

VERMONT SUPREME COURT
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Case No. 26-AP-069

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

AUGUST TERM, 2026

In re D.P., Juvenile	}	APPEALED FROM:
(M.P., Mother* and D.B, Father*)	}	
	}	Superior Court, Orleans Unit,
	}	Family Division
	}	CASE NO. 23-JV-00767
		Trial Judge: Howard A. Kalfus

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

Parents appeal the termination of their residual parental rights to D.P. We affirm.

D.P. was born in June 2021. In June 2023, when D.P. was two years old, the State filed a petition alleging that he was a child in need of care or supervision (CHINS). The petition alleged that police visited mother's home in response to a report that father was violating conditions of release prohibiting him from contacting mother. An officer found father in mother's bedroom, where the officer observed pipes, used needles, and other drug paraphernalia within D.P.'s reach. Mother admitted to the officer that she had been using methamphetamine. The court transferred legal custody of D.P. to the Department for Children and Families (DCF) in emergency and temporary care orders.

In October 2023, the court found the merits of the CHINS petition to be established. At disposition, the court set a permanency goal of reunification with either parent. The case plan adopted by the court contained action steps requiring both parents to engage in substance-use evaluations and follow treatment recommendations, demonstrate sobriety from drugs and alcohol, maintain a safe household, participate in drug screens at DCF's request, and demonstrate an ability to appropriately care for D.P. and an understanding of how their actions had affected D.P. In addition, the case plan required father to abide by criminal conditions of release, refrain from further criminal activity or physical aggression, and participate in a domestic-violence assessment.

DCF moved to terminate parents' rights in December 2024. A hearing was held over three days in August 2025 and January and February 2026. The court issued a written order making the following findings by clear and convincing evidence.

Mother began using drugs in 2019 after the death of her husband. After the CHINS petition was filed, mother engaged in a substance-use evaluation. However, her participation in treatment was inconsistent. She attempted inpatient treatment in November 2023 and July 2024 but failed to complete those programs due to anxiety and heart issues. She had several relapses. In January 2025, she completed inpatient treatment at Serenity House. She initially complied with post-discharge treatment recommendations but relapsed within a month. By April 2025, she had stopped treatment completely and was using cocaine.

In July 2025, mother reentered and completed the Serenity House residential-treatment program. The provider recommended that she engage in an intensive outpatient program (IOP) to address her trauma. The trauma-related treatment resulted in another recommendation of IOP for substance use. As of January 2026, mother had not engaged in the substance-use IOP. By that point she had been sober for six months and was living in a sober residence. She attended at least one Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) meeting each day and met with her sponsor and recovery coach twice a week.

Mother and DCF repeatedly discussed mother going to the Lund home where she could engage in substance-use treatment while reunifying with D.P. The parties differed as to the reasons why, but mother never entered the program. The court stated that it could not find that mother's failure to enter the Lund program caused her failure to make progress toward reunification.

Since October 2023, mother had twice-weekly visits with D.P. By the time of the termination hearing, she also had weekly fifteen-minute virtual visits with D.P. Although visits went well, they were still supervised. Mother missed approximately a quarter of visits during the first half of 2025, not including the time when she was in residential treatment. She missed only three visits after that. Mother initially participated in Family Time Coaching but stopped when she entered residential treatment in August 2024 and did not resume. She completed the Nurturing Parents course in 2025.

Mother lived in Barton when the CHINS petition was filed. She later left her apartment and began living with her boyfriend in a cabin in Newport, which she would not allow DCF to visit because it was not appropriate for reunification. In July 2025, she moved to a sober-living program in Essex. The program had apartments in Barre that were suitable for children, but there was no plan for mother to move to one of those apartments. Mother had not sought housing assistance to help her transition out of the sober-living home.

Mother attended many of D.P.'s medical and speech-therapy appointments, and some educational and shared-parenting meetings. She did not want to attend meetings with DCF without an advocate from her attorney's office because she felt unsafe around DCF. The court found it unclear why mother feared DCF and found that her reluctance to meet interfered with her ability to engage in timely discussions about D.P.'s needs.

At the time the CHINS petition was filed, father was living in Springfield, Massachusetts. In the summer of 2024 he moved to Orange, Massachusetts, where he lived for about a year before moving to Pennsylvania. In addition to D.P., father has two adult children and a five-year-old son who lives in Pennsylvania. Father has 50/50 custody of his son in Pennsylvania.

At the outset of the case, father traveled to visit D.P. weekly. His attendance became less consistent starting in January 2024 and eventually visits became virtual. By the time of the termination hearing, father had two fifteen-minute virtual visits with D.P. per week. DCF

offered father assistance with transportation to see D.P. in person, but he declined. Father attended seventy percent of virtual visits during the first half of 2025 and had missed two visits since then. Visits were generally positive, though father became frustrated with D.P.'s speech delays.

Father had not engaged in substance-use treatment since 2023, despite being diagnosed with severe substance-use disorder. In the summer of 2025, he used cocaine. He denied struggling with substance use. He reported that he regularly used marijuana and felt that if he could operate heavy machinery while using marijuana, he could parent while doing so. Father did not complete Family Time Coaching or the Parenting with Respect class. He often swore, yelled, and was rude to the DCF caseworker. He did not consistently attend meetings about D.P. and had not attended any of D.P.'s medical appointments. Father was arrested as a fugitive in December 2024. At the time of the hearing, he had six active arrest warrants in Vermont and was also wanted in New Hampshire.

The court found that both parents had stagnated in their progress toward reunification. Father had not seen D.P. in person in more than two years, having decided to move out of state. He returned to Vermont during that time but had not asked to see D.P. Mother saw D.P. regularly but she had not progressed and the court observed it was not clear why her visits had not progressed more. It concluded it was due to factors within her control. Her visits were still supervised and she had not had any overnights. The court found that this lack of progress constituted a change in circumstances warranting modification of the initial disposition order.

The court then assessed the best-interests factors. It found that D.P. had a bond with mother but was not strongly bonded to father. D.P. had a loving relationship with his foster parents and foster sister, with whom he had lived for nearly two years. He was well adjusted to his home, school, and community, and had made significant progress in his speech and physical development since entering foster care. The court found that neither parent would be able to resume parental duties within a reasonable time. Father's relationship with D.P. was minimal and he did not attend meetings to understand D.P.'s needs. Father also did not engage in substance-use or domestic-violence treatment and had several outstanding warrants that could lead to his incarceration. Mother had not progressed beyond supervised visits and her unwillingness to meet with DCF without her attorney inhibited her ability to understand D.P.'s needs. She had not completed recommended substance-use treatment or secured safe, stable housing where D.P. could live. Finally, the court found that father did not play a constructive role in D.P.'s life. Mother did play such a role, but this was outweighed by factors favoring termination. The court therefore granted the petition. Both parents appealed.

When considering a petition to terminate parental rights after initial disposition, the family court must first determine whether there has been a change in circumstances sufficient to justify modification of the original disposition order. In re B.W., 162 Vt. 287, 291 (1994). "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 it finds a change in circumstances, the court must then consider whether termination is in the child's best interests in accordance with the factors set forth in 33 V.S.A. § 5114(a). "The most important factor for the court to consider is the likelihood that the parent will be able to resume parental duties within a reasonable time." In re J.B., 167 Vt. 637, 639 (1998). "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 stating that mother's sober-living environment and attendance at AA and NA meetings provided her with "tremendous support" but were "not treatment." We see no error. At the January 2026 hearing, the DCF case worker testified based on her communication with mother's provider that mother had recently engaged an IOP for trauma. The provider recommended that mother engage in IOP for substance use after completing the trauma IOP. Mother testified at the January 2026 hearing that she completed the trauma IOP and had scheduled an intake to be assessed for the substance-use IOP. However, as the court found, there was no evidence presented that mother was, at the time of the hearing, actively engaged in substance-use treatment that had been recommended for her. While mother was living in a sober-living home and attending AA and NA meetings with her sponsor and her recovery coach, the court reasonably concluded that these supports were not equivalent to or a substitute for the treatment recommended by her prior provider. Accordingly, the finding is not clearly erroneous.

Mother further argues that the court erred in concluding that her progress toward reunification was not affected by DCF's obstruction of her application to the Lund home. As noted above, the parties differed as to why mother was not accepted to Lund when she applied in late December 2024 or early January 2025. The record shows that mother refused to go to Lund when the program was initially offered to her in October 2023. In the fall of 2024, mother agreed to go, and DCF assisted her in filling out the paperwork. However, mother then informed DCF that her substance-use counselor did not believe mother should go to Lund. Mother finally completed the paperwork in December 2024, after the court ordered her to do so. The DCF caseworker testified that, at that point, Lund was not in favor of mother entering the program because the termination petition had been filed. In addition, mother was only having visits with D.P. twice a week, and it would be a "shock" for D.P. to transition to living with her fifty-one percent of the time.

Mother argues that DCF blocked her application and therefore her best chance at reunification, pointing to testimony by a Lund representative that mother was not accepted at Lund because they were unable to get a response from DCF, indicating nonsupport. However, the Lund representative also repeatedly indicated that she did not recall mother's case, leading the trial court to state that it would not rely on any of her testimony "with respect to the specific facts of her interactions on this case." As the trier of fact, the court had authority to disregard unreliable testimony. See In re A.F., 160 Vt. 175, 178 (1993) ("We leave it to the sound discretion of the family court to determine the credibility of the witnesses and to weigh the evidence.").

Moreover, even if mother is correct that DCF blocked her Lund application because it came too late in the case, this does not mean that mother's lack of progress was caused by DCF. The record shows that mother refused to go to Lund early in the case and then delayed filling out her paperwork for months. Mother's belated decision to go to Lund occurred approximately two years into the case, during which she repeatedly relapsed and failed to successfully engage in substance-abuse treatment, left her apartment to live in an unsafe housing situation, and did not complete Family Time Coaching. This lack of progress was within mother's control and cannot be attributed to DCF. Timeliness to reach permanency is in the child's best interest. See 33 V.S.A. § 5101(a)(4) (stating that "safety and timely permanency for children are the paramount concerns in the administration and conduct of" CHINS proceedings).

Mother further argues that DCF interfered with her efforts to reunify with D.P. by refusing to increase visitation after it filed the termination petition. The record does not support

this argument. The termination petition was filed in December 2024, when D.P. had already been in DCF custody for eighteen months. During the first half of 2025, mother missed a quarter of visits and relapsed on cocaine. In August 2025, mother restarted visits after completing inpatient treatment. DCF transported both mother and D.P. to Morrisville, roughly halfway between their respective homes, for twice-weekly visits. In the fall of 2025, while the termination petition was pending, DCF increased the length of the visits from one hour to one hour and forty-five minutes. Visits occurred on Tuesday and Wednesday afternoons to accommodate mother's trauma IOP, which ran until noon every day. DCF increased visit length rather than adding days to avoid subjecting D.P. to a third three-hour round trip each week. Although mother claims that DCF arbitrarily refused to further increase visitation, mother never filed a motion with the court to request increased visitation. DCF acted within its discretion in maintaining the existing schedule and supervision given mother's inconsistent attendance during the first half of 2025 and her uncertain progress in substance-use treatment. These facts were within mother's control; we therefore see no reason to disturb the court's finding of stagnation.

We turn to father's arguments on appeal. First, he contends that the court and DCF erroneously refused to treat him as a parent at the outset of the CHINS proceeding, thereby causing stagnation. Father's argument lacks merit. The record shows that at the June 2023 temporary care hearing, mother's attorney indicated that mother disputed father's parentage. As a result, father did not initially have visitation with D.P. Despite the initial uncertainty regarding parentage, father was appointed counsel prior to the temporary care hearing, and was treated as a party in court proceedings. In early August 2023, mother stipulated to parentage at a hearing, and father began having visits with D.P.¹

Father fails to demonstrate that he was prejudiced by the two-month delay in visitation.² Father never successfully completed Family Time Coaching. He later chose to move to Massachusetts, at which point his in-person visits with D.P. decreased and eventually stopped altogether. Father refused DCF assistance to visit D.P. in person and failed to consistently attend virtual visits. He did not engage in substance-use treatment, had difficulty cooperating with DCF, and failed to complete a parenting class or consistently attend parenting meetings. He had numerous active arrest warrants that further hindered his ability to parent D.P. Even if DCF or the court erred in delaying visitation at the beginning of the case, this record demonstrates that father's failure to progress towards reunification was primarily caused by factors within his control.

Father also claims that DCF caused his stagnation by refusing to help mother get a placement at the Lund home, where she could have assumed primary custody while supporting contact with father. Assuming father has standing to raise this argument on behalf of mother, neither mother nor father preserved it by raising it before the trial court. See In re C.H., 170 Vt. 603, 604 (2000) (mem.) (declining to address argument on appeal from order terminating parental rights where father "fail[ed] to raise it at any point during the family court proceedings"). While mother argued that DCF interfered with her placement at Lund, she did

¹ Genetic testing later confirmed that father was D.P.'s parent.

² The record shows that shortly after father's visitation began, it was interrupted when the criminal division imposed conditions of release prohibiting father from contacting mother or D.P. in the fall of 2023. The conditions were later amended to permit visitation. Father's criminal behavior was within his control and cannot be attributed to the court or DCF. In re D.S., 2014 VT 38, ¶ 20, 196 Vt. 325.

not argue that she would have supported contact with father as part of that placement. For his part, father proposed to be made primary custodian and that D.P. live with him in Pennsylvania. Because father failed to raise this argument below, we do not address it on appeal.

Neither parent challenges the court's assessment of the best-interests factors, which is supported by the court's findings and the record. We therefore affirm the termination of parents' rights to D.P.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Nancy J. Waples, Associate Justice