VERMONT SUPREME COURT
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Case No. 26-AP-249

*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

NOVEMBER TERM, 2026

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| In re R.A., Juvenile<br>(J.M., Mother*) | } | APPEALED FROM: |
| | } | Superior Court, Washington Unit,<br>Family Division |
| | } | CASE NO. 24-JV-00489<br>Trial Judge: Kirstin Schoonover |

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

Mother appeals termination of her parental rights to her daughter R.A., born in June 2023. On appeal, mother argues that the court failed to consider her situation separately from father's, violated her due-process rights, and erred in finding that her progress stagnated. We affirm.

The court found the following facts by clear and convincing evidence. At the time R.A. was born, mother was familiar to the Department for Children and Families (DCF) because mother's older child was previously placed in DCF custody due in part to mother's drug use. R.A. was in mother's care for a period after her birth, but mother relapsed on cocaine and fentanyl in February 2024, and when DCF visited mother's home, mother reported that father had come and destroyed her apartment while she and R.A. were inside. In April 2024, the State filed a petition alleging that R.A. was a child in need of care or supervision (CHINS) due to lack of proper parental care.

In June 2024, mother stipulated to the merits of the CHINS petition, agreeing that her substance use put R.A. at risk of harm. The resulting disposition order had a goal of reunification with mother or father. It set out several action steps for both parents. Mother's steps included regulating her emotions in a stable and safe manner, completing a mental-health assessment, remaining sober and engaged in services, following recommendations from treatment providers, developing a relapse-prevention plan, submitting to random drug screenings, understanding R.A.'s developmental, emotional, and medical needs, obtaining parent education, attending R.A.'s medical and dental appointments, refraining from illegal activity, creating safe boundaries and not exposing R.A. to unsafe people, and engaging with DCF.

In November 2024, law enforcement was called to mother's residence because of an altercation, which resulted in mother being charged with disorderly conduct and simple assault. The following month, mother was charged with driving under the influence (DUI).[1] Mother also struggled to maintain her sobriety from illicit drugs. Mother applied to attend the residential Lund program, but she was denied admission because of alcohol use. She attended inpatient treatment in August 2025 but relapsed upon her release. She was again denied acceptance at Lund due to an inability to maintain her sobriety. At the time of the final hearing, mother had refrained from using illicit drugs since November 2025, but she was not engaged with a treatment provider or relapse-prevention groups. She did not consistently attend any peer recovery group and had not received individual counseling since 2025. She continued to use alcohol and marijuana.

Mother consistently attended supervised visits with R.A., which took place once a week.[2] However, she did not progress sufficiently with her action steps to increase contact or regain custody. She did not attend any of R.A.'s medical or dental appointments. Mother participated in Family Time Coaching early in the case plan but the service terminated due to mother's nonattendance. Mother did not complete a mental-health assessment. Mother was enrolled in a child-abuse-prevention class but missed so many appointments that she did not anticipate completing the class.

In May 2026, father called police and reported that he was attacked and that individuals were driving intoxicated and with children in the car. Police stopped a vehicle and the driver was arrested for DUI. Mother was a passenger in the car. There were no children found in the car. Mother reported that she had gone to father's property to help him and afterwards they were drinking alcohol. Father became enraged at mother, grabbed her by the throat, and choked her. Although mother disputed that she and father were in a relationship, the court found it was likely that they remained involved and hoped to reunite in the future.

During the pendency of the case, mother lacked stable housing and at times lived with father's former girlfriend or was unhoused. In March 2026, mother moved in with her father. She did not notify DCF about this residence and there was no information about the appropriateness of the home at the time of the final hearing in April and May 2026. Mother indicated that she was not yet ready to parent but sought more time for reunification.

R.A. has resided with her foster parents since March 2024. She is comfortable with foster parents, and they love her dearly and will adopt her if able. R.A. goes to foster parents for support and emotional comfort, and they are meeting all her medical, educational, social, and emotional needs.

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[1] In May 2025, mother pled guilty to DUI and simple assault and was placed on probation for two years.

[2] Mother's visits were initially supervised by maternal grandmother, and father was instructed not to attend these visits. Maternal grandmother's supervision was discontinued because maternal grandmother was at times under the influence of alcohol and father often appeared. Mother was not responsible for grandmother's and father's actions but did not inform DCF of these issues.

In December 2025, the State filed a petition to terminate parents' rights. The court held hearings over two days and heard testimony from DCF workers, parents, foster mother, and a state trooper. Based on the evidence, the court found that there was a change of circumstances due to parental stagnation. The court found that although mother made some progress towards the case-plan goals by engaging respectfully with DCF, achieving a period free from illicit drug use, and attending visits, she had not demonstrated sufficient progress on other important action steps. Mother had not completed a mental-health assessment, obtained suitable stable housing, increased her visits, or refrained from criminal activity. In addition, mother continued to surround herself with others who engaged in unsafe behavior, including father and father's former girlfriend. The court then assessed R.A.'s best interests. The court found that R.A. had a loving relationship with mother, but mother's visits were relatively limited. R.A. had resided with her foster family since she was ten months old and looked to them for love and comfort. She had strong relationships with her foster parents and extended foster family. R.A. was well adjusted to her foster home and daycare. She had no experience living with mother or mother's community. Mother's role in R.A.'s life was limited since she had not increased her visit time, had not attended preschool or medical appointments, and did not know R.A.'s daily life or activities. Most importantly, mother would not be able to parent within a reasonable time as measured from R.A.'s perspective, given R.A.'s young age, time in custody, and need for permanence. Mother continued to associate with unsafe individuals, continued to use alcohol and marijuana, and lacked safe and stable housing. Therefore, the court terminated mother's rights.[3] Mother appeals.

When the State moves to terminate parental rights after the initial disposition, the court must first find that there is a change of circumstances, 33 V.S.A. § 5113(b), and second, "that termination of parental rights is in the child's best interests." In re K.F., 2004 VT 40, ¶ 8, 176 Vt. 636 (mem.). Changed circumstances are "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). 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. See 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.

Mother first argues that the family division erred by failing to consider mother individually from father in its assessment of her ability to parent R.A. Mother contends that the trial court's finding that mother associated with individuals who engaged in unsafe behaviors essentially amounted to the court blaming mother for father's abusive behavior.[4] Mother also

[3] The court also terminated father's parental rights, finding a change of circumstances because father had not meaningfully engaged in any of the action steps. The court found that father had incurred additional criminal charges for assaultive behaviors, had not engaged with DCF, had not remained substance-free, had not attended visits, and had not created a parental bond. After assessing the statutory factors, the court found that termination of his rights was in R.A.'s best interests. Father did not appeal.

[4] Mother accuses DCF of punishing her for father's behavior and alleges DCF faulted her for being unable to regulate her emotions during the altercation in which father abused her and choked her. We need not ascertain whether mother's assertions regarding DCF are correct

argues that the court erred in not crediting her testimony that she and father were no longer a couple.

The family division properly assessed mother separately from father in both analyzing changed circumstances and assessing R.A.'s best interests. The court explicitly recognized that mother's situation differed from father's, and acknowledged the ways that mother had made progress, including by regulating her emotions throughout most of the case, engaging respectfully with DCF, attending weekly visits with R.A., and refraining from using illicit drugs for seven months. The court found, however, that mother had not made progress in other key areas because she had failed to complete a mental-health assessment, secure stable housing, or progress to increased visits. The court also found that mother continued to associate with people exhibiting unsafe behaviors, including father and father's former girlfriend. This was an entirely appropriate consideration in that it impacted mother's ability to safely care for the child. The court did not blame mother for father's behavior. Rather, the court considered how mother's failure to inform DCF of certain of father's problematic behaviors, and her choices in continuing to associate with father and other individuals, created safety risks for R.A. To the extent that mother argues that the court erred in not crediting her testimony that she and father were no longer in a relationship, it was up to the trial court to assess the credibility of witnesses, and we decline to reexamine that on appeal. In re A.F., 160 Vt. 175, 178 (1993).

Mother also argues that her procedural due process rights were violated when DCF delayed the return of R.A. based on father's abusive actions. In support, mother cites Nicholson v. Williams, 203 F. Supp. 2d 153 (E.D.N.Y. 2002), which was a class action brought on behalf of mothers and their children who were separated because the mothers suffered domestic abuse and for this reason the children were deemed neglected. In that case, the court held that "if an agency removes or unnecessarily delays the return of a child to a mother against whom it has no evidence of her abuse or neglect, on the grounds that the father is abusive to the mother, the mother's procedural due process rights have been infringed," and the mothers were entitled to appointed counsel. Id. at 238. Mother has not demonstrated how her due-process argument was preserved below. In re C.B., 2020 VT 80, ¶ 9, 213 Vt. 215 (explaining that parent must raise issue below to preserve it for appeal). Mother has also not identified what further procedural due-process protections she was deprived of, given that she received notice and an opportunity for a full evidentiary hearing with appointed counsel. See In re K.G., 2023 VT 51, ¶ 43, 218 Vt. 419 (providing that parent in juvenile proceeding was afforded due process when he was given notice and opportunity for hearing and appointed counsel). In any event, here, mother was not separated from her child because she suffered domestic abuse. Instead, the lower court engaged in separate analyses for mother and father, and reached its conclusions based on findings regarding mother's own conduct and R.A.'s risk exposure from her conduct. Mother stipulated that R.A. was without proper parental care due to mother's use of illicit drugs; R.A.'s removal from mother's custody was not because mother was a victim of father's abuse.

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because regardless of DCF's views, the court did not improperly blame mother as victim of domestic violence. The court considered father's behavior separately from mother. To the extent that the court discussed father's assault of mother, it was to demonstrate that mother continued to choose to spend time with father even though he was not a safe person.

Finally, mother argues that the evidence did not support the court's determination that mother's progress stagnated because mother had ameliorated her use of illicit drugs, which was the primary safety issue that caused R.A. to be placed in custody. "Stagnation may be shown by the passage of time with no improvement in parental capacity to care properly for the child." In re B.W., 162 Vt. 287, 291 (1994) (quotation omitted). "[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." Id. (quotation omitted).

The court here acknowledged mother's progress towards addressing her use of illicit drugs, but found that she did not have a treatment provider and was not engaged in a relapse-prevention group. Moreover, there remained other goals of the case plan where mother had not made sufficient progress and that were important to ensuring R.A.'s safety. Mother had not completed a mental-health assessment, lacked safe and stable housing, did not demonstrate sufficient progress to increase her visits with R.A., did not attend R.A.'s educational and medical appointments, and continued to associate with unsafe individuals. The evidence supports these findings, which in turn support the court's determination that mother's progress had stagnated. See In re D.M., 2004 VT 41, ¶ 7, 176 Vt. 639 (mem.) (explaining that "main concern must always be whether the individual parent has demonstrated the improvement contemplated at the time the children were removed from the parent's care").

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Nancy J. Waples, Associate Justice

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Christina E. Nolan, Associate Justice