

APPENDIX

Appendix A: Vermont Supreme Court decision affirming the order of the trial court terminating N.P.'s parental rights to G.L. *In re G.L.*, No. 22-AP-004, 2022 WL 2189545 (Vt. June 17, 2022).

Appendix B: Vermont Supreme Court decision denying Petitioner's Motion for Reargument, dated July 14, 2022.

VERMONT SUPREME COURT
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Case No. 22-AP-004

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

JUNE TERM, 2022

In re G.L., Juvenile
(N.P., Mother*)

} APPEALED FROM:
}
} Superior Court, Franklin Unit,
} Family Division
} CASE NO. 232-9-19 Frjv
} Trial Judge: Mary L. Morrissey

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

Mother appeals from the trial court's order terminating her parental rights as to her daughter, G.L. We affirm.

The court made the following findings in its termination order. Mother and father have one child together, G.L., born in April 2019. Mother and father each have another child from other relationships. In September 2019, the State petitioned the court to adjudicate G.L. a child in need of care or supervision (CHINS), alleging that G.L.'s half-brother arrived at school with a facial injury and reported that mother had hit him. That same day, the court issued an emergency order placing G.L. in custody of the Department for Children and Families (DCF). Shortly thereafter, G.L. was placed with a foster family in Montgomery, where she remained throughout the pendency of the case.

Initially, mother and father had supervised visits with G.L. Around April 2020, they progressed to unsupervised visits at their home, including over weekends, but these were short-lived. Of the approximate four-to-five unsupervised weekend contacts G.L. had with her parents, G.L. only stayed the entire weekend once or twice. On three weekends, mother asked foster mother to pick up G.L. within the first twelve-to-twenty-four hours of arrival, due to disagreements between parents for which mother did not want G.L. to be present. During one of these incidents, father pushed mother to the ground, mother punched a mirror, and father ultimately called the police. On one weekend where foster mother picked up G.L. early, she observed G.L. to be disoriented, cranky, and overly tired.

In March 2020, parents stipulated that G.L. was a CHINS based on her half-brother's unexplained injuries while in parents' care and a "history of violence in the home, that has interfered with the home life." In June 2020, DCF filed a disposition case plan with a goal of reunification with either parent by September 2020. Following a disposition hearing, the court adopted this plan in July 2020. Two of the goals of the case plan were for mother to engage in therapy to address her aggressive behaviors and attend all visits with G.L.

At the disposition hearing, parents sought additional time to reunify. At the same time, DCF sought to reimpose supervised visits due to violent incidents that had occurred during recent unsupervised visits with G.L., including mother punching a mirror and father pushing mother to the ground. The court denied parents' request for additional time to reunify and granted DCF's request for supervised visitation pending parents' completion of a domestic-violence assessment.

Mother and father separated in July 2020 and mother moved into an apartment with her mother and sister. Once there, she had two altercations with her sister, one of which resulted in a charge of domestic assault against mother. In discussing one of the incidents, mother reported to DCF that her sister was "running her mouth," and mother had to "beat her ass" to make her be quiet. Following these incidents, in November 2020, mother moved out and into a motel. During one incident while living there, mother screamed at the motel owners, claiming that they had entered her room when they were not supposed to.

Between December 2020 and April 2021, mother attended only about half of her scheduled visits with G.L., not including visits that were cancelled due to circumstances beyond mother's control, such as foster parents or DCF needing to cancel. In March 2021 she worked with Pathways to move into a new apartment in St. Albans. This apartment was strategically located "around the corner" from the St. Albans DCF office where mother's visits with G.L. were occurring, because mother had previously struggled to find consistent transportation for visits.

Despite this close proximity, mother continued to miss a significant portion of scheduled visits. Mother missed visits for various reasons, including illness, violating COVID restrictions, and failing to timely confirm appointments.

In March 2021, DCF moved to terminate parental rights for both mother and father and filed an interim case plan with a new case-plan goal of adoption, based on the length of time G.L. had been out of parents' care and mother's continuing struggles with emotional dysregulation. In April 2021, mother's attorney moved the court to permit visits to occur in mother's home. The court issued an order in June 2021 providing a path for mother to progress toward visits in her home. It initially permitted supervised visits in the community. If mother attended these community visits consistently and they went well, mother could begin unsupervised visits in her home.

Mother's supervised community visits began in June 2021, scheduled for twice a week. She did not consistently attend these visits. When mother did attend, she generally came prepared with snacks and other supplies. In September 2021, mother had a scheduled visit with

G.L., which she incorrectly believed was going to take place at her home. When mother questioned DCF employees about it, they referred to the June 2021 court order and explained that because of mother's lack of consistent attendance, the visits had not yet progressed into mother's home. Mother reacted by yelling insults and swearing at the DCF employees. G.L. was present and witnessed this incident, and other families were also in the DCF office.

After that incident, mother's attendance at visits decreased further. For example, mother confirmed one visit and then did not attend. When the DCF visit supervisor contacted her, mother said that she was coughing and would not be attending the visit, but it sounded to the supervisor like mother had been sleeping. For the next scheduled visit, mother again confirmed but later said she was still sick and asked to reschedule. When the visit supervisor suggested there was still time that day prior to the scheduled visit for mother to see a doctor, mother indicated that she had other things to do. DCF also gave mother the opportunity to engage in virtual visits with G.L., but mother declined.

The court held a two-day hearing on the petition to terminate parental rights in October and November 2021. It issued written findings and an order terminating mother's and father's rights in December 2021.

As to mother, the court found that she had put effort into meeting case-plan goals and improving her life circumstances, including securing stable housing, remaining financially secure, and working with a counselor on mental-health issues. However, it found that she struggled to meet case-plan goals in two critical respects: (1) her volatile behavior and emotional dysregulation was ongoing and continued to negatively impact G.L.; and (2) she continued to be unable or unwilling to maintain consistent contact with G.L. since supervised visits began in July 2020, and she was not able to progress to overnight or unsupervised visits. Based on these findings, the court concluded that mother's progress had stagnated.

The court then analyzed all of the statutory best-interests factors. It found that G.L. had adjusted well to her community and foster family in Montgomery, and had developed a strong bond with them. At the time of the merits hearing, she had been living with them for two straight years, since she was five months old.

The court acknowledged that mother loved G.L. and G.L. had some attachment to mother, but it noted that G.L. had never been to mother's home in St. Albans or spent time in the community there because mother had not been able to maintain consistent visits and progress to unsupervised time. The COVID-19 pandemic had some impact on visitation, and some visits were cancelled due to circumstances outside of mother's control. However, the court found that throughout the pendency of the case mother struggled to consistently attend and complete visits for a variety of reasons within her control, including lack of reliable transportation, illness, violating COVID-19 restrictions, failing to timely confirm appointments, and domestic strife.

The court also found troubling the impact of mother's emotional dysregulation on G.L. Mother struggled with managing her anger and aggression throughout this case, including cursing at and threatening a DCF employee, assaulting her sister, and screaming at the owners of the motel where she was living. G.L. was present at some but not all incidents where mother

was dysregulated or aggressive. From around August 2020 to August 2021 mother was engaged with a clinician who assisted her with a variety of issues affecting her life, from anger management to completing housing applications. The court noted that DCF had previously raised concerns that this clinician was not a licensed mental-health counselor. It found, based on a DCF report, that mother's engagement with a licensed mental-health therapist was necessary to assist mother in managing her anger and preventing G.L. from being exposed to mother's outbursts and physical altercations. Mother first began meeting with a licensed counselor in September 2021, just six weeks before the first merits hearing. The court found she had made little progress over the course of this case in managing her emotional volatility. The court additionally found that mother failed to recognize and understand the impact that her behavior had on G.L. Given these concerns, the court found that mother would not be able to resume parental duties within a reasonable period of time.

Based on all these findings, the court concluded that termination of mother's parental rights was in G.L.'s best interests.

On appeal, mother argues that the trial court committed reversible error by relying on evidence outside the record—in particular, one of DCF's interim case plans that was never admitted into evidence at the merits hearing. She contends she was deprived of the opportunity rebut or cross examine any witnesses on this exhibit and that without this improper evidence, the record did not support stagnation or termination of parental rights.

To terminate parental rights after an initial disposition order is in place, the family division must first determine by clear and convincing evidence that there has been a "change in circumstances," and then that termination is in the child's best interests. 33 V.S.A. § 5113(b). 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 B.W.*, 162 Vt. 287, 291 (1994) (quotation omitted). In assessing the child's best interests, the court must consider the statutory criteria. 33 V.S.A. § 5114(a). 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.).

We will affirm the trial court's conclusions if supported by the findings and uphold the findings unless clearly erroneous. *In re A.F.*, 160 Vt. 175, 178 (1993). Even if the trial court erred by relying on evidence outside of the record, the error is reversible only if it was prejudicial and affected a party's substantial right. *In re B.S.*, 163 Vt. 445, 454 (1995). If other findings—based on admitted, credible evidence—supported its conclusions regarding stagnation and termination of parental rights, we must affirm. *Id.* Such is the case here.

Mother emphasizes that the trial court relied on the unadmitted DCF exhibit for its findings that mother needed to see a licensed mental-health counselor but initially rejected DCF's expectation that she do so; that she assaulted a DCF worker as a youth; and that she attended only 37% of scheduled visits in April and May of 2021 and missed particular visits during a portion of summer 2021. But none of these findings was essential to the court's ultimate conclusions regarding stagnation and termination of parental rights.

As to visitation, mother does not contest the court's findings based on witness testimony and other proper evidence that she attended only 52% of her overall scheduled visits between December 2020 and April 2021, or that she continued to miss a significant number of visits in September and October 2021 leading up to the merits hearing. The testimony of mother's visit supervisor independently supported the court's findings that mother failed to consistently attend visits during the summer of 2021, and that DCF did not allow her to progress to unsupervised home visits with G.L. because of this inconsistent attendance. Chickanosky v. Chickanosky, 2011 VT 110, ¶ 14, 190 Vt. 435 (“[F]indings will stand if any reasonable and credible evidence supports them.”).

Mother argues that she missed many visits due to circumstances outside her control, such as illness, COVID-19 restrictions, and DCF changing its visit policies. See In re S.R., 157 Vt. 417, 421-22 (1991) (explaining that court cannot conclude parent's progress has stagnated based on factors outside parent's control). However, the court clearly found credible two DCF visit supervisors whose testimony suggested that mother feigned or exaggerated illness to avoid or cut short visits on several occasions. The trial court also carefully accounted, and did not fault mother, for visits canceled by DCF either because an office was closed or because G.L. was sick. Although the court acknowledged that the pandemic had affected visitation to some degree, it found that mother missed visits because of her failure to anticipate the consequences of COVID-19 restrictions—such as traveling out of state and having to quarantine—not because the restrictions prevented visitation completely. The court also found, and mother does not contest, that DCF offered mother the option of remote video or telephone visits with G.L., and mother declined. There was ample record evidence from various sources to support the court's findings that mother had failed to maintain consistent contact with G.L. during the two years G.L. had been with her foster family, that her inconsistent visitation was largely due to factors within her control, and that there was no certainty about when mother might be able to resume parenting.

As to mental health, regardless of whether mother was adhering to the case plan by meeting with an unlicensed counselor, the court found that she had not made significant progress in ameliorating one of the primary concerns that led to G.L. being taken out of her care, namely, her aggressive behavior and emotional dysregulation. The court noted mother's consistent, continuing pattern of volatile behavior in interacting with others, despite her engagement with service providers. The “case plan is not intended to be a mere checklist the parent must satisfy to ensure the automatic return of the children to the parent's care.” In re D.M., 2004 VT 41, ¶ 7, 176 Vt. 639 (mem.). Thus, “even if a parent participates in every program set forth in [DCF's] plan, the 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.” Id. The court's findings regarding behavioral and mental-health progress were well supported by the record, apart from the contested exhibit, and these findings in turn supported the court's conclusions regarding stagnation and termination of parental rights.

While mother perceives the evidentiary record as showing sufficient improvement in attending visits and addressing mental-health issues, these arguments effectively challenge the weight that the trial court assigned to various pieces of evidence. We do not reweigh evidence on appeal. Chickanosky, 2011 VT 110, ¶ 14 (explaining that family court alone evaluates weight

of evidence in determining child's best interests). Because there was credible evidence to support the court's key findings, we must uphold them. Id.

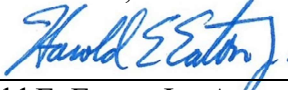
Mother also argues that DCF failed to prove by clear and convincing evidence that termination was in G.L.'s best interests because it never proved that she assaulted G.L.'s half-brother, and some incidents of violence occurred outside of G.L.'s presence. The court did not need to specifically find that mother assaulted G.L.'s sibling or that mother's aggressive behavior always occurred in front of G.L. to conclude that termination was in G.L.'s best interests. The best-interests factors focus on the needs of the child, and the parent's ability to meet those needs and resume parental duties within a reasonable period of time. As the court explained, G.L. "needs caregivers who prioritize her needs above their own and can provide stability and consistency in her life." Although not every emotional outburst or violent action occurred within G.L.'s presence, the court noted multiple recent incidents that G.L. did witness. The court found credible G.L.'s foster mother, who testified to the negative emotional effects she observed in G.L. following visits with mother where domestic strife had occurred. It also credited testimony of DCF workers that mother lacked insight as to how her dysregulation and aggressive behaviors created a risk of harm for her children and affected her parenting. These findings, combined with mother's ongoing struggles to maintain consistent contact with G.L., amply supported the court's conclusion that termination was in G.L.'s best interests.

Affirmed.

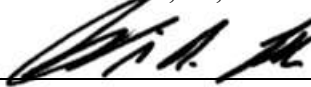
BY THE COURT:



Paul L. Reiber, Chief Justice



Harold E. Eaton, Jr., Associate Justice



William D. Cohen, Associate Justice

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ENTRY ORDER

JULY TERM, 2022

In re G.L., Juvenile (N.P., Mother*)	}	APPEALED FROM:
	}	Superior Court, Franklin Unit, Family Division
	}	
	}	CASE NO. 232-9-19 Frjv

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

Mother's motion for reargument fails to satisfy the requirements of V.R.A.P. 40 and it is therefore denied.

BY THE COURT:

Handwritten signature of Paul L. Reiber in black ink.

Paul L. Reiber, Chief Justice

Handwritten signature of Harold E. Eaton, Jr. in blue ink.

Harold E. Eaton, Jr., Associate Justice

Handwritten signature of William D. Cohen in black ink.

William D. Cohen, Associate Justice