROM:
(H.M., Mother*)	}	
	}	Superior Court, Chittenden Unit,
	}	Family Division
	}	CASE NO. 22-JV-00059
		Trial Judge: Michael J. Harris

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

Mother appeals from the termination of her parental rights in daughter A.B. We affirm.

The court made the following findings. Mother is the parent of three children, including two daughters: Ad.B., born in August 2020, and A.B., born in November 2021.[*] Shortly before Ad.B.'s birth, the Department for Children and Families (DCF) filed a petition alleging that Ad.B. was a child in need of care or supervision (CHINS). DCF was concerned by mother's lack of stable housing, her failure to access services, father's history of trauma, impulsivity, dysregulated behaviors and aggressiveness, and father's past DCF involvement and criminal history. Father had a significant history of involvement with DCF. Mother had been in DCF custody through age eighteen and was deemed eligible for developmental services. When Ad.B. was born, mother was under an adult public guardianship. The guardianship terminated just after the merits hearing in Ad.B.'s case.

Ad.B. was placed in the custody of her parents and paternal grandparents pursuant to a conditional custody order (CCO), which was modified several times after tensions developed between the parties. Parents stipulated that Ad.B. was CHINS in April 2021. A disposition plan was adopted in July 2021 and some of the action steps continued into subsequent plans, including plans for A.B.

A.B. was born prematurely in November 2021, and she was severely underweight. She was exposed to substance abuse by caregivers who were impaired, domestic violence, and unsafe individuals. A.B. had high needs and was later diagnosed with a rare genetic condition. Parents struggled to follow the pediatrician's recommendations regarding feeding. In January 2022,

[*] Mother's rights to Ad.B. were also terminated but mother failed to file a timely appeal as to Ad.B. Because DCF became involved with the family prior to Ad.B.'s birth, we recount the procedural history of this case from its outset.

A.B. was diagnosed with failure to thrive and spent a week in the hospital. That month, DCF filed a petition alleging that A.B. was CHINS.

Both children were both placed under a CCO with paternal grandparents in January 2022. At the urgent request of grandparents one month later, however, the CCO was precipitously revoked and the children were placed in DCF custody. Parents stipulated that A.B. was CHINS and her disposition plan called for reunification with parents in three to six months, followed by a six-month CCO.

Parents initially had parent-child contact (PCC) five days per week. Parents argued in front of the children, however, and their visits were split up. Mother failed to use the developmental services available and recommended for her. She was inconsistent in attending mental-health counseling and discharged from counseling several times for lack of engagement. Beginning in June 2022, mother missed an increasing number of PCC visits. After she missed twenty-four of twenty-five visits in May 2023, the court granted DCF's request to suspend her visits. Father's PCC was also suspended due to his nonparticipation. Mother did not take the basic steps needed to resume PCC and her last contact with the children was in May 2023. Mother was also inconsistent in attending the children's medical appointments and team meetings. Mother's use of developmental services declined over time. Police were called to parents' home on multiple occasions for domestic incidents and each parent pursued a relief-from-abuse order against the other.

In January 2023, DCF moved to terminate parents' rights. The following month, mother gave birth to a son, who was immediately subjected to a CHINS petition. Son was placed with paternal grandparents under a CCO. A.B. and Ad.B. were placed with the same foster family, where they were making progress. A.B. has an extensive treatment team to meet her specialized needs. Proper care for A.B. requires strict adherence and attention to her feeding and eating routines. The foster family was meeting A.B.'s needs and A.B. was bonded with them.

Based on these and other findings, the court concluded in a December 2023 order that mother had stagnated in her ability to parent and that termination of her rights was in A.B.'s best interests. The court explained that mother made little progress in addressing the case plan goals. It concluded that all of the statutory best-interest factors supported termination of mother's rights, including that mother was unable to resume parenting A.B. within a reasonable time as measured from A.B.'s perspective.

In reaching its conclusion, the court considered and rejected a request that the children be placed with paternal grandparents under a CCO. The court found that it was in the children's best interests to receive full and unconditional finality after twenty months in DCF custody. The children each had several prior placements and were now in a loving foster home with foster parents who wanted to adopt them. The court found it unclear if grandparents could provide the children with long-term stability. Grandparents proposed to take on the immediate and daily care of three very young children. The children had specialized needs with detailed protocols developed over many months. The court noted that past interactions between parents and grandparents had resulted in discord and neither grandparents nor parents had engaged in counseling that might help them navigate such issues. Mother failed to obtain mental-health counseling while father failed to obtain domestic violence and substance-abuse counseling. Neither parent had seen the children for more than five months at the time of the court's termination decision. Parents no longer played a role in A.B. or Ad.B.'s lives and, were they to resume involvement, the court found that it could result in regression of the gains the children

had obtained. The foster family provided consistency, stability, and a sense of emotional/developmental "place" for the children. The court recognized that grandparents would be a kin placement, but it concluded that the children's strong need for a permanent and stable home weighed in favor of denying the CCO. Mother appealed.

When considering a petition to terminate parental rights after an initial disposition order, the court must first determine if there has been a change in circumstances sufficient to justify modifying the existing disposition order. In re B.W., 162 Vt. 287, 291 (1994); 33 V.S.A. § 5113(b). "A change in circumstances is most often found when the parent's ability to care properly for the child has either stagnated or deteriorated over the passage of time." In re H.A., 153 Vt. 504, 515 (1990). If the court finds a change in circumstances, it must then consider whether termination is in the child's best interests using the factors set forth in 33 V.S.A. § 5114(a). "As long as the court applied the proper standard, we will not disturb its findings unless they are clearly erroneous, and we will affirm its conclusions if they are supported by the findings." In re N.L., 2019 VT 10, ¶ 9, 209 Vt. 450 (quotation omitted).

Mother first argues that the court erred in finding that she stagnated in her ability to parent. Mother contends that she substantially complied with the case plan by obtaining stable housing, completing a parenting class, communicating with DCF, and having a stable income. Mother acknowledges that she did not complete some of the case plan steps but maintains that she made substantial progress.

We find no error. The court's unchallenged findings support its determination that mother stagnated in her ability to parent A.B. As it found, mother failed to show that she maintained mental-health counseling, which was an ongoing concern with respect to her ability to provide safe care for A.B. Mother stopped attending team meetings, which allowed for coordination of services for both her and the children and were designed to help mother meet A.B.'s special needs. Mother did not show that she could apply skills that would allow her to independently and successfully care for A.B. She was discharged from Family Time Coaching for lack of engagement and she did not progress through the program to gain further parenting insight. Mother began missing visitation in 2022, and this continued to the point where mother had only one or two visits with A.B. between April and May 2023 and only one visit since then. Mother failed to take very basic steps to resume visitation with A.B., and she did not prioritize PCC or A.B.'s needs. The court found that mother effectively relinquished her role in A.B.'s life. These findings amply support the court's conclusion as to stagnation. Even if mother made some progress, that does not preclude a finding of changed circumstances. In re A.F., 160 Vt. 175, 181 (1993) ("[T]he mere fact that a parent has shown some progress in some aspects of his or her life does not preclude a finding of changed circumstances warranting modification of a previous disposition order."). "We leave it to the sound discretion of the family court to determine the credibility of the witnesses and to weigh the evidence." Id. at 178.

Mother's second argument is equally without merit. Mother asserts that the court should have granted a CCO to paternal grandparents. She notes that grandparents had previously been a placement for A.B. and Ad.B., and she contends that grandparents could provide A.B. with a safe and nurturing environment. She suggests that DCF should have provided grandparents more support during the initial placement.

The court's denial of the CCO request is well-supported by its findings, detailed above. Mother essentially wars with the court's assessment of the weight of the evidence, and we do not reweigh the evidence on appeal. See id.; see also Meyncke v. Meyncke, 2009 VT 84, ¶ 15, 186

Vt. 571 (mem.) (explaining that arguments which amount to nothing more than disagreement with court's reasoning and conclusion do not make out case for abuse of discretion). We find no error.

Affirmed.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

Nancy J. Waples, Associate Justice