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THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2017-0662, In re A.P.; In re A.P.; In re P.P.; In re A.P., the court on August 10, 2018, issued the following order:

Having considered the briefs of the respondents, the mother and father of A.P., P.P., A.P., and A.P. (children), the memorandum of law of the petitioner, the New Hampshire Division for Children, Youth and Families (DCYF), and the record submitted upon appeal, we conclude that oral argument is unnecessary in this case. See Sup. Ct. R. 18(1). We affirm.

The mother and father appeal an order of the Circuit Court (Ryan, J.) terminating their parental rights over the children for failing to correct conditions that led to findings of child neglect within 12 months of the findings. See RSA 170-C:5, III (2014). They contend that the trial court erred by finding that: (1) they failed to correct the conditions of neglect; (2) DCYF made reasonable efforts to assist them; and (3) terminating their parental rights was in the children's best interests.

Before a court may terminate a parent's rights, the petitioner must prove a statutory ground for termination beyond a reasonable doubt. In re K.H., 167 N.H. 766, 771 (2015); RSA 170-C:10 (Supp. 2017). One such ground is the failure, "subsequent to a finding of child neglect or abuse under RSA 169-C, . . . to correct the conditions leading to such a finding within 12 months of the finding despite reasonable efforts under the direction of the [circuit] court to rectify the conditions." RSA 170-C:5, III; see RSA 490-D:2, IX (2010) (granting judicial branch family division jurisdiction to terminate parental rights); RSA 490-F:3 (Supp. 2017) (granting circuit court jurisdiction conferred upon former judicial branch family division). If the trial court finds a statutory ground for terminating the parent's rights, it must then consider whether terminating the parent's rights is in the child's best interest. K.H., 167 N.H. at 771.

We will affirm the trial court's order unless it is unsupported by the evidence or erroneous as a matter of law. Id. In reviewing the trial court's findings, we are mindful that it is in the best position to assess and weigh the evidence before it, In re Jack L., 161 N.H. 611, 614 (2011), and that our task is not to determine whether we would have found differently, but whether a reasonable person could have found as the trial judge did, In re Juvenile 2005-426, 154 N.H. 336, 339 (2006).

The four children who are the subjects of this order were removed from the parents' custody by police in April 2014, in part because they were endangered by the parents' failure to supervise them. When they were removed, the children

were four years, three years, sixteen months, and four months old. While the children were in foster care, the parents had a fifth child in April 2015, around the time of the nine-month review hearing, and a sixth child in April 2016, approximately eight weeks before three of the children were reunified briefly with the parents. These younger two siblings were also removed from the parents' custody in June 2016, the parents corrected the conditions that led to their neglect, and the two younger siblings were reunified with the parents in July 2016. They are not the subject of this appeal.

We first address whether the trial court erred by finding that the parents failed to correct the conditions that led to the neglect findings. The dispositional order required the parents, among other things, to "[p]rovide [their] children with developmentally appropriate supervision and care."

The mother was the primary caretaker because the father worked long hours. She expressed to DCYF that she felt "overwhelmed, anxious, and depressed while caring for her children." The child protection service worker (CPSW), who worked with the family throughout the case, testified that, prior to the adjudicatory hearing, the mother told the father "multiple times that she was overwhelmed; that she wasn't able to meet the [four children's] needs; [and] that she didn't want to be left home alone all day with them." The CPSW testified that, in June 2015, the mother expressed concern that "if she were left alone for long periods of time with all five of these children, that she would not be able to manage them safely or appropriately." In August 2016, the mother stated that she did not think she could handle all six children.

The father was diagnosed with "[a n]arcissistic personality disorder with obsessive compulsive personality traits and schizoid personality traits." His therapist reported that "he struggled to form an emotional bond with his children, which made it difficult for him to effectively parent them in a nurturing way." According to the therapist, the father's stress increased "as his parenting time increased and the possibility of the children returning to the home became a reality."

After the children were placed in foster care, the parents had regular supervised parenting time. The visits were "chaotic," and the parent aides believed that, if the visits were not supervised, the children would be at serious risk of harm. In August 2015, the father witnessed two of the children engaged in sexualized play, told them to stop, but failed to separate them.

In October 2015, the parents had their first unsupervised parenting time with the children. When the person transporting the fourth child, who was approximately 22 months old, arrived, the mother was not at the home. The transporter observed the younger sibling, who was approximately six months old, crying in a bassinette alone inside the home. After a period of time, the mother walked down the street with the second and third child and confirmed that the infant was in the home unsupervised and alone.

In June 2016, when three of the children were reunited with the parents for approximately one week, there were repeated events during which lack of supervision placed the children in danger. The parents had witnessed two of the children, who were five and six, engaging in sexualized play; thus, they required constant monitoring when together. However, shortly after reunification, a parent educator observed them playing alone together.

On another day during the reunification period, the mother left the youngest sibling, who was approximately three months old, alone in a motor vehicle for 30 to 45 minutes because she forgot that the infant was there. The family therapist testified that on one occasion when the father was supervising all six siblings he left the infant in wet clothing unsupervised on a changing table. The third child then climbed onto the table, moved the infant, and covered the infant's face with a blanket. This incident placed both the infant and the third child in danger. The father's therapist reported that the danger of leaving an infant alone in a motor vehicle was not apparent to the father. Only after the therapist explained the concerns in detail did the father grasp them. DCYF found this "extremely worrisome."

A few days later, while the mother was parenting three of the children and the two younger siblings, the second child repeatedly climbed into a playpen in which the one-year-old sibling had been left for much of the day and bit the sibling. The parents were aware that the child had a "biting issue." Nevertheless, the mother left the second child unsupervised with the one-year-old repeatedly and had to take the one-year-old to a hospital emergency department because of eleven bites inflicted by the second child. After this event, the three children who had been reunified and the two younger siblings were removed from the parents' custody. Upon the third child's return to the foster home, the foster parent found brown worms on the child's skin and in the child's diaper.

The parents' time with the children was subsequently supervised and reduced to two hours twice a week. DCYF limited the length and frequency of parenting time because, throughout the case, when visits became longer, they became "more chaotic and overwhelming for everyone involved."

However, even in these limited periods, the parents failed to supervise the children adequately. For instance, the family therapist testified that: (1) the parents again left the first and second child together and unattended; (2) the father left a sibling, who was less than one year old, unsupervised in a room with a heater that the sibling could reach; (3) the parents had to be prompted to have the first child finish homework; (4) the father had to be directed to supervise the children when the mother left the home to retrieve something from the car and when she was busy with the older child in another room; and (5) the father regularly left the children unsupervised when he left the room to take a telephone call.

DCYF reported its concern that, after two years of services, the parents "do not have an understanding or knowledge of the basic care and supervision that young children require." The father "continue[d] to struggle with appropriate supervision during parenting time, and need[ed] continued intervention by parent aid[e]s," while the mother "continue[d] to struggle with all six children in her home at one time, and ha[d] made several statements indicating that she cannot, or does not wish to[,] parent all of her children."

The parents argue that, when terminating their rights over the older four children, the trial court improperly relied upon the events involving the younger siblings. However, RSA 170-C:10 (Supp. 2017) permits the trial court to consider "relevant and material information of any nature." The circumstances surrounding those events reflected the parents' supervisory abilities. Moreover, the trial court could have reasonably determined that the older children were adversely impacted by those events. Cf. In re Craig T., 144 N.H. 584, 588 (1999) (stating that child does not have to be target of assault to be seriously harmed by witnessing it). Finally, the record does not reflect that the trial court relied exclusively upon those events; witnesses testified to the parents' inadequate supervision both before and after the brief period of reunification, and DCYF's social history, relied upon by the trial court, encompassed the entire case.

The mother argues that, because the trial court found that the parents had corrected the conditions of neglect for the children's younger siblings after all six of the children were removed from the home in June 2016, they necessarily corrected the conditions for the four older children as well. She further contends that DCYF is estopped from arguing that the parents failed to correct the conditions of neglect with respect to the four older children. The record does not reflect that these arguments were raised in the trial court. See Bean v. Red Oak Prop. Mgmt., 151 N.H. 248, 250 (2004).

Even if they were raised, the parents have not provided on appeal the dispositional orders in the younger siblings' cases. Accordingly, we cannot conclude that the conditions that led to the finding that the younger siblings were neglected in 2016 were identical to those that led to the 2014 finding that the children were neglected. Cf. In re Zachary G., 159 N.H. 146, 152 (2009) (stating that collateral estoppel does not bar reconsidering evidence from previous closed neglect action involving the same children if subsequent recent incidents of neglect occurred that are substantially similar to those in earlier, closed action); In re Angel N., 141 N.H. 158, 162 (1996) (stating that one who can adequately parent one child is not equally and automatically capable of parenting another child). The trial court found that the parents "are incapable of caring for more than two children on a full-time basis."

The father argues that the mother, and not he, failed to supervise the children. However, the record contains ample evidence of instances, summarized above, in which the father himself failed to supervise the children adequately or was complicit in the mother's failure to supervise them. Cf. Craig T., 144 N.H. at

588 (stating that trial court could reasonably find mother neglected children when she did not attempt to protect them from father's abuse).

To the extent the father faults the trial court for not articulating any specific findings relative to his failure to correct the conditions of neglect, we assume that the trial court made all subsidiary findings necessary to support its general ruling. See In the Matter of Kosek & Kosek, 151 N.H. 722, 725 (2005). To the extent that both parents argue that they corrected some of the conditions that led to the neglect finding because they were found to be in compliance with orders issued in the neglect case, compliance with such orders is but one factor the trial court may consider in addressing the broader issue of whether they corrected the conditions leading to the original finding of neglect. In re Haley K., 163 N.H. 247, 251 (2012). Upon this record, we conclude that the trial court's finding that the parents had failed to correct the conditions that led to the neglect finding was supported by the evidence and not legally erroneous. See K.H., 167 N.H. at 771.

We next address whether DCYF made reasonable efforts to assist the parents. In determining whether DCYF has made such efforts, the trial court must consider whether it provided services that were "accessible, available and appropriate." In re Michael E., 162 N.H. 520, 524 (2011); see RSA 169-C:24-a, III(c), IV (2014). The State's role is to assist parents to deal with and correct problems, not to assume the full weight of the parent's responsibilities. Michael E., 162 N.H. at 525. "Reasonable efforts" means doing everything reasonable, not everything possible. In re Juvenile 2006-833, 156 N.H. 482, 487 (2007). Parents must make their own efforts in conjunction with the efforts made by DCYF. Id.

In this case, the parents received ISO-level services, the highest level of services DCYF provides, from the outset and for over two years. The family therapist testified that such services are provided seven days a week at a cost of $110 per day. However, the parents repeatedly failed to cooperate with providers. Both parents refused to give the home service provider permission to speak with their individual therapists, although the family therapist testified that this would have been helpful in tailoring services. The father withheld his mental health evaluation from DCYF. The CPSW testified that the father defied parent educators and refused to listen to their instructions. She further testified that the father was "very argumentative" and accused her and others "of intentionally looking for things that he was doing wrong."

The parents argue that DCYF did not make reasonable efforts when reunifying the children with them. They argue that DCYF should have: (1) provided them with unsupervised visits immediately after November 2015, when the trial court ordered it to reunify the children by June 1, 2016; (2) allowed overnight visits sooner; (3) reunified the eldest child in January or February, when the child had to change schools; (4) reunified the children earlier, before the mother gave birth to her sixth child; (5) allowed longer intervals between the reunification of each child; (6) not initiated overnight visits when the mother was due to give birth; (7) provided additional services when reunifying the second child;

(8) not allowed the foster parents' reports to delay reunification; and (9) completed reunification by June 1, 2016. However, they do not point to anything in the record that establishes that such actions would have been safe for the children or that reunification would have been successful if DCYF had arranged it differently. We note that unsupervised visits had been attempted and stopped in October 2015, and that services increased significantly in preparation for reunification, including multiple parent educators working with the family and addressing each child's anticipated behaviors.

The mother argues that "DCYF refused to work towards reunification" after the children were removed from the parents the second time. However, approximately a week after the children were removed for the second time, the trial court granted DCYF's motion to modify the permanency order to suspend reunification. Approximately two months later, the trial court ordered the permanency plan changed to the termination of both parents' parental rights. Upon this record, we conclude that the trial court's finding that DCYF made reasonable efforts to assist the parents was supported by the record and not legally erroneous. See K.H., 167 N.H. at 771.

Finally, we address whether terminating the parents' parental rights was in the children's best interests. Once a statutory ground for termination of parental rights is established, the court must then consider whether termination, or some alternative dispositional order, is in the child's best interest. In re Sophia-Marie H., 165 N.H. 332, 336 (2013). The dominant consideration is the welfare of the child, which prevails over the interests of the parents. In re Adam R., 159 N.H. 788, 792 (2010). Although contemplation of adoption is a factor, it is not a prerequisite to termination of parental rights. In re John Kevin B., 129 N.H. 286, 287 (1987).

The children had been in foster placement for approximately two and a half years, and the guardian ad litem (GAL) testified that they "deserve to have permanency and stability." See Juvenile 2006-674, 156 N.H. 1, 9 (2007) (Dalianis, J., concurring specially) ("Children need and deserve permanent living arrangements.") Although only the fourth child was in a pre-adoptive placement, the CPSW testified that freeing the other three children for adoption would increase the likelihood of finding them permanent homes.

DCYF reported that "[a]ll of the children present as tense, angry, 'clingy' or generally dysregulated following parenting time." The GAL testified that the children are "agitated" before they have to attend parenting time and "different for days after they come home from the visit." A foster mother reported that, after the brief period of reunification, the second and third child had regressed approximately two years. The GAL testified that the second child's food insecurity had increased and that the third child, who had been very calm, was having tantrums and throwing things. That child was subsequently expelled from daycare due to behavioral issues. DCYF reported that the child uses inappropriate language and the child states that the father says those words. The parents have

failed to sign the releases necessary to provide this child with recommended therapy. To the extent that the mother argues that the children's behavior was negatively affected after visits because they missed the parents, the trial court could have reasonably inferred that the negative behaviors were caused by the visits.

The parents argue that terminating their rights is not in the fourth child's best interest because that child, who has been in the same pre-adoptive home since the age of four months, will lose contact with the child's siblings. However, the GAL testified that the fourth child was largely left alone during parenting time and did not participate in the other children's play. She further testified that the child was thriving in the pre-adoptive home.

The mother argues that termination is not in the eldest child's best interest because that child has been in six different foster homes and, at the time of the termination hearing, was about to be moved to a seventh home. The GAL testified that one reason that the child had moved frequently was that the father sabotaged the child's relationship with foster parents by telling the child that the foster homes were not providing appropriate food and had bed bugs. The parents argue that terminating their rights will result in the child losing contact with the other children. The CPSW testified that DCYF was exploring the possibility of placing the three children together in a pre-adoptive home. However, the GAL testified that the eldest child did not do well in homes with a male parent or other children.

The father argues that termination will separate the children from the two younger siblings. However, with the exception of the brief reunification, the children have not lived with those siblings. The parents argue that they love the children, and the father argues that the trial court's finding that they are incapable of safely parenting more than two children is unfounded. However, upon this record, we conclude that the trial court's finding that terminating the parents' rights is in the children's best interests is supported by the record and not legally erroneous. See K.H., 167 N.H. at 771.

Affirmed.

Lynn, C.J., and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

Eileen Fox,
Clerk