**No. _____**

**IN THE**
**SUPREME COURT OF THE UNITED STATES**

D.B. & N.D.,
Petitioners

v.

STATE OF VERMONT,
Respondent

On Petition for Writ of Certiorari
To the Vermont Supreme Court

# PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

The questions presented are:

1. Whether 42 U.S.C. § 671(a)(15)(B), which mandates that reasonable efforts "shall be made" to reunify families, requires state courts to ensure that child welfare agencies made reasonable efforts toward reunification before terminating parental rights based solely on parents' failure to remedy the conditions that led to removal.
2. Whether the Due Process Clause requires a court-approved case plan providing parents with fair notice of what they must do to avert termination and preserve their fundamental right to parent their children.

## LIST OF PARTIES

The parties to the judgment from which review is sought are:

D.B., Father – Petitioner
N.D., Mother – Petitioner
State of Vermont – Respondent
J.B., Juvenile – Respondent
D.B., Juvenile – Respondent
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## PETITION FOR A WRIT OF CERTIORARI

D.B. and N.D., Petitioners, respectfully petition for a writ of certiorari to review the judgment of the Vermont Supreme Court in this case.

## OPINIONS BELOW

The opinion of the Vermont Supreme Court is not published, but is electronically reported at *In re J.B.*, No. 25-AP-033, 2025 WL 1913382 (Vt. July 11, 2025). App. A.

## JURISDICTION

The Vermont Supreme Court entered judgment on July 11, 2025, and it denied a motion to reargue the case on August 12, 2025. App. B. The jurisdiction of the Court is invoked under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in relevant part:

> No State shall…deprive any person of life, liberty, or property, without due process of law…

U.S. Const. amend. XIV, § 1.

The federal statutory provisions involved include 42 U.S.C. § 671 and 42 U.S.C. § 675.

## STATEMENT

### *A. Vermont's Termination System*

Vermont terminates parental rights at more than twice the national rate. Between 2000 and 2016, Vermont ranked fourth highest in the nation for per capita

terminations of parental rights. Christopher Wildeman, Frank R. Edwards, & Sara Wakefield, *The Cumulative Prevalence of Termination of Parental Rights for U.S. Children, 2000–2016*, 25 Child Maltreatment 32, 38 (2020). A 2021 federal study found that thirty-six percent of Vermont children entering foster care will experience termination of parental rights – a higher percentage than all but four other states. Laura Radel & Emily Madden, U.S. Dep't of Health and Human Svs., *Freeing Children for Adoption within the Adoption and Safe Families Act Timeline: Part 1 – The Numbers*, 4 (Feb. 2021) https://aspe.hhs.gov/sites/default/files/private/pdf/265036/freeing-children-for-adoption-asfa-pt-1.pdf.

Vermont trial courts grant 98.9 percent of termination petitions. Email from Leda Moloff, General Counsel, Vermont Judiciary (Sep. 12, 2025, 14:07 EST). The Vermont Supreme Court has affirmed one hundred percent of termination decisions over the last five years. The last reversal occurred in May 2020 on procedural grounds. *In re A.W.*, 2020 VT 34, ¶ 14, 212 Vt. 225, 235 A.3d 518. In other words, if Vermont's child welfare agency decides to pursue a termination of parental rights, the petition is almost ninety-nine percent certain to succeed. No other type of judicial proceeding produces such lopsided results.

This case illustrates why. Vermont courts refuse to require the Vermont Department for Children and Families (DCF) to make reasonable efforts toward reunification before terminating parental rights. Vermont law also permits termination at initial disposition based solely on a finding that termination is in the

children's "best interests." 33 V.S.A. § 5114. When, as in this case, termination is sought at initial disposition, the Vermont Supreme Court has held that parental rights may be terminated without a court-approved case plan specifying what parents must do to avert the permanent destruction of their family. These practices violate federal law and deny parents due process.

*B. Factual Background*

D.B. (Father) and N.D. (Mother) are the parents of four children, Jacqueline, David, Emma, and Landon.[1]. In June 2021, the government filed neglect petitions alleging concerns about David and Jacqueline's hygiene, the cleanliness of the family's home, and truancy. Jacqueline and David were taken into temporary custody. In December 2021, a court determined that the State failed to prove its allegations of neglect, and both children returned home.

In May 2022, the State filed another set of neglect petitions containing nearly identical allegations regarding cleanliness and hygiene, truancy, and concerns that the children were overweight. The children remained in parental custody under court supervision[2] until October 2022, when they were removed after Father, who suffers from sleep apnea, fell asleep during a counseling appointment. Emma was removed immediately after her birth in November 2022. Landon was removed at birth in July 2024. He subsequently returned to Mother and Father's care, where he

[1] The children have been assigned pseudonyms to protect their privacy and to streamline the narrative by avoiding the overuse of initials to identify the parties.

[2] Vermont allows a court to place conditions on a parents' custody as an alternative to removal of the child and placement in DCF custody. These orders are called "conditional custody orders," and are frequently referred to as "CCOs."

remains.

At the merits hearing in April 2023, the State proved limited allegations. The court found that the two older children, then age nine and seven, were "without proper parental care" based on: 1) obesity and poor hygiene; 2) dirty or ill-fitting clothing; and 3) excessive school absences. As to the youngest child, Emma, the court found only that the parents maintained an "unclean" home, twice declined unannounced DCF visits, and that mother declined to release her treatment records to DCF, despite no court order requiring her to do so.

The evidence supporting initial removal and the court's merits findings was weak. Though the children received regular medical care through a local pediatrics practice and some of DCF's concerns centered around the children's weight, the children's medical providers did not testify. Some of the school absences resulted from COVID-19 and from the school's policy of marking children "absent" if tardy three times consecutively – even by one minute. David's hygiene concerns stemmed primarily from his toileting accidents. These accidents were due to encopresis, a medical condition, and continued even after fourteen months in foster care. Both parents testified that the children bathed daily and used deodorant. Jaqueline wore Father's work shirts because they made her feel safe. The shirts, though clean, were stained from Father's work in construction. The DCF worker's testimony indicated that the parents improved the condition of their home after the petition was filed. Mother testified that the family had given away several of their cats and had only two at the time of the merits hearing. Significantly, the State offered no evidence

linking the condition of the family's home to any negative health consequences.

Mother testified to the family's close-knit relationship. She described how the children would often ask to have "campouts" in the living room, explaining that these campouts because they made them feel safe and close to their parents following their involuntary removal from the home in 2021. Mother testified to the many activities the family did together, including visiting relatives in the Berkshires, swimming, reading, celebrating the children's birthday parties, playing outdoors, visiting state parks, and attending public events. She explained, "my kids are my world and without them, I'm nothing."

The court concluded its decision on the merits by urging DCF to reunify the family: "Given the length of time the children have been in custody, the court encourages DCF to consider services and conditions under which the children could be returned to their parents' custody under a CCO, if not at disposition, soon thereafter."

DCF responded to the court's encouragement by seeking termination instead of reunification. The court expressed significant concern about the plan to terminate parental rights without first offering reunification services, stating:

> My first reaction was there must be more evidence that I haven't seen, maybe about the past or whatever, because my initial reaction was, the facts that I found at merits were before the Court on a request for TPR, it would be difficult to make the finding of parental unfitness without further effort by these folks and on their – and on their behalf.

There was no "more evidence." Undeterred by the court's concern, in June 2023,

DCF filed the petition and began recruiting adoptive parents for the children.

Though Jacqueline and Emma were placed in separate pre-adoptive homes, David was not so lucky. He was sexually abused by another child in foster care and moved seven times in two years. At the time of termination, he was in his second residential placement, with no prospects for adoption in sight. His DCF worker testified that his chances at permanency through adoption were "slim." At termination, David's contact with his siblings was extremely limited, and the only family members who visited him regularly were his parents. That contact stopped after the court terminated parental rights.

*C. DCF's Failure to Make Reasonable Efforts*

DCF never made reasonable efforts to reunify the family, despite the court's urging. Six months after removal, the parents were still only permitted one hour per week of visitation with their children. The State's Attorney conceded in June 2023 that "the Court ordered parent-child contact, and DCF isn't doing it." When asked what services DCF provided to address home cleanliness – a primary merits concern – the DCF worker testified: "So DCF doesn't provide those services."

Instead, DCF created a lengthy case plan with action steps unrelated to the merits findings. Father was required to complete a domestic violence assessment and programming despite no evidence or findings of domestic violence. Both parents underwent repeated substance abuse testing even though the court made no findings regarding substance abuse, and both parents were ordered to participate in mental health counseling without any prior assessment or finding that such

treatment was necessary. The DCF worker admitted these requirements bore no relationship to the merits findings but insisted they were necessary to "prevent repeated removals" – even though the court had dismissed the 2021 case for lack of evidence.

The sole "reunification service" – family time coaching – did not begin until nine months post-removal and focused on gathering evidence against parents rather than addressing the concerns identified by the court. DCF and the contractor who provided the coaching service imposed arbitrary restrictions on the parents. These included prohibiting "future talk" and "adult talk," without defining these terms, and faulting the parents for occasionally bringing the children sweets or chips in addition to healthy snack options. DCF and the visit supervisor offered examples of "future talk" and "adult talk" that were petty at best – an occasion where the parents discussed celebrating Jacqueline's birthday party without first obtaining permission from DCF, the parents telling the children they missed a visit because it conflicted with a court hearing, and an occasion where Mother redirected Jacqueline when she asked about coming home instead of ignoring her question.

Though the trial court held a permanency hearing in November 2023, it did not approve DCF's case plan, which called for termination of parental rights. Thus, the court did not relieve DCF of its obligation to make reasonable efforts. The court conducted three days of contested termination hearings in November 2024, but again, it did not approve DCF's case plan or relieve DCF of its obligation to make reasonable efforts. As part of the termination proceedings in the trial court, the

parents raised DCF's failure to make reasonable efforts.

*D. No Court-Approved Case Plan*

Because DCF sought termination at initial disposition, the court never approved the disposition case plan. The parents thus had no judicial determination of what they needed to do to avoid termination and no opportunity to challenge DCF's arbitrary restrictions and unnecessary demands.

Despite receiving no reunification services and no court-approved plan, both parents substantially complied with DCF's demands. The parents: 1) signed releases for DCF to communicate with providers; 2) attended individual counseling; 3) submitted to random drug testing; 4) participated in "family time coaching," a supervised visitation program that largely focused on nitpicking their parenting; 5) offered their children healthy snacks during visits, including fresh fruits, vegetables, and low fat dairy products; and 6) improved the cleanliness of their home. Father completed a domestic violence assessment and fifty out of fifty-two domestic violence classes. Additionally, after David was placed in a residential program, Mother and Father traveled to see him weekly, a six-hour round trip.

*E. The Termination Proceedings and Decision*

After eleven days of testimony, the trial court terminated parental rights based on its conclusion that the statutory "best interests" factors favored termination. 33 V.S.A. § 5114. The court found that the first factor, which requires consideration of the children's relationships with their parents, siblings, and foster parents, did "not weigh strongly in favor of termination" because of the ongoing

parent-child contact and close relationships between the children and their parents.

The court determined that the second factor, the children's adjustment to their home, school, and community, weighed "strongly in favor" of termination for Jacqueline and Emma, since both were living in pre-adoptive homes. It found that this factor did not weigh strongly in favor of termination for David since he was living in congregate care.

The court found that the third factor, whether the parents could resume parenting within a reasonable time, weighed "strongly in favor" of termination. As evidence, the court cited the parents' alleged failure to provide exclusively healthy snacks during visits, inability to maintain a clean home, failure to address "mental health issues," Father's "dysregulation," Mother's "passivity," and the fact that DCF did not allow the parents to have unsupervised contact with the children.

The court concluded that the fourth factor, whether the parents continued to play a "constructive role" in the children's lives, weighed in favor of termination based on the parents engaging in "future talk" and "adult talk" during visits, their decision to bring David sweets during a Christmas visit, and the parents' use of their phones during visits to play music, distract Emma during diaper changes, and occasionally take calls. Importantly, the court declined to find that DCF made reasonable efforts toward reunification – only that it made reasonable efforts to finalize a permanency plan through adoption.

The Vermont Supreme Court affirmed. App. A. It dismissed Father's reasonable efforts argument in a single paragraph: "When termination is sought at

initial disposition, as here, the sole question is whether it is in the child's best interests. Therefore, we do not address the arguments regarding reasonable efforts and focus instead on the court's analysis of the children's best interests." App. A at 6. The court rejected Father's due process argument about the lack of a court-approved case plan in a footnote: "A court-approved plan of services is not a precondition to termination at initial disposition." *Id.* at 7, n.5. The court rejected Mother's related argument that it was impossible for the parents to show that they had addressed concerns regarding the children's weight, hygiene, and truancy while the children were in foster care. App. A at 7.

## REASONS FOR GRANTING THE PETITION

This case presents two questions of exceptional importance affecting thousands of families nationwide. First, the states are sharply divided on whether federal law requires child welfare agencies to make reasonable efforts toward reunification before terminating parental rights. Vermont stands virtually alone in refusing to consider reasonable efforts when termination is sought at initial disposition. Second, Vermont permits termination without providing parents a court-approved case plan—denying them fair notice of what they must do to preserve their fundamental right to parent their children.

These issues warrant this Court's review for four reasons. First, there is a clear and acknowledged split among the states. Forty-one states and the District of Columbia require reasonable efforts as a precondition to termination (absent aggravating circumstances) in cases where termination is sought based on a parent's failure to remedy the conditions leading to removal. Only nine states

permit termination when agencies fail to make reasonable efforts toward reunification. Among those nine, Vermont is unique in categorically refusing to consider reasonable efforts when termination is sought at initial disposition.

Second, the questions presented have profound practical importance. States receive federal child welfare funding conditioned on compliance with 42 U.S.C. § 671(a)(15)(B), which mandates reasonable efforts "shall be made" to reunify families. Vermont courts openly defy their duty to enforce this important federal law.

Third, fundamental constitutional rights are at stake. As this Court recognized in *Santosky v. Kramer*, the State's "unusual ability to structure the evidence increases the risk of an erroneous factfinding" in termination cases. 455 U.S. 745, 763, n. 13 (1982). Vermont's system magnifies this risk by permitting the State to manufacture grounds for termination through deliberate failure to reunify, then using the passage of time and resulting changes in the child's circumstances as evidence of parental unfitness.

Fourth, Vermont's extraordinary termination statistics – a 98.9 percent grant rate, a one hundred percent appellate affirmance rate over five years, and double the national per capita termination rate – demonstrate a systemic failure requiring this Court's intervention.

## I. This Court should grant the petition because the states are sharply divided on whether federal law requires reasonable efforts before terminating parental rights.

### *A. Federal law requires states to make reasonable efforts toward reunification.*

Federal law is clear: "reasonable efforts *shall* be made to preserve and reunify families . . . to make it possible for a child to safely return home." 42 U.S.C. § 671(a)(15)(B)(ii) (emphasis added). This requirement continues until a court adopts a contrary permanency goal. *See* 42 U.S.C. § 671(a)(15)(C). Limited exceptions exist for aggravating circumstances, which are not present here. 42 U.S.C. § 671(a)(15)(D).

The reasonable efforts requirement is reinforced by 42 U.S.C. § 675(5)(E), which creates an exception to the mandate to file for termination after fifteen of twenty-two months in care when the State "has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child." 42 U.S.C. § 675(5)(E)(iii). Thus, federal law contemplates termination only *after* reasonable reunification efforts, absent aggravating circumstances. *See Kenny A. ex rel. Winn v. Perdue*, 218 F.R.D. 277, 297 (N.D. Ga. 2003) ("[T]his Court finds that once the state has removed a child from his or her family, it cannot deliberately and without justification deny that child the services necessary to facilitate reunification with his or her family, when safe and appropriate, without violating the child's right to family integrity.").

States receive federal funding conditioned on compliance with these requirements. The Supremacy Clause requires state courts to enforce federal law. *Haaland v. Brackeen*, 599 U.S. 255, 259-60 (2023). It "forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source." *Howlett v. Rose*, 496 U.S.

356, 371 (1990). Indeed, state juvenile courts are the only mechanism for enforcement of this critical federal requirement. *See Suter v. Artist M.*, 503 U.S. 347, 350 (1992).

*B. Forty-one states and the District of Columbia would prohibit the termination of Mother and Father's parental rights because of DCF's failure to make reasonable efforts.*

The substantial majority of states require child welfare agencies to make reasonable efforts toward reunification before terminating parental rights, at least when termination is based on parents' failure to remedy the conditions that brought the children into custody. These forty-one jurisdictions include: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.[3]

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[3] *K.W. v. Lee Cnty. Dep't of Hum. Res.*, 390 So. 3d 1080, 1092 (Ala. Civ. App. 2023), *cert. denied* (Sept. 8, 2023); *Sherman B. v. State, Dep't of Health & Soc. Servs.*, 290 P.3d 421, 432 (Alaska 2012); *Jessie D. v. Dep't of Child Safety*, 251 Ariz. 574, 581, 495 P.3d 914, 921 (2021) (framing the requirement to make reasonable efforts as a constitutional issue); *Best v. Arkansas Dep't of Hum. Servs.*, 2020 Ark. App. 485, 24, 611 S.W.3d 690, 704 (2020) (requiring reasonable efforts unless aggravated circumstances, as defined by state law, are present); *In re K.C.*, 212 Cal. App. 4th 323, 329, 151 Cal. Rptr. 3d 161, 165–66 (2012) (explaining that reunification services must ordinarily be attempted for twelve months prior to terminating parental rights and the court may extend services to eighteen months if the agency fails to make reasonable efforts); *People In Int. of S.Z.S.*, 2022 COA 133, ¶ 13, 524 P.3d 1209, 1214 (explaining that reasonable efforts are required absent unless state-defined aggravating circumstances are present); *In re Joseph W., Jr.*, 53 Conn. Supp. 1, 141, 79 A.3d 155, 231 (Super. Ct.), *aff'd,* 146 Conn. App. 468, 78 A.3d 276 (2013); *Ralston v. Div. of Servs. for Child., Youth & their Fams.*, 308 A.3d 149, 163 (Del. 2023);*In re Ta.L.*, 149 A.3d 1060, 1079 (D.C. 2016); *R.W. v. Dep't of Child. & Fams.*, 228 So. 3d 730, 733 (Fla. Dist. Ct. App. 2017); *In re Doe*, 100 Hawai'i 335, 343, 60 P.3d 285, 293 (2002); 705 Ill. Comp. Stat. Ann. 405/2-21; *In re T.W.*, 135 N.E.3d 607, 615 (Ind. Ct. App. 2019) (framing "reasonable efforts" to reunify families as an essential element of due

These states recognize that without enforceable reasonable efforts, agencies can manufacture grounds for termination simply by allowing time to pass.

Only nine states permit termination when agencies fail to make reasonable efforts: Georgia, Idaho, Maine, Massachusetts, Montana, Nevada, Pennsylvania, Tennessee, and Vermont. Even these states generally require courts to *consider* the agency's efforts – or lack thereof – as part of the termination analysis. *In Int. of E. M.*, 347 Ga. App. 351, 359, 819 S.E.2d 505, 511 (2018); *Matter of Doe I*, 166 Idaho 357, 360, 458 P.3d 226, 229 (Ct. App. 2020) (stating that although reasonable efforts

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process); *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000) (explaining that reasonable efforts is not "a strict substantive requirement of termination," but the government must show reasonable efforts "as a part of its ultimate proof the child cannot be safely returned to the care of a parent"); *Ints. of M.S.*, 56 Kan. App. 2d 1247, 1257–58, 447 P.3d 994, 1004 (2019); *R. M. v. Cabinet for Health & Fam. Servs.*, 620 S.W.3d 32, 41 (Ky. 2021); *State ex rel. A.T.*, 2006-0501 (La. 7/6/06), 936 So. 2d 79, 85–86 (reversing order terminating parental rights where agency failed to assist mother in finding housing and lack of housing was the primary barrier to reunification); *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 233, 189 A.3d 284, 303 (2018); *In re Hicks/Brown*, 500 Mich. 79, 90, 893 N.W.2d 637, 642 (2017); *Matter of Welfare of Child of J.H.*, 968 N.W.2d 593, 600 (Minn. Ct. App. 2021); *Matter of L.C.*, 394 So. 3d 517, 531 (Miss. Ct. App. 2024); *Int. of D.L.P.*, 638 S.W.3d 82, 92 (Mo. Ct. App. 2021) (explaining that parental rights cannot be terminated on the grounds that the parent has failed to rectify harmful conditions where agency has also failed to make reasonable efforts to reunify the family); *In re Hope L.*, 278 Neb. 869, 891, 775 N.W.2d 384, 400 (2009); *New Jersey Div. of Youth & Fam. Servs. v. I.S.*, 202 N.J. 145, 167, 996 A.2d 986, 999 (2010); *Matter of Anhayla H.*, 2018-NMSC-033, ¶ 40, 421 P.3d 814, 823; *Matter of Desirea F.*, 217 A.D.3d 1064, 1066, 190 N.Y.S.3d 522, 525, *leave to appeal denied,* 40 N.Y.3d 908, 224 N.E.3d 540 (2023); *In re S.D.*, 2021-NCCOA-93, ¶ 50, 857 S.E.2d 332, 342; *In re A.B.*, 2009 ND 116, ¶ 26, 767 N.W.2d 817, 825; *In re C.F.*, 2007-Ohio-1104, ¶ 21, 113 Ohio St. 3d 73, 77, 862 N.E.2d 816, 820; *In re E.P.F.L., Jr.*, 2011 OK CIV APP 112, ¶ 25, 265 P.3d 764, 769; *Matter of E. B.-M.*, 310 Or. App. 171, 183, 483 P.3d 1248, 1255 (2021); *In re Briann A.T.*, 146 A.3d 866, 873 (R.I. 2016); *S.C. Dep't of Soc. Servs. v. Briggs*, 413 S.C. 377, 384, 776 S.E.2d 115, 119 (Ct. App. 2015); *People in interest of M.S.*, 2014 S.D. 17, ¶ 13, 845 N.W.2d 366, 369–70; *Int. of Y.K.*, No. 02-25-00069-CV, 2025 WL 2006075, at *6 (Tex. App. July 17, 2025) (referencing statute that requires court to find that agency made reasonable efforts or that the requirement was waived before terminating parental rights); *State ex rel. K.F.*, 2009 UT 4, ¶ 51, 201 P.3d 985, 997 (explaining that state statute defines "a reasonable effort is 'a fair and serious attempt to reunify a parent with a child prior to seeking to terminate parental rights.'"); *Dung Thi Thach v. Arlington Cnty. Dep't of Hum. Servs.*, 63 Va. App. 157, 170, 754 S.E.2d 922, 928 (2014); *Matter of B.P. v. H.O.*, 186 Wash. 2d 292, 315–16, 376 P.3d 350, 362 (2016); *In re Edward B.*, 210 W. Va. 621, 631, 558 S.E.2d 620, 630 (2001); *In re Marquette S.*, 2007 WI 77, ¶ 58, 301 Wis. 2d 531, 561, 734 N.W.2d 81, 96; *In Int. of JW*, 2018 WY 22, ¶ 19, 411 P.3d 422, 426 (Wyo. 2018) (stating that the permanency goal cannot change from reunification to adoption unless the agency proves that it "made reasonable efforts to achieve unification without success.").

are an ongoing consideration throughout the child protection case, the agency's failure to make reasonable efforts is not reviewable at TPR); *In re Child of James R.*, 2018 ME 50, ¶ 21, 182 A.3d 1252, 1259 (holding that the agency's failure to provide "adequate reunification services is not by itself a basis for the court to deny a termination petition, although it is a factor the court may consider in evaluating allegations of the parent's unfitness."); *In re Adoption of Ilona*, 459 Mass. 53, 61, 944 N.E.2d 115, 123 (2011) (holding that the court "may consider the department's failure to make reasonable efforts in deciding whether a parent's unfitness is merely temporary," but failure to make reasonable efforts does not preclude termination); *In re Matter of C.M.*, 2019 MT 227, ¶ 22, 397 Mont. 275, 449 P.3d 806 (stating that "a conclusion that a parent is unlikely to change could be called into question if the Department failed to make reasonable efforts to assist the parent."); *In re Parental Rts. as to T.A.G.*, 281 P.3d 1186 (Nev. 2009); *In re D.C.D.*, 629 Pa. 325, 340, 105 A.3d 662, 671 (2014); *In re Kaliyah S.*, 455 S.W.3d 533, 555 (Tenn. 2015) (holding that "the extent of DCS's efforts to reunify the family is weighed in the court's best-interest analysis, but proof of reasonable efforts is not a precondition to termination of the parental rights of the respondent parent.").

Vermont stands alone in categorically refusing to consider reasonable efforts when termination is sought at initial disposition. Its highest court has explicitly decoupled the federal mandate to make "reasonable efforts" to reunify families from termination proceedings. The four best interest factors are the only criteria upon which a termination of parental rights need rest, and "[w]hether [DCF] made

reasonable efforts to assist the parents is not one [of these four criteria]." *In re J.T.*, 166 Vt. 173, 180, 693 A.2d 283, 287 (1997) (citing *In re K.H.,* 154 Vt. 540, 541–43, 580 A.2d 48, 49 (1990), *cert. denied by D.H. v. Vermont Dep't of Social & Rehabilitation Servs.,* 498 U.S. 1070 (1991)). The Vermont Supreme Court's decision in this case held that whether DCF made reasonable efforts to reunify was irrelevant to the termination of Mother and Father's parental rights. No other state has taken this position.

*C. Vermont's position conflicts with federal law and constitutional requirements.*

Vermont's refusal to enforce reasonable efforts creates three interrelated problems: 1) it violates federal statutes; 2) it impermissibly shifts the burden of proof from the government to the parents in termination proceedings; and 3) these factors, combined with Vermont's unique statutory framework for terminating parental rights, deprive parents of due process.

As explained above, Vermont explicitly defies 42 U.S.C. § 671(a)(15)(B)'s mandate that child welfare agencies "shall" make reasonable efforts to reunify families. The Vermont Supreme Court has held that "whether DCF made reasonable efforts to achieve permanency is a separate question from whether termination is in the child's best interests and the former is not a prerequisite to the latter." *In re C.P.*, 2012 VT 100, ¶ 38, 193 Vt. 29, 47, 71 A.3d 1142.

Vermont's approach shifts the burden of proof from the State to parents. Vermont lacks substantive statutory criteria for terminating parental rights, particularly at initial disposition. The only requirement is that the court find, by

clear and convincing evidence, that termination is in the children's "best interests." 33 V.S.A. § 5317(d); 33 V.S.A. § 5318(a)(5). The "best interest" factors include: 1) the children's relationships with their parents, foster parents, siblings, and other significant adults; 2) the children's adjustment to their home, school, and community; 3) whether the parents can resume parental duties within a reasonable time; and 4) whether the parents continue to play a constructive role in the children's lives. 33 V.S.A. § 5114.

One quirk of Vermont law is that a merits adjudication does not mean that the parent is unfit – that determination occurs at disposition. *In re R.L.,* 148 Vt. 223, 227, 531 A.2d 909, 911 (1987). Thus, Mother and Father entered the disposition phase of the proceeding with a presumption of fitness. The Vermont Supreme Court has held that the third best interest factor, whether the parent can resume "parental duties within a reasonable period of time," is equivalent to the concept of "unfitness" that this Court articulated in *Santosky v. Kramer*, 455 U.S. 745, 760 (1982); *In re D.C.*, 2012 VT 108, ¶ 22, 193 Vt. 101, 111, 71 A.3d 1191. Vermont's case law – and the Vermont Supreme Court's decision in this case – reveal the shifting and subjective nature of this standard and an extreme level of deference to the trial courts. The court is tasked with guessing whether the parents can succeed by conducting a "forward-looking" inquiry that examines the parents' "prospective ability to parent the child." *In re B.M.*, 165 Vt. 331, 337, 682 A.2d 477, 480 (1996). The court's inquiry is supposed to measure the "reasonableness of the time period . . . from the perspective of the child's needs, and may take account of

the child's young age or special needs." *In re C.P.*, 2012 VT 100, ¶ 30, 193 Vt. 29, 43, 71 A.3d 1142. Additionally, the proper balance of the various best interest considerations remains an elusive standard. *Compare In re J.M.*, 2015 VT 94, ¶ 12, 199 Vt. 627, 127 A.3d 921, 924 (observing that "few, if any, circumstances concerning the welfare of the child should be considered entirely immaterial or, for that matter, entirely controlling") *with In re B.M.*, 165 Vt. at 336 (holding that the most important "best interests" factor is the likelihood that the parent will be able to resume parental duties within a reasonable period of time).

In *In re C.L.*, the Vermont Supreme Court upheld the termination of a father's parental rights – despite his acknowledged fitness – simply because his daughter was "bonded" to her foster parents and transitioning her to her father's care would take "too long" from the child's perspective. 2005 VT 34, ¶ 17, 178 Vt. 558, 563–64, 878 A.2d 207. As this case illustrates, when DCF takes custody of a child, "the state tilts the very playing field of the litigation," shifting the burden of proof "in effect, if not in law, from the state to the parents." Paul Chill, *Burden of Proof Begone the Pernicious Effect of Emergency Removal in Child Protective Proceedings*, 41 Fam. Ct. Rev. 457, 459 (2003). By simply failing to work toward reunification and allowing time to pass, DCF can tip the balance of the best interest factors in favor of termination. Similarly, "the State's unusual ability to structure the evidence increases the risk of an erroneous factfinding" in termination cases. *Santosky*, 455 U.S. at 763, n. 13. Thus, enforcing reasonable efforts is indistinguishable from holding the State to its burden of proof in cases like this one,

where termination is based solely on the alleged failure of the parents to demonstrate sufficient improvement. As one commentator explained:

> Whenever an action for termination of parental rights is based on a parent's failure to improve, reasonable efforts should be an integral factor at the termination hearing. . . Reasonable efforts is the primary burden against which states must contend in each CPS case. While it is preferable to require state agencies to show reasonable efforts early on in each case, the requirement is no less important at termination hearings. On the contrary, it is decisions to terminate parental rights where the legal relationship between parent and child suffers the greatest blow. Thus, these hearings, perhaps more than any other, should include a showing of reasonable efforts.

Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State's Burden Under Federal Child Protection Legislation*, 12 B.U. Pub. Int. L.J. 259, 314 (2003). In recognition of the due process implications, some states explicitly frame the federal reasonable efforts mandate as a constitutional requirement. *Waters v. Div. of Fam. Servs.*, 903 A.2d 720, 727 (Del. 2006) ("Because DFS failed to provide Waters with any meaningful case plan or reunification services where they were feasible—and in this case required by statute—the State failed to comply with basic due process standards in termination of parental rights proceedings."); *In re T.W.*, 135 N.E.3d 607, 615 (Ind. Ct. App. 2019).

In short, without reasonable efforts enforcement, DCF can tip the statutory "best interest" factors toward termination simply by restricting parent-child contact and thereby weakening familial bonds; delaying or refusing to offer services, which prevents the parents from demonstrating improvement; and allowing time to pass such that the children better adjust to their foster placement, school and

community. This case exemplifies the problem. The court found that the first best interest factor, the children's relationships, did not favor termination because of the ongoing parent-contact. However, DCF controlled whether contact occurred – and it placed significant restrictions on contact, initially permitting the parents just one hour per week in the months leading up to the termination filing. The court found that the second factor, the children's adjustment to their placement, favored termination for Jacqueline and Emma, since both were in pre-adoptive homes. This factor was undoubtedly influenced by DCF's restrictions on parent-child contact and DCF's refusal to move toward reunification. The third factor, the parents' ability to resume parental duties, supposedly favored termination because the parents couldn't demonstrate improvement addressing the children's weight, hygiene, and school attendance. However, the children were in DCF custody, making such demonstrations impossible.

As this Court recognized, once children are "in agency custody, the State even has the power to shape the historical events that form the basis for termination." *Santosky*, 455 U.S. at 763. Reasonable efforts enforcement is the primary safeguard against this power. American Bar Association & National Association of Juvenile and Family Court Judges, *Using the Family First Prevention Services Act to Strengthen Reasonable Efforts Determinations*, 1 (Jun. 2023) https://www.ncjfcj.org/wp-content/uploads/2025/04/family-first-reasonable-efforts.pdf (explaining that a court's "individualized and fact-specific" reasonable efforts determination serves as check "on whether families in contact with state

authorities are being provided appropriate support to avoid separation or achieve permanency."). Indeed, whether an agency made reasonable efforts toward reunification is one of the few uniform, substantive standards governing termination of parental rights, which is "an exercise of awesome power" that is "tantamount to imposition of a civil death penalty." *In re Termination of Parental Rts. as to N.J.*, 116 Nev. 790, 795, 8 P.3d 126, 129 (2000) (internal citations and quotation marks omitted).

Termination of parental rights implicates "perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000). When the State can manufacture evidence supporting termination through deliberate inaction, parents are denied a meaningful opportunity to defend their rights. The Vermont Supreme Court's decision to decouple termination of parental rights from the requirement to make reasonable efforts "assumes that termination of the natural parents' rights invariably will benefit the child," and fails to appreciate the fact "that the parents and the child share an interest in avoiding erroneous termination." *Santosky*, 455 U.S. at 765. When DCF can tip the "best interest" factors toward termination simply by failing to make reasonable efforts, courts must enforce the reasonable efforts mandate. *See In re Termination of S.J.*, 162 Wash. App. 873, 877-78, 256 P.3d 470 (2011) (reversing the termination of mother's parental rights because the State failed to provide services to promote and repair child's attachment to his mother, which had been weakened by his time in foster care and was the primary basis for

termination); *In re Walters*, No. 369318, 2025 WL 20947, at *1 (Mich. Ct. App. Jan. 2, 2025) (reversing a termination of parental rights at initial disposition because the child welfare agency failed to make reasonable efforts to reunify). Absent meaningful judicial review, an executive branch agency that has been empowered by the courts to create the factual basis for termination is an existential threat to due process. *See*, *e.g. In re Termination of S.J.*, 162 Wash. App. 873, 877-78, 256 P.3d 470 (2011) (reversing the termination of mother's parental rights because the State failed to provide services to promote and repair child's attachment to his mother, which had been weakened by his time in foster care and which was the primary basis for termination). A system that refuses to grasp the due process problem illustrated by this case and others like it will produce countless unjustified terminations of parental rights. The fact that Vermont courts grant nearly ninety-nine percent of termination petitions is proof positive of the judiciary's failure to scrutinize DCF's actions in termination cases.

### *D. This case presents an ideal vehicle for addressing the important federal questions arising from termination proceedings.*

This case cleanly presents the question of whether states must enforce reasonable efforts before terminating parental rights based on parents' failure to remedy the conditions that led to removal. The trial court did not find that DCF made reasonable efforts, nor did it relieve DCF of its obligation under federal law to work toward reunifying Mother and Father with their three oldest children. The Vermont Supreme Court explicitly refused to consider the issue. DCF's failure to provide any meaningful reunification services is undisputed.

The case also illustrates why the issue matters. Here, the parents substantially complied with DCF's demands despite receiving no services to address the merits findings. They improved their home, maintained contact with their children, and participated in every requirement imposed. Yet their rights were terminated based largely on the passage of time and their inability to demonstrate improvement in areas they could not control while their children were in DCF custody.

## II. This Court should grant the petition because terminating parental rights without a court-approved disposition case plan denies parents adequate notice in violation of the Due Process Clause.

Fair notice is a core due process requirement. "The touchstone of due process is protection of the individual against arbitrary action of government." *Wolff v. McDonnell,* 418 U.S. 539, 558 (1974). Due process requires fair notice of the standards by which government will judge an individual's conduct, particularly when fundamental rights are at stake. *Sessions v. Dimaya*, 584 U.S. 148, 156 (2018). A court-approved disposition case plan is a constitutional requirement because it provides "fair notice" of the standards by which the court will judge a parent's fitness in the event of a termination of parental rights. Here, the parents did not have a court-approved case plan at any point before the court terminated their parental rights.

Because parental "unfitness" is determined at disposition, not merits, the disposition case plan serves critical notice functions. *See In re R.L.,* 148 Vt. 223, 227, 531 A.2d 909, 911 (1987). First, it identifies "family changes needed to correct

the problems necessitating State intervention." 33 V.S.A. § 5316(b)(5). In other words, it offers the parents notice of what they must do to avoid termination of their parental rights. Second, the goals and action steps contained in the plan must be rationally related to the court's findings at merits and the reasons the children are in custody. *In re J.B.,* 167 Vt. 637, 639, 712 A.2d 895, 897 (1998) (explaining that a parent is fit if he or she can remedy the conditions that led to the filing of the petition); 33 V.S.A. § 5316(b)(5). Third, the disposition case plan is the product of an adversarial hearing where all parties may present evidence, and the court is ultimately charged with approving the contents of the plan, including the goals and action steps that will comprise the substantive standards against which parental improvement is judged. 33 V.S.A. § 5317(b). Lastly, the plan provides a benchmark for measuring parental progress. Non-compliance or incomplete compliance with a disposition case plan is typically the basis for termination of parental rights. *See*, *e.g. In re A.M.*, 2020 VT 95, ¶ 12, 213 Vt. 402, 407–08, 246 A.3d 419 (terminating parental rights based on parents' failure to achieve goals and complete action steps outlined in disposition case plan).

A case plan is also a federal statutory requirement. 42 U.S.C. § 671(a)(16). Federal law requires "[a] plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own safe home or the permanent placement of the child…." 42 U.S.C. § 675(1)(B). Such plans must be reviewed by a court or an administrative body approved by the

court, utilizing adequate "procedural safeguards" every twelve months. 42 U.S.C. 675(5)(C); *State of Vermont Dep't of Soc. & Rehab. Servs. v. U.S. Dep't of Health & Hum. Servs.*, 798 F.2d 57, 64 (2d Cir. 1986) (holding that 42 U.S.C. 675(5)(C) requires annual permanency hearings before a court or court-approved administrative body that contains adequate "procedural safeguards"). In this case, the court did not approve the disposition case plan or DCF's permanency case plans calling for adoption.

Courts in other states recognize case plans as a vital element of due process – providing the parent with notice of what is necessary to preserve parental rights. *In re Involuntary Termination of Parental Rts. of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004) (stating that the "case plan's purpose is to serve notice of parental conduct that could lead to termination of the parent-child relationship."); *Waters v. Div. of Fam. Servs.*, 903 A.2d 720, 727 (Del. 2006) (holding that the lack of a "meaningful case plan" violates "basic due process standards"); *In re Int. of Mainor T.*, 267 Neb. 232, 253, 674 N.W.2d 442, 461 (2004) (holding that court's failure to hold an evidentiary hearing and make findings of fact supporting case plan that was later used as the basis for termination deprived parents of due process); *In re Walters*, No. 369318, 2025 WL 20947, at *6–7 (Mich. Ct. App. Jan. 2, 2025) (holding that social services agency's failure to prepare written case plan and submit it to the court for approval before seeking termination of parental rights at initial disposition deprived mother of due process).

Vermont explicitly permits termination of parental rights without first giving parents a court-approved case plan. *In re J.T.*, 166 Vt. 173, 179, 693 A.2d 283, 286–87 (1997) (affirmed by *In re J.B.*, No. 25-AP-033, 2025 WL 1913382, at *6, n.5 (Vt. July 11, 2025) ("A court-approved plan of services is not a precondition to termination at initial disposition.")).

Without a court-approved plan, DCF imposed requirements on Mother and Father bearing no rational relationship to the court's merits findings. These included requiring a domestic violence assessment and extensive programming related to domestic violence, mental health treatment, substance abuse testing, and excessive and poorly defined restrictions on what the parents could say to the children during visits.

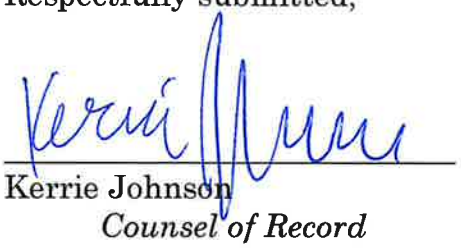
Mother and Father had no opportunity to challenge these requirements judicially, and the juvenile court never determined what the parents needed to do to avoid termination. The DCF worker admitted that several of the requirements were untethered from the court's merits findings, but claimed she had authority to address DCF's "concerns" even where the State failed to prove them.

This is the definition of arbitrary government action. Mother and Father's rights were terminated based on vague assertions of insufficient "progress" toward goals that were never judicially approved and bore little to no relationship to proven concerns.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



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# Appendix A

VERMONT SUPREME COURT
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Case No. 25-AP-033

*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

JULY TERM, 2025

| | | |
|---|---|---|
| In re J.B., D.B., E.B., Juveniles<br>(D.B., Father* & N.D., Mother*) | } | APPEALED FROM: |
| | } | |
| | } | Superior Court, Grand Isle Unit, |
| | } | Family Division |
| | } | CASE NOS. 22-JV-00708, 22-JV-00710 & 22-JV-01648 |
| | | Trial Judge: Samuel Hoar, Jr. (merits); Howard A. Kalfus (termination) |

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

Mother and father appeal termination of their parental rights to their children J.B., D.B., and E.B., born in March 2014, August 2015, and November 2022, respectively. On appeal, mother and father argue that the evidence did not support the court's analysis of the children's best interests or the finding that the children were in need of care or supervision. Father also contends that the court erred by combining the merits and temporary-care hearings and failing to correct an alleged conflict of interest by children's attorney. We affirm.

## I. Facts

The court found the following facts by clear and convincing evidence.[1] In June 2021, petitions were filed alleging that J.B. and D.B. were in need of care or supervision (CHINS). In December 2021, the court determined that the State had not proven the merits, and the children returned to parents' care. In May 2022, the State again filed CHINS petitions as to J.B. and D.B. Initially, parents retained custody under a conditional custody order (CCO). In October 2022, the court issued an emergency care order placing J.B. and D.B. in the custody of the Department for Children and Families (DCF). The State filed a CHINS petition as to E.B. in November 2022 a day after she was born, and she was placed in DCF custody.

Parents contested the CHINS petitions. In May 2023, following a contested hearing, the court found that all three children were CHINS. As to the older children, the court found the

[1] The findings are from the court's orders terminating parents' rights and deciding the merits of the CHINS petition. The CHINS findings were made by clear and convincing evidence.

children were chronically late or absent from school. Parents did not notify the school of the children's absences and failed to engage with the school to address the chronic absences. The absences had a meaningful, negative impact on each child's academic progress. Parents neglected the children's basic hygiene. They were not dressed for the weather and were frequently unclean, soiled, and not well rested. D.B. often had an odor of feces and J.B. of cat urine. J.B. wore clothing that was far too large, soiled, and stained. She had matted, oily hair, dirty skin, dirt under her nails, and a foul odor. D.B. was also unsuitably clothed, his hair was matted, his nails were black, his teeth had excessive plaque and his gums were red, and he had a strong odor. Parents would not admit the DCF worker into the home, but the worker observed a smell of cat waste and filth. The children were obese. J.B. gained twenty pounds between when she was returned to parents' custody in December 2021 and when the petition was filed in May 2022.

Although the children were initially placed in parents' custody under a CCO, parents violated several conditions designed to ensure the safety of the home and health of the children. Parents refused to allow DCF to conduct home visits. When DCF was allowed entry, the home was unclean and had a strong, unhealthy odor. Parents would not allow DCF to examine the space where the baby would sleep once born to make sure that it was safe and appropriate. The CCO required parents to provide releases for physicians and parents refused. They also refused to sign releases regarding their substance-abuse treatment.

Based on violations of the CCO, the court ordered the children into DCF custody in October 2022. E.B. was born in November 2022 and came into custody the day after her birth. The court found that E.B. was also at risk of harm given the experiences of her siblings and parents' violations of the CCO. All three children have remained in custody since their removal from parents' care.

J.B. was placed in a foster home with her fictive grandmother, who previously cared for J.B. for periods when she was two and seven. J.B.'s foster mother engaged in J.B.'s education and discussed J.B.'s therapeutic needs with J.B.'s counselor. J.B.'s foster mother and her partner developed loving relationships with J.B. J.B. was diagnosed with disinhibited social engagement disorder and benefitted from engagement with a counselor. J.B. began to enjoy school, was doing well academically, had friends, and was involved in extracurricular activities. At the time of the final hearing, J.B. was healthy, was growing strong, had proper hygiene, and was properly clothed. She displayed anger before and after visits with parents and indicated to her foster mother than she did not want to attend visits.

D.B. was diagnosed with post-traumatic stress disorder (PTSD) and attention-deficit/hyperactivity disorder (ADHD). He was initially placed in several foster homes, but he moved to a residential treatment program. He had difficulty controlling his emotions and became aggressive. D.B. intentionally defecated on furniture at a foster home. D.B. struggled with losing weight and displayed regression in social interactions. He required structure, individual support, and trauma-informed caregiving.

E.B. was placed with mother's cousin and her partner. E.B. was doing well physically and loved her daycare. E.B. developed a loving relationship with all members of her foster family, including her foster siblings and a friend who resided with the family. E.B.'s foster parents committed to providing permanency for E.B. E.B.'s and J.B.'s foster parents facilitated contact between the siblings.

The initial case plan had a goal of adoption. In June 2023, the State filed petitions to terminate parental rights at initial disposition. In December 2023, the petitions were withdrawn. In April 2024, the State again filed to terminate parents' rights to all three children. The court held a hearing over several days.

Based on the evidence the court found the following. Parents were not able to consistently maintain their home in a safe, sanitary condition. During announced visits to the home, DCF workers observed trash littering the porch and white powder, believed to be illicit drugs, in the home. The home smelled strongly of bleach and cigarettes. During unannounced visits, the home smelled of cat urine. Parents had supervised visits with the children—twice weekly for J.B. and E.B., and once for D.B. Family Time Coaching was implemented to assist parents in progressing to unsupervised visits. This coaching involved meeting with parents before and after visits to discuss the skills parents needed to work on and how to improve. Parents often arrived late to visits or left early, causing them to miss this critical opportunity. The coaching ended after thirteen months due to parents' lack of progress. Even though it was prohibited, parents also used cell phones during visits, which resulted in them missing chances to interact directly with the children.

Parents displayed a lack of insight regarding the issues that brought the children into custody initially. Despite concerns about the children's history of obesity and D.B.'s ongoing weight issues, parents continued to bring candy, muffins, and other sugary foods and drinks to visits. Parents did not gain sufficient knowledge regarding nutrition even though this was a concern leading to the children's removal. Parents continued to discuss returning home with J.B., even though she made it clear that she did not want to be reunited, she had been in and out of foster care several times, and the discussions were harmful to her mental health. Father displayed a lack of impulse control that interfered with his progress. He was escalated and dysregulated during visits, interfering with the children's ability to regulate their own behavior. He also escalated during meetings, impeding his ability to work with professionals in the children's lives. He did not engage in mental-health counseling. The family court observed that during the termination hearing father repeatedly spoke out of turn, interrupted others, and banged on the table. Mother was diagnosed with PTSD and ADHD as well as anxiety and depression. She had a counselor, but did not engage and stopped attending in the last months of 2024. Mother did not take responsibility for the circumstances leading to the children's removal or lack of progress and blamed others. She did not acknowledge the health risks of the older children's obesity or lack of personal hygiene.

Based on the evidence, the court analyzed the children's best interests. As to the first factor, the relationships of the children, the court found that it did not weigh strongly in favor of termination for all children. It found this factor weighed more strongly in favor of termination for J.B. and less so for D.B., who did not have a foster parent. Parents loved the children, but the relationship was impeded by their provision of unhealthy foods, father's dysregulation, and parents' distraction with their cell phones. J.B. and E.B. had loving relationships with their foster parents and extended foster families.

As to the second factor, the children's adjustment to their home, school, and community, the court found that it weighed strongly in favor of termination as to E.B. and J.B. J.B. was adjusted to her home, school, and community. She was doing much better in school and was thriving. If she returned home, she might have to attend her former school where she was bullied and did not perform well academically. E.B. adjusted to her kinship foster home. A return home

would require a new daycare. Because D.B. was living in a community home and not in a permanent placement, this factor had less application to him.

Most importantly, the court found that parents would not be able to resume parenting within a reasonable time as measured from the children's perspective and this factor weighed strongly in favor of termination. The case was pending for two years and parents had not demonstrated progress toward addressing the issues leading to the children going into custody, including truancy, health concerns over obesity, poor hygiene, and the unsanitary condition of the home. Parents lacked insight into how these issues impacted the children. They continued to bring sugary, unhealthy snacks to visits and did not control portions given to the children. They did not demonstrate an ability to maintain a clean home. They did not address their mental health. Father continued to become elevated and dysregulated, which interfered with his ability to work with service providers, counselors, and school personnel. Mother was passive in response to father's disruptive behavior.

The final factor—the parents' role in the children's lives—also weighed in favor of termination. Although parents loved the children, their behavior was not constructive and impeded progress. Therefore, the court concluded that termination was in the children's best interests. Both parents appeal, raising arguments related to both the court's determination of the CHINS merits petition and its order terminating parental rights.

## II. CHINS Merits Decision

We first address the arguments regarding the CHINS decision. To demonstrate that a child is "in need of care or supervision," the State has the burden of proving by a preponderance of the evidence that the child "is without proper parental care or subsistence, education, medical, or other care necessary" for the child's well-being.[2] 33 V.S.A. §§ 5102(3)(B), 5315(a); In re L.M., 2014 VT 17, ¶ 19, 195 Vt. 637. In assessing a petition, the court may consider "the circumstances leading up to the filing of the CHINS petition" to gain "a full picture of the child's well-being." In re L.M., 2014 VT 17, ¶ 20.

Father argues that the family court erred by combining the hearing on the merits of the CHINS petition with the temporary-care hearing. As father highlights, these are distinct issues with different evidentiary standards. At merits, the State must prove that the children are CHINS by a preponderance of the evidence and hearsay is not admissible. 33 V.S.A. § 5315(d). In contrast, at a temporary-care hearing, reliable hearsay is admissible. Id. § 5307(f). There is, however, no prohibition in the statute against combining the hearings on these issues. In fact, the procedural rules allow combining hearings where there are common questions of law or fact. V.R.C.P. 42(a) (applicable in juvenile proceeding through V.R.F.P. 2(a)). The court's order demonstrates that it was mindful of the different evidentiary frameworks and separated its analysis and discussion of the issues involved for this reason. Given that the court acknowledged and followed the two standards, we conclude there was no error.

As to the merits, both parents allege that some findings were not supported by the evidence. In assessing the court's findings, we apply a deferential standard of review and will uphold findings unless they are clearly erroneous. In re D.B., 2003 VT 81, ¶ 4, 175 Vt. 618 (mem.). "We leave it to the sound discretion of the family court to determine the credibility of the witnesses and to weigh the evidence." In re A.F., 160 Vt. 175, 178 (1993).

[2] There are other bases for a CHINS finding that are not relevant to this appeal.

Father contends that the evidence did not support the court's finding by clear and convincing evidence that J.B. and D.B. were "morbidly obese," alleging that this is a medical term and there was no expert testimony to support this. Any error in using the term "morbidly obese" to describe J.B. and D.B.'s health did not amount to reversible error as the CHINS determination did not rest on this diagnosis. See In re L.M., 2014 VT 17, ¶ 18 (explaining that where court erred in relying on certain evidence reversal is appropriate in juvenile case only if other findings do not support court's conclusion). The import of the family court's finding was that the children were overweight when in parents' care, and parents were not properly responding. This finding is supported by the testimony of the health assistant at J.B. and D.B.'s school, who testified that J.B. and D.B. were overweight when in parents' custody and that they lost weight during the time they were in DCF custody and out of parents' care. To the extent parents contend that other evidence contravened these findings, we will not reweigh the evidence on appeal.

Both parents also contend that the court's findings regarding the children's school absences were not supported. Father argues that the evidence does not support the court's finding that the children were absent "more than twenty-five days." He alleges that some of these absences may have been late attendance and that the court failed to credit parents' explanation that the absences were due to illness. Mother argues that the evidence did not support the court's finding that J.B. and D.B. "were habitually and without justification truant from compulsory school activities." The court's findings were supported by the evidence. The children's attendance records were admitted into evidence and the principal testified concerning the absences. The principal stated that J.B. was tardy fourteen times and absent twenty-eight times during the period between December to May when she was in parents' custody. Of those absences, parents did not notify the school on ten occasions. D.B. had a similar record of attendance. The health assistant at the school also testified that on four-to-seven occasions she requested that parents bring the children to a pediatrician given the number of absences, but parents did not follow through. Although mother contends that the court erred by failing to credit parents' excuses for the absences, it was up to the court to weigh the credibility of these explanations. We will not reevaluate the weight to give this evidence on appeal. In re A.F., 160 Vt. at 178 ("We leave it to the sound discretion of the family court to determine the credibility of the witnesses and to weigh the evidence."). The evidence supported the court's finding that the children were chronically absent and that parents failed to engage with the school to address this issue.

Finally, father argues that the State failed to prove that the children were at risk of harm, alleging that the family was separated simply due to poverty. Father claims that the CHINS determination was based merely on findings that the condition of the home was unpleasant and the children had poor hygiene and the State failed to link these observations to any risk or adverse health impact. As to E.B., father asserts that she was found CHINS simply because mother did not release information about her prenatal care to DCF.[3] Father's argument depends on an interpretation of the evidence and the record that is at odds with the family court's findings. Father is essentially asking that we accept his version of the evidence, a request beyond our standard of review. The family court's CHINS adjudication for the older children

[3] Father contends that mother's decision not to release her medical records to DCF was not relevant and should not have been considered in the court's merits decision. Because the merits decision was based on other concerns, we do not address the relevance of mother's medical records.

was based on its findings that parents were chronically inattentive to J.B. and D.B.'s hygiene, that the home was in an unhealthy condition, and that parents neglected the children's education, causing harm. The history of these conditions of the older children coupled with parents' refusal to work with DCF and violation of the CCO were sufficient for the court to find that there was a risk of harm to newborn E.B. These findings were all supported by the evidence, and the merits decision is therefore affirmed.

## III. Reasonable Efforts

Father next argues that the State failed to make reasonable efforts to reunify the family before seeking to terminate parental rights. The reasonable-efforts question is "a separate question from" whether termination is in the children's best interests.[4] In re D.F., 2018 VT 132, ¶ 49, 209 Vt. 272 (quotation omitted). We have held that "the court is not required to find DCF made reasonable efforts as a prerequisite to termination." In re C.P., 2012 VT 100, ¶ 38, 193 Vt. 29. When termination is sought at initial disposition, as here, the sole question is whether it is in the child's best interests. Id. Therefore, we do not address the arguments regarding reasonable efforts and focus instead on the court's analysis of the children's best interests.

## IV. Termination Decision

The family court may terminate parental rights at the initial disposition proceeding if it finds by clear and convincing evidence that termination is in the child's best interests. In re J.T., 166 Vt. 173, 177, 180 (1997). In assessing the child's best interests, the court must consider the statutory factors. 33 V.S.A. § 5114(a). These factors are the child's interaction with parents, siblings, foster parents, and other significant persons, the child's adjustment to the existing home, school, and community, the likelihood the parent will be able to resume parental duties within a reasonable time, and the parent's history of playing a constructive role in the child's welfare. Id. § 5114(a)(1)-(4). The third factor regarding the parent's ability to resume parenting duties within a reasonable period is the most important. In re J.B., 167 Vt. 637, 639 (1998) (mem.). On appeal, we uphold the family court's conclusions if supported by the findings and affirm the findings unless clearly erroneous. Id.

On appeal, mother argues that the family court erred in assessing the best-interests factors and terminating her rights at initial disposition. Father similarly argues that the State failed to prove that termination was in the children's best interests. "When findings are attacked on appeal, our role is limited to determining whether they are supported by credible evidence." In re A.F., 160 Vt. at 178.

Mother claims that the evidence did not support the court's findings that the children's adjustment to home and school weighed strongly in favor of termination. The court found that J.B. and E.B. were thriving in their foster homes and had adjusted to school and daycare. J.B. was doing much better in her new school. Mother's own testimony supported these findings, and she does not challenge them on appeal; rather, she claims that the court improperly focused on

[4] Father makes several generalized arguments concerning Vermont's statutory procedures for terminating parental rights, claiming that many states require a reasonable-efforts determination prior to termination and that Vermont children experience termination of parental rights at a higher rate than the national average. Our task is to apply the statutory scheme adopted by the Legislature. To the extent father believes that these procedures require modification, those arguments are more appropriately addressed to the legislative process.

how a return to parents' care might require J.B. to return to a school where she had not done well and E.B. to change daycares. According to mother, it was speculation whether J.B. would need to change schools or whether a change in daycare would be disruptive to E.B. The trial court's findings were supported as to this factor. In accordance with § 5114(a)(2), the court examined J.B. and E.B.'s adjustment to their current home, school and community and determined that they were thriving and well adjusted. The fact that the court was also concerned about how a disruption might affect the children did not undermine its findings on this factor. The court made its decision based on the facts and not on speculation.

Mother also asserts that the evidence did not support the court's findings that parents would be unable to resume parenting in a reasonable time, and that parents' role in the children's lives was not constructive. Mother claims that there was no opportunity for parents to demonstrate progress towards the truancy issues, the sanitary condition of the home, or the children's hygiene because the children were no longer living with them and DCF did not conduct a visit to the home. As explained above, the CHINS petition was granted primarily due to children's chronic absences and parents' unwillingness to work with the school to address that issue, the children's poor hygiene, and the unsanitary condition of the home. The court recognized that parents could not demonstrate progress towards addressing the children's absences. Parents were on notice regarding the other concerns, however, and the court found that they did not work to demonstrate progress.[5] They lacked insight into how the issues impacted the children and continued to bring sugary foods to visits. They did not engage with Family Time counseling. They did not demonstrate an ability to maintain a clean, healthy home. They did not address their mental health, and father became elevated and dysregulated, inhibiting him from working with the children, counselors, and school personnel.

Mother claims it was error for the court to focus on parents bringing unhealthy foods and on D.B.'s obesity in assessing their future ability to parent. Similarly, as to parents' role in the children's lives, mother contends that the court erred in faulting parents for engaging in "future talk" with J.B. Father also raises several arguments regarding the court's weighing of the statutory factors. The court's decision reflects that it properly considered each factor and that its assessment was not erroneous. The court focused on parents' understanding of the children's nutritional needs because this was one of the reasons for the CHINS determination. As to D.B., the court found that parents bringing unhealthy foods demonstrated their lack of understanding around his proper nutritional needs. Despite mother's contention, the court did not fault parents for D.B.'s ongoing weight issues; rather, it recognized that they were not acting to improve his condition. Overall, mother's arguments go to the family court's weighing of the evidence and assessment of the factors, which are matters within that court's discretion. See In re D.M., 2004 VT 41, ¶ 5, 176 Vt. 639 (mem.) (explaining that court has "broad discretion" in evaluating petition to terminate parental rights).

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[5] Father contends that there was no court-approved disposition plan and therefore parents did not have notice regarding which goals they needed to accomplish. A court-approved plan of services is not a precondition to termination at initial disposition. See In re J.T., 166 Vt. at 179 (rejecting parent's argument that termination of parental rights at initial disposition without approved case plan was reversible error). In any event, the record indicates that parents had adequate notice of the issues that led to removal of the children from parents' care and the expectations for parents' improvement. DCF filed case plans in July 2022 for J.B. and D.B. and December 2022 for E.B., there were several conditions in the initial CCO, and the merits decision highlighted the issues parents needed to address.

Finally, both parents argue that the court's weighing of the factors as to D.B. was particularly erroneous given his negative experience in DCF custody and his lack of a permanent placement. We conclude that the family court did not err in assessing the factors as to D.B. The court acknowledged that D.B. had a different experience than the other children, but ultimately concluded that parents' inability to resume parenting within a reasonable time weighed in favor of termination. Given that D.B. was still young, had been in custody for almost three years, and had several diagnoses which required a structured, supportive environment, the court acted within its discretion in determining that parents would not be able to resume parenting in a reasonable time and therefore termination was in D.B.'s best interests.

IV. Children's Attorney

Finally, father asserts that the children's attorney had an obvious conflict of interest requiring reversal. Father claims that D.B. wanted to return to parents' care and J.B. did not and this created a conflict for the children's attorney. This Court has recognized that "one attorney may represent more than one child in a juvenile proceeding and will not be disqualified unless an actual conflict arises." In re L.H., 2018 VT 4, ¶ 35 n.9, 206 Vt. 596 (emphasis added). " 'An actual conflict exists when an attorney's professional judgment for one client necessarily will be affected adversely because of the interests of another client.' " In re Jasmine S., 63 Cal. Rptr. 3d 593, 601 n. 6 (Ct. App. 2007) (quoting 2 R. Mallen & J. Smith, Legal Malpractice § 16:2, at 818 (2007 ed.)). "If competent evidence does not establish such a conflict, the attorney is not disqualified for a conflict." Id. at 600.

Father has failed to demonstrate how this argument was raised below and therefore preserved for appeal. See In re C.H., 170 Vt. 603, 604 (2000) (mem.) (explaining that parent must raise issue in family court to preserve it for appeal). Because father did not allege in the family court that there was an actual conflict or move to have different counsel for D.B., the family court did not have the opportunity to respond and evaluate whether an actual conflict existed. To the extent father claims that this error was "structural" and did not require preservation, he has failed to demonstrate such an egregious error. The fact that the children expressed different wishes did not in itself create an actual conflict of interest. Father has not identified any compelling evidence to show that an actual conflict existed here.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Karen R. Carroll, Associate Justice

Nancy J. Waples, Associate Justice

## Appendix B

VERMONT SUPREME COURT
109 State Street
Montpelier VT 05609-0801
802-828-4774
www.vermontjudiciary.org

Case No. 25-AP-033

# ENTRY ORDER

AUGUST TERM, 2025

| | | |
|---|---|---|
| In re J.B., D.B., E.B., Juveniles (D.B., Father* & N.D., Mother*) | } | APPEALED FROM: |
| | } | |
| | } | Superior Court, Grand Isle Unit; Grand Isle Unit; Grand Isle Unit, Family Division |
| | } | CASE NO. 22-JV-00708; 22-JV-00710; 22-JV-01648 |

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

Father's request for an extension of time is granted and his July 28, 2025 motion for reargument is accepted as timely filed. V.R.A.P. 26(b), 40(a). The motion for reargument is denied because it fails to identify points of law or fact presented in the briefs upon the original argument which were overlooked or misapprehended by this Court. See V.R.A.P. 40(b)(1).

BY THE COURT:

Paul L. Reiber, Chief Justice

Karen R. Carroll, Associate Justice

Nancy J. Waples, Associate Justice