



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

JANUARY TERM, 2025

In re A.D., Juvenile	}	APPEALED FROM:
(D.D., Father*)	}	
	}	Superior Court, Addison Unit,
	}	Family Division
	}	CASE NO. 22-JV-01141
	}	Trial Judge: David R. Fenster

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

Father appeals the court's order terminating his parental rights to A.D., who was born in November 2017. On appeal, father argues that termination was in error because he had no meaningful opportunity to have contact with A.D. or proceed to reunification. We affirm.

The court found the following. Although father coparented A.D. with mother until A.D. was two, he was never A.D.'s primary caretaker. A.D. was in mother's sole care in August 2022 when the State filed a petition alleging that A.D. was a child in need of care or supervision (CHINS), and the court granted custody of A.D. to the Department for Children and Families (DCF). The CHINS petition alleged that A.D. was without proper parental care due to mother's daily fentanyl use, even while pregnant and in labor with A.D.'s younger half-sister. Father participated in A.D.'s life until October 2022, when he was incarcerated. Except for approximately sixteen days during February 2023, father remained incarcerated throughout the CHINS case. His earliest release date was February 2025 and maximum release date was in 2026.

A.D. and her half-sister were placed with their maternal great-aunt, who was a support for A.D. prior to being placed in DCF custody. Mother stipulated A.D. and her half-sister were CHINS due to mother's daily fentanyl use which placed the children at risk of harm. At disposition, the court adopted a case plan with a goal of reunification with mother. The case plan identified goals for father, including obtaining safe and stable housing, attending A.D.'s appointments, demonstrating an ability to regulate himself and respond to A.D. appropriately, participating in substance-abuse assessments, and participating in treatment. At a post-disposition review in December 2022, the reunification goal with mother was set for April 2023. In June 2023, the State recommend that the permanency goal be changed to adoption.

In September 2023, the State moved to terminate parental rights after parents did not make progress toward the case-plan goals. Following a contested hearing, the court issued

written orders as to both parents. The court found that there was a change of circumstances due to mother's stagnation and it was in the children's best interests to terminate mother's rights.* As to father, the court found the following. While incarcerated, father worked on his sobriety, participated in a fathering program, met with a mental-health counselor, and had begun phone and video contact with A.D. Despite these efforts, father's progress stagnated because he did not make improvement towards the case-plan goals. In addition, termination of father's rights was in A.D.'s best interests. A.D. was well adjusted to her school and foster home and was bonded to her aunt and her half-sister. Father was incarcerated since October 2022 and was just beginning telephone and video visits with A.D. There was little likelihood father would be able to assume parental duties in a reasonable time, especially given A.D.'s young age and time in custody. The court therefore granted the petition to terminate father's parental rights. Father appeals.

When the State moves to terminate parental rights after the initial disposition, the court must find by clear and convincing evidence that there is a change of circumstances, 33 V.S.A. § 5113(b), and "that termination of parental rights is in the child's best interests." In re K.F., 2004 VT 40, ¶ 8, 176 Vt. 636 (mem.); see In re J.R., 164 Vt. 267, 270 (1995) (explaining that standard of proof at termination is clear and convincing evidence). In assessing the child's best interests, the court must consider the statutory criteria. 33 V.S.A. § 5114. The most important factor is whether the parent will be able to resume parenting duties within a reasonable period of time. In re J.B., 167 Vt. 637, 639 (1998) (mem.). On appeal, we will uphold the family court's conclusions if supported by the findings and affirm the findings unless clearly erroneous. Id.

On appeal, father argues that the record does not support the family court's finding that he will be unable to resume his parental duties within a reasonable time. Father contends that he was deprived of a meaningful opportunity to have contact with A.D. during the period of his incarceration and without consistent contact it was impossible for the court to determine if father had the ability to parent A.D.

Father fails to demonstrate any error. Despite father's claims otherwise, the record supports the court's determination that father's inability to parent within a reasonable period of time was due to factors within his control. Father's incarceration was a major cause of his limited contact with A.D., and father is solely responsible for the behavior that led to that incarceration. See In re K.F., 2004 VT 40, ¶ 12 (concluding that parent was responsible for criminal behavior leading to incarceration). The record shows that father's DCF caseworkers made efforts to communicate with father and set up visits for father while he was incarcerated but were unable to obtain the cooperation of the Department of Corrections for some time. Moreover, father did not reach out to the DCF caseworker until after the termination petition was filed.

Father contends that without parent-child contact, it was impossible for the court to determine whether father would be able to parent A.D., citing In re D.S., 2016 VT 130, ¶ 10, 204 Vt. 44. Father's reliance on In re D.S. is misplaced. In that case, DCF shifted to an adoption-only goal four months before the contemplated date for reunification in the original case plan and ended Family Time Coaching for the mother. This Court concluded that the premature shift resulted in fewer services being provided to the mother and that this likely inhibited her progress. Id. ¶ 14. Here, in contrast, DCF did not prematurely change the case-plan goal or discontinue providing services. The goal was changed to adoption after the contemplated reunification

* Mother did not appeal the decision terminating her parental rights.

period had passed and DCF worked to provide father with contact throughout the pendency of the case.

Moreover, the facts support the court's finding that father would not be able to parent within a reasonable time, which "is measured from the perspective of the child's needs, and may take account of the child's young age or special needs." *In re C.P.*, 2012 VT 100, ¶ 30, 193 Vt. 29 (quotation and citations omitted). Here, due to his incarceration, father was absent from A.D.'s life for twenty-two months. He would remain incarcerated for at least another six months after final hearing, but it could be longer given his maximum sentence and his pending charges that were not yet resolved. He had only just begun to have contact with A.D. and build a relationship. On the other hand, A.D. had an immediate need for permanency; she was seven years old and had already been in custody for two years. Given A.D.'s young age, time in custody, and need for permanency, the court did not err in determining that father would not be able to assume parental duties in a reasonable time and that termination was in A.D.'s best interests.

Affirmed.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice