

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2007-0132, In re Juvenile 2007-0132, the court on January 3, 2008, issued the following order:

The mother and father of Juvenile 2007-0132 appeal the termination of their parental rights. The mother argues that: (1) she did not receive adequate notice of the conditions that she was required to correct to regain custody of her daughter; (2) DCYF and the Family Division initially failed to follow closely her progress in correcting the conditions; and (3) DCYF and the Family Division failed to follow their own protocols with respect to providing services. The father argues that: (1) he did not receive a descriptive notice of the conditions that led to the finding of neglect, which violated both his statutory and due process rights; and (2) the trial court erred in terminating his rights when he complied with all applicable court orders. We affirm.

Before a court may order the termination of a parent's rights, the petitioning party must prove a statutory ground for termination beyond a reasonable doubt; one such ground is the failure to correct conditions leading to a finding of neglect under RSA chapter 169-C. In re Juvenile 2003-195, 150 N.H. 644, 648 (2004); RSA 170-C:5, III (2002). We will not disturb the trial court's decree in a termination of parental rights case unless it is unsupported by the evidence or plainly erroneous as a matter of law. See In re Antonio W., 147 N.H. 408, 412 (2002). The trial court is in the best position to assess and weigh the evidence because it has the benefit of observing the parties and their witnesses; we therefore do not consider whether we would have found differently but rather whether a reasonable person could have found as the trial court did. See In re Craig T., 144 N.H. 584, 585 (1999).

The mother first argues that she did not receive adequate notice of the conditions that she was supposed to correct to regain custody of her daughter in the abuse and neglect proceedings. Because her argument addresses deficiencies in the neglect proceedings, it is untimely. See RSA 169-C:28. We note, however, that neglect petitions were filed against both parents and alleged that they had failed to follow through with recommendations of health care professionals to address the juvenile's morbid obesity and "extremely poor hygiene"; the petitions also cited the juvenile's high risk for health-related issues and listed certain conditions from which she already suffered. Both petitions also cited the domestic violence that occurred in the home as grounds for a neglect finding. Although the neglect petition against the mother was subsequently withdrawn, DCYF continued to have protective supervision of the

juvenile, who remained in foster placement. Cf. In re Tricia H., 126 N.H. 418, 422 (1985) (RSA 170-C:5, III does not require that parent be named respondent in RSA chapter 169-C neglect proceeding before that parent's rights can be terminated). The conditions that the mother was required to correct did not change in the following fifteen-month period and were addressed in reports submitted to the court by DCYF. Evidence presented at the termination of parental rights hearing included that, for several months after the juvenile was removed from the home, the mother denied that there was a history of domestic violence in the home, despite her own earlier reports, and continued to bring unhealthy snacks when she visited the juvenile.

The mother also argues that DCYF and the Family Division initially failed to follow closely her progress in correcting the conditions of neglect. In the first months after the juvenile was removed from the home, both parents were required to obtain psychological evaluations. Continued counseling was then recommended. At the dispositional hearing, the trial court noted that the DCYF case plan had not adequately addressed the separate needs of the parents and extended the period for correction of conditions for ninety days. In a subsequent order, the trial court found that given the lack of insight exhibited by both parents into the existence and effect of domestic violence, they would be unable to correct the conditions of neglect, even if granted an additional ninety days. See In re Jonathan T., 148 N.H. 296, 301 (2002) (recognizing reasonable efforts analysis includes assessment of State's available staff and financial resources); cf. In re Melissa M., 127 N.H. 710, 714 (1986).

The father argues that he did not receive a descriptive notice of the conditions that led to a finding of neglect. To the extent that he contends that the original neglect petition was deficient, it is not only untimely, see RSA 169-C:28, but he waived that argument when he agreed to a finding of neglect. He also argues that the court's orders in the abuse and neglect proceedings contained no clear guidelines for compliance. We reiterate that any appeal of deficiencies in the abuse and neglect orders is untimely. We note, however, that it is clear from the record that the juvenile was removed from the home, in part, due to the domestic violence perpetrated by the father. The orders issued in the abuse and neglect proceedings required that he have a psychological evaluation, complete a batterer's evaluation, and participate in individual therapy.

Although the father argues that he complied with the orders issued in the abuse and neglect proceedings, the record indicates that his compliance was minimal and that he did not fully acknowledge his abusive behavior or its effects upon his family. We have previously held that rote compliance with court orders is not sufficient to correct conditions of neglect. See In re Craig T., 147 N.H. 739, 747-48 (2002). Given the father's failure to admit the abuse and

to acknowledge its harmful effects upon his family, we find no error in the trial court's ruling that he had failed to correct the conditions of neglect.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**