

VERMONT SUPREME COURT
109 State Street
Montpelier VT 05609-0801
802-828-4774
www.vermontjudiciary.org



Case No. 24-AP-106

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

SEPTEMBER TERM, 2024

In re H.D., Juvenile
(T.W., Father*)

} APPEALED FROM:
}
} Superior Court, Addison Unit,
} Family Division
} CASE NO. 22-JV-00567
} Trial Judge: John W. Valente

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

Father appeals the termination of his parental rights to ten-year-old son H.D. We affirm.

The family division found the following facts by clear and convincing evidence. H.D. was born in July 2014. He was in the custody of the Department for Children and Families (DCF) from 2018 to 2020. During this time, he lived with his maternal grandmother. He had some contact with father at the beginning of this period, but then had virtually no contact with father for over two years. The case was closed in December 2020 and H.D. was returned to mother's custody.

In April 2022, the State filed another petition alleging that H.D. was a child in need of care or supervision (CHINS) due to mother's substance abuse. The court transferred custody to DCF and H.D. was again placed in the care of his maternal grandmother. In May 2022, mother stipulated that H.D. was CHINS due to mother's substance abuse and educational neglect. In June 2022, the court issued a disposition order continuing custody with DCF and establishing a permanency goal of reunification with mother by December 2022.

At the beginning of this proceeding, father's whereabouts were unknown. He was nevertheless included in the disposition case plan, which called for him to refrain from illegal activity, comply with conditions of release and furlough, engage in parent education, and be able to articulate the impact that his absence had on H.D.

DCF eventually determined that father was incarcerated and tried several times to contact him at the corrections facility. In November 2022, a DCF worker was able to contact father and sent him a copy of the case plan. Father did not initiate contact with DCF or H.D.'s foster parent between November 2022 and March 2024.

In February 2023, DCF amended the case plan goal to adoption and filed a petition to terminate both parents' rights. Mother voluntarily relinquished her parental rights at a hearing in August 2023, at which father was present.

At the time of the final termination hearing in March 2024, father was still incarcerated. He expected to be released in April 2024 after serving his full sentence. The court found that father made little effort to engage with H.D. during the pendency of the case, other than writing two letters to H.D. in the spring of 2024. He had not communicated with H.D.'s foster parent and did not know who H.D.'s teachers or medical providers were. He did not know H.D.'s current medical, educational, or social needs, or who H.D.'s friends were. He had been incarcerated for most of H.D.'s life.

The court found that father had stagnated in his progress by making no improvement in his ability to properly care for H.D. since the case began. It then examined the factors set forth in 33 V.S.A. § 5114(a). It found that while father loved H.D., H.D. had a limited relationship with father. H.D. was well-adjusted to his foster home and community and his behavior and school performance had improved since he first entered foster care. Father was unable to assume parental duties within a reasonable time because he had no demonstrated parenting skills and had almost no relationship with H.D. Finally, father had not played a constructive role in H.D.'s life. The court therefore concluded that it was in the best interests of H.D. to terminate father's parental rights. This appeal followed.

When considering a petition to terminate parental rights after initial disposition, the court must first determine whether there exists 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 a parent's ability to care for a child has either stagnated or deteriorated over the passage of time." In re S.W., 2003 VT 90, ¶ 4, 176 Vt. 517 (mem.) (quotation omitted). When, as here, the court finds changed circumstances because a parent has stagnated in their progress toward the case plan goals, the court 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).

On appeal, father first claims that the court erred in concluding that he was unable to resume his parental duties within a reasonable time because he was now released from incarceration, had arranged for housing with his own father, who could provide familial support, and was free to have extensive contact with H.D. Father argues that the court failed to adequately consider his prospective ability to parent H.D.

"The critical factor" in the best-interests analysis "is whether the natural parent will be able to resume parental duties within a reasonable period of time." In re B.M., 165 Vt. 331, 336 (1996). A determination that a parent will not be able to resume parental duties must be supported by clear and convincing evidence. Id. "The court must consider the parent's prospective ability to parent the child. This does not mean, however, that past events are not relevant to whether the parent can resume parental duties." Id. at 337.

The court's conclusion that father will not be able to resume parental duties in a reasonable time is supported by ample evidence. As the court found, father was incarcerated throughout the proceeding and for much of H.D.'s life. During the periods when he was not incarcerated, he did not attempt to assume any parental duties or improve his parenting skills.

He had a minimal relationship with H.D., having only contacted the child in writing twice over the previous several years. While father's incarceration may have hindered his ability to contact H.D. or engage in parenting education, "our case law makes clear that a parent is responsible for the behavior that leads to incarceration and for the consequences that come with such incarceration." In re D.S., 2014 VT 38, ¶ 26, 196 Vt. 325. The court considered father's present ability to parent H.D. and concluded that he would not be able to do so within a timeframe that was reasonable from the child's perspective. See In re C.P., 2012 VT 100, ¶ 30, 193 Vt. 29 (explaining that "[t]he reasonableness of the time period is measured from the perspective of the child's needs"). The court's conclusion is supported by its factual findings, which father does not challenge.

Father further claims that the court erred in terminating his rights instead of considering a less drastic alternative that would allow him to have a continuing familial relationship with H.D. However, the question before the court was whether termination of father's rights was in H.D.'s best interests. Having determined that termination was in the child's best interests using the statutory criteria, the court was not required to address and rule out each of the other potential disposition options. In re T.T., 2005 VT 30, ¶ 7, 178 Vt. 496 (mem.); see In re G.F., 2007 VT 11, ¶ 20, 181 Vt. 593 (mem.) (explaining family court need not "consider less drastic alternatives to termination once it has determined the parent to be unfit and unable to resume his or her parental responsibilities."); see also In re D.S., 2014 VT 38, ¶ 31 ("[T]he court is not obligated to 'preserve the family' at the expense of a child's best interests.").

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Nancy J. Waples, Associate Justice