ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-175

AUGUST TERM, 2017

In re C.D., Juvenile	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Family Division
	}	
	}	DOCKET NO. 82-3-16 Cnjv
		Trial Judge: Nancy J. Waples

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

Father appeals from the termination of his parental rights in daughter C.D. He argues that the court committed reversible error by failing to determine if there had been a material change in circumstances before proceeding to its best-interests analysis. We affirm.

C.D. was born in January 2016. She has significant health problems. Father has never met or had any contact with C.D. In fact, Father is prohibited from having contact with C.D. through a relief from abuse order. He has a lengthy criminal history and he has been incarcerated since June 2015. He has convictions for domestic assault and simple assault; at the time of the final hearing, he was also being held without bail on new charges, including domestic assault against mother.

In March 2016, the Department for Children and Families (DCF) filed a petition alleging that C.D. was a child in need of care or supervision (CHINS) and she was taken into DCF custody. C.D. suffered a skull fracture while in mother's care; she was also born opiate-dependent. Mother admitted that C.D. was CHINS in April 2016. A disposition hearing was held in May 2016, and the court adopted the case plan with a goal of reunification with mother or adoption within three-to-six months. In October 2016, DCF moved to terminate parents' rights. Mother voluntarily relinquished her rights at a January 2017 status conference, contingent on father's rights being terminated. Following a hearing, the court terminated father's rights.

In its written decision, the court indicated that it was asked to terminate father's rights at an initial disposition hearing. The court thus considered whether termination of father's rights was

in C.D.'s best interests without first considering whether there had been a change of circumstances. See In re C.P., 2012 VT 100, ¶ 30, 193 Vt. 29 ("The family court may terminate parental rights at the initial disposition proceeding if the court finds by clear and convincing evidence that termination is in the child's best interests."). The court concluded that all of the statutory best-interest factors supported termination. It found that father had no relationship with C.D.; C.D. had a strong and loving relationship with her foster parents and she was thriving in their care; father could not parent C.D. now or in the foreseeable future; and father did not play a constructive role in C.D.'s life. Father appeals from the court's order.

Father argues that the court committed error by failing to consider whether there had been a material change of circumstances since the issuance of the disposition order. He asserts that the error was not harmless because there was no evidence to show that he had stagnated in his ability to parent. Father states that the case plan did not call upon him to take any actions until he was released from prison and he has not yet been released. He notes that he had engaged in parenting classes while in prison.

We considered and rejected similar arguments in In re D.C., 2012 VT 108, ¶¶ 16-19. There, the court considered a petition to terminate a mother's rights where the disposition plan had called for reunification with the father only, and the father had voluntarily relinquished his parental rights. The parties agreed at the TPR hearing that the court should treat the case as a TPR petition at the initial disposition stage, and go "straight to considering the best interests of the child." Id. ¶ 9. The family court did so, and the mother argued on appeal that this was error. We found mother's arguments without merit. "[A]ssuming that the family court was required to find a change of circumstances," we found any error harmless "because changed circumstances were manifest in this case." Id. ¶ 16 (citing In re R.W., 2011 VT 124, ¶ 17, 191 Vt. 108 (noting that harmless error standard has been employed in termination cases and that court error warrants reversal only if substantial right of party is affected)). As support for this conclusion, we referred to "the father's relinquishment of his parental rights" as well as the death of a relative who at one point had conditional custody of the child and who had expressed interest in adopting him. In re D.C., 2012 VT 108, ¶ 16. We emphasized that from the outset of the case, no one, including the mother, anticipated that she would assume primary care of the child. We also made clear that changed circumstances can "arise independent of the subject parent's actions." Id. ¶¶ 18-19 ("[T]he statutory standard is changed circumstances, not stagnation, and stagnation is not the only way to show changed circumstances.").

As in D.C., we find the error harmless here. The disposition plan contemplated reunification with mother or adoption; reunification with father was never contemplated. Since there had been a disposition ordered issued, the court should have made findings on change of circumstances. However, mother's relinquishment of her parental rights establishes by clear and convincing evidence that there had been a change in circumstances since the issuance of the initial

disposition order, even in the absence of a specific finding to that effect. See id. ¶ 16; see also In re K.F., 2004 VT 40, ¶ 9, 176 Vt. 636 (concluding that where, among other factors, mother voluntarily relinquished her parental rights and was the sole parent with whom reunification was contemplated a change in circumstances could be found). The court did not need to find that father's progress had stagnated to satisfy this threshold requirement. We find no basis to disturb the court's decision.

Affirmed.

BY THE COURT:

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice