

COURT OF APPEALS OF VIRGINIA

Record No. 1383-25-2

NEW KENT COUNTY DEPARTMENT OF SOCIAL SERVICES

v.

AUTUMN SURRAN, ET AL.

Present: Judges Beales, Frucci and Senior Judge Clements

Argued by videoconference

Opinion Issued August 25, 2026

FROM THE CIRCUIT COURT OF NEW KENT COUNTY

B. Elliott Bondurant, Judge

Alexandra M. Griffin (Hefty Wiley & Gore P.C., on briefs), for appellant.

Samantha Bohannon (Bohannon Legal, on brief), for appellee Autumn Surran.

J. Terry Osborne, Guardian ad litem for appellee Pete Archer.

Katherine T. Meixel (Kelley, Dennett & Meixel, on brief), Guardian ad litem for the minor child.

PUBLISHED OPINION BY JUDGE RANDOLPH A. BEALES

The New Kent County Department of Social Services appeals the Circuit Court of New Kent County's order, which reversed the juvenile and domestic relations district court's order terminating Autumn Surran's and Pete Archer's parental rights. The Department argues that the evidence established that father had no contact with the child for 6 months without good cause and that both parents—Autumn Surran (mother) and Pete Archer (father)—were unwilling or unable to correct the conditions that led to the child's foster care placement within 12 months.

BACKGROUND¹

“On appeal, ‘we view the evidence and all reasonable inferences in the light most favorable to the prevailing party below,’” which in this case was the parents. *Joyce v. Botetourt Cnty. Dep’t of Soc. Servs.*, 75 Va. App. 690, 695 (2022) (quoting *Farrell v. Warren Cnty. Dep’t of Soc. Servs.*, 59 Va. App. 375, 386 (2012)).

Mother and father are the biological parents of R.A.,² who was almost three months old at the time of removal and who turned two years old in January 2026. The Department first became involved with the family in February 2024 after receiving a report that the child had been exposed to domestic violence. After the Department began an assessment of the family situation, mother and father signed a safety plan agreeing that mother would not be the sole caretaker for the child. While the Department was completing that assessment of the family, the child was hospitalized for failure to thrive symptoms. On March 8, 2024, R.A. was discharged and went with the father’s cousin as R.A.’s caretaker under a new safety plan. On March 26, 2024, the New Kent County Juvenile and Domestic Relations District Court (JDR court) found insufficient evidence of abuse and neglect to warrant removal of the child and returned R.A. to mother’s and father’s custody.

In April 2024, the police responded to a domestic incident between mother and father at the family’s residence. Mother was upset and stated that, during an argument with father, she had been in the bathroom with a knife threatening to harm herself. A Department of Social Services employee testified that father was agitated but cooperative, and she also testified that father confirmed that he and mother had argued. The Department employee observed R.A. alone

¹ “To the extent that this opinion discusses facts found in sealed documents in the record, we unseal only those facts.” *Brown v. Va. State Bar ex rel. Sixth Dist. Comm.*, 302 Va. 234, 240 n.2 (2023).

² We refer to the child using only initials in an attempt to better protect his privacy.

in a bedroom, propped up in a bassinette, with a bottle in his mouth. The room was warm, and R.A. was dressed in blankets and winter clothing. The Department employee further testified that R.A. “appeared to be very unkempt” and that he was “drenched in spit up and urine.” R.A. had no reaction to mother and father arguing outside the room and did not make eye contact with the Department employee when prompted. The Department employee also testified that neither mother nor father showed attentiveness to R.A.’s needs.

R.A. entered foster care after the parents signed an entrustment agreement on April 15, 2024. Due to what she said were “[s]afety concerns,” mother moved to Northern Virginia about a month after R.A. entered foster care, and she lived in an extended stay hotel with her new boyfriend and his son. The extended stay hotel was “set up like a studio apartment,” and mother had the option to move to a larger room if she regained custody of R.A. She also planned to get a bed for R.A. and find medical providers for him in Northern Virginia. Mother testified that she worked for a food delivery service. Charity Baker, a Department employee, testified that mother indicated that she was not abusing drugs at the time of the hearing.

Mother met with a counselor four times between May 10, 2024 and November 15, 2024 to complete a parental capacity evaluation. The evaluation, drafted after the last meeting, recommended that mother undergo a psychological evaluation and complete in-person counseling, substance abuse treatment, medication management, and a parenting program. The report also recommended that mother attend all scheduled medical appointments for herself and R.A. and maintain stable housing.

Since R.A. was placed in foster care, mother had attended 36 of 68 scheduled visitations with R.A. She canceled 16 sessions in advance—sometimes without an explanation and other times due to illness or transportation issues. The Department canceled some of the visits because R.A. was sick, because the office was closed due to weather, or because mother did not confirm

her attendance at the visitation appointment. When she was unable to appear in person, mother sometimes requested video calls with R.A. Mother attended some of R.A.'s medical appointments, and Baker described mother's behavior at those appointments as appropriate. Mother maintained contact with the foster mother and routinely asked for updates, but the Department encouraged mother to relocate closer to R.A.

Due to mother's relocation to Northern Virginia, the Department did not provide mother services. Even without referrals or support, mother, on her own initiative, engaged in therapy, registered for parenting classes, and participated in medication management. She also underwent another mental health evaluation and joined a waitlist for the recommended behavioral therapy.

On April 24, 2024, father's conditional release³ was revoked, and he was recommitted to Eastern State Hospital because he had stopped taking medication and presented in a psychotic state. The foster care service plan, created by Baker, required father to successfully complete the program at Eastern State Hospital as well as a parental capacity evaluation. That plan also required that father refrain from substances not prescribed to him, maintain stable employment and housing, and participate in individual therapy and medication management upon his release. In addition, the plan required father to maintain contact with the Department and sign releases to his medical providers.

Dr. Matthew Portner, a clinical psychologist, began treating father in October 2024 at Eastern State Hospital for a schizoaffective and bipolar disorder. At admission, patients had "very few privileges," but those privileges could increase after the approval of a Forensic Review Panel during the course of treatment. During treatment, father actively engaged with counseling and therapy and adhered to his medication management. Father had obtained

³ Father had previously been found not guilty by reason of insanity for felony and misdemeanor offenses committed on May 19, 2021, after which he was remanded to a state psychiatric hospital.

“unescorted grounds and escorted community” privileges and was likely to earn additional freedoms, including family day passes and day treatment programs in the community. His treatment did not focus on parenting and precluded visitation with R.A. Eventually, as father’s treatment progressed, father would be able to meet with R.A. and a social worker. Father had not yet received panel approval for that privilege as the review depended on the panel’s schedule. Dr. Portner concluded that father’s symptoms could be managed through medication, treatment, and therapy.

Charity Baker, the foster care worker assigned to R.A., had very little contact with father, and the Department did not refer father for services due to his hospitalization. It took Baker several months “to figure out who the best contact was” to have father sign a medical release. She visited with him only once—less than a month before the circuit court hearing on the Department’s petitions to terminate parental rights.

On March 31, 2025, the Department filed a petition in the New Kent County Juvenile and Domestic Relations District Court for the termination of mother’s and father’s parental rights and requested the foster care goal be changed to adoption. The Department asserted that mother had failed to make significant progress—and that her visitations with R.A. required supervision. The Department also claimed that father had not made any progress because he remained at Eastern State Hospital. The JDR court then terminated the parents’ parental rights under Code § 16.1-283(C)(2) and approved the foster care goal of adoption. Mother and father appealed the termination of their parental rights to the circuit court.

Following a hearing, the circuit court found that mother did not receive the recommendations from the parental capacity evaluation until December 2024—only seven months before the JDR court hearing. The circuit court declined to terminate the parties’ parental rights because the court found that they were not given an adequate opportunity “to

correct what needs to be corrected” as of the time of the hearing. The circuit court held that the Department had not shown that termination of mother’s and father’s parental rights was in the best interest of R.A.—and had not shown that mother and father were unwilling and unable to remedy the circumstances that led to R.A.’s foster care placement. The Department now appeals to this Court.

ANALYSIS

“On review of a trial court’s decision regarding the termination of parental rights, we presume the trial court ‘thoroughly weighed all the evidence, considered the statutory requirements, and made its determination based on the child’s best interests.’” *Joyce*, 75 Va. App. at 699 (quoting *Norfolk Div. of Soc. Servs. v. Hardy*, 42 Va. App. 546, 552 (2004)). “Where, as here, the court hears the evidence *ore tenus*, its finding is entitled to great weight and will not be disturbed on appeal unless plainly wrong or without evidence to support it.” *Simms v. Alexandria Dep’t of Cmty. & Hum. Servs.*, 74 Va. App. 447, 470 (2022) (quoting *Fauquier Cnty. Dep’t of Soc. Servs. v. Ridgeway*, 59 Va. App. 185, 190 (2011)).

The Department argues that the circuit court erred in denying the petition to terminate father’s parental rights under Code § 16.1-283(C)(1) and that the circuit court erred in denying the petition to terminate both mother’s and father’s parental rights under Code § 16.1-283(C)(2).⁴ Code § 16.1-283(C)(1) authorizes a termination of parental rights when:

The parent or parents have, without good cause, failed to maintain continuing contact with and to provide or substantially plan for the future of the child for a period of six months after the child’s placement in foster care notwithstanding the reasonable and

⁴ The Department also argues that the circuit court “abused its discretion in failing to give appropriate weight to relevant evidence while giving improper weight to irrelevant evidence.” Because the Department did not raise this argument before the circuit court and thus did not preserve this challenge for appellate review, we cannot reach it on appeal. Rule 5A:18. Furthermore, an appellate court does not “reweigh the evidence,” *Nusbaum v. Berlin*, 273 Va. 385, 408 (2007), and has no authority “to preside *de novo* over a second trial,” *Haskins v. Commonwealth*, 44 Va. App. 1, 11 (2004).

appropriate efforts of social, medical, mental health or other rehabilitative agencies to communicate with the parent or parents and to strengthen the parent-child relationship.

“Proof that the parent or parents have failed without good cause to communicate on a continuing and planned basis with the child for a period of six months shall constitute prima facie evidence of this condition.” *Id.*

Code § 16.1-283(C)(2) authorizes a court to terminate parental rights if:

The parent or parents, without good cause, have been unwilling or unable within a reasonable period of time not to exceed 12 months from the date the child was placed in foster care to remedy substantially the conditions which led to or required continuation of the child’s foster care placement, notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to such end.

“[S]ubsection C termination decisions hinge not so much on the magnitude of the problem that created the original danger to the child, but on the demonstrated failure of the parent to make reasonable changes.” *Yafi v. Stafford Dep’t of Soc. Servs.*, 69 Va. App. 539, 552 (2018) (alteration in original) (quoting *Toms v. Hanover Dep’t of Soc. Servs.*, 46 Va. App. 257, 271 (2005)). The statute “requires the court to determine whether the parent has been unwilling or unable to remedy the problems during the period in which he [or she] has been offered rehabilitation services.” *Toms*, 46 Va. App. at 271.

“The lack of a definite timeline in which a parent will be able to comply with social services’ plan is a relevant factor under the statute, but is not alone dispositive of the inquiry the trial judge must make under the statute.” *Richmond Dep’t of Soc. Servs. v. Crawley*, 47 Va. App. 572, 582 (2006).

I. Father’s Parental Rights

The New Kent County Department of Social Services argues that the circuit court should have terminated father’s parental rights under Code § 16.1-283(C)(1) and (C)(2) because father

allegedly “failed to maintain continuing contact with and to provide or substantially plan for the future of the child for a period of six months after R.A.’s placement in foster care.” The Department further argues that father did not “remedy substantially the conditions which led to or required continuation of the child’s foster care placement, notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to such end.”

The parties do not dispute that father has had no contact with R.A. since R.A. was entrusted to the Department’s custody, but “termination is not necessarily or automatically in the best interests of the child, even where these statutory requirements are met by” the Department. *Bristol Dep’t of Soc. Servs. v. Welch*, 64 Va. App. 34, 47 (2014). Both Code § 16.1-283(C)(1) and (C)(2) contain “good cause” exceptions to the statutory requirements. Father’s lack of contact was due to the conditions of his involuntary hospitalization rather than his own choice, which the Department acknowledged in its closing argument to the circuit court. Matthew Portner, father’s clinical psychologist at Eastern State Hospital, testified before the circuit court that father could earn the privilege to spend time with R.A. and a Department social worker.

In its brief to this Court on appeal, the Department compares father’s involuntary hospitalization to incarceration, and the Department cites to this Court’s holding in *Harrison v. Tazewell County Department of Social Services*, 42 Va. App. 149, 163-64 (2004), that “[i]t would be patently unreasonable to require the Department, under such circumstances [of incarceration], to continue to offer services.” This Court has previously held:

[W]hile long-term incarceration does not, per se, authorize termination of parental rights or negate the Department’s obligation to provide services, it is a valid and proper circumstance which, when combined with other evidence concerning the parent/child relationship, can support a court’s finding by clear and convincing evidence that the best interests of the child will be served by termination.

Ferguson v. Stafford Cnty. Dep’t of Soc. Servs., 14 Va. App. 333, 340 (1992).

Father is not incarcerated but rather involuntarily hospitalized, and while hospitalized at Eastern State Hospital, father has the opportunity to earn privileges, including the opportunity to have visitation with R.A. In fact, at the time of the hearing in the circuit court, father had completed the first step of an approval process to receive a 12-hour pass—during which he could leave the hospital and enter the community. Father has made progress and Dr. Portner, the clinical psychologist assigned to father’s case at Eastern State, testified that father’s condition could be managed through medication, treatment, and therapy. Involuntary hospitalization, like incarceration, “does not, per se, authorize termination of parental rights or negate the Department’s obligation to provide services.” *Id.*

The circuit court denied the petition to terminate father’s parental rights because the Department had not provided services to father due to his involuntary hospitalization. The Department did not contact father for several months or even try to obtain a release to meet with him, and the record does not contain an explanation for the delay other than Charity Baker’s apparent lack of knowledge as to whom to contact. The circuit court noted in its ruling from the bench that father “hasn’t even been given an opportunity to do anything.” Thus, because of the circuit court’s finding that the Department had not provided any services to father, we cannot say that the circuit court erred when it denied the Department’s petition to terminate father’s parental rights under Code § 16.1-283(C)(1) and (C)(2).

II. Mother’s Parental Rights

The Department next argues that the circuit court should have terminated mother’s parental rights under Code § 16.1-283(C)(2) because mother failed to remedy the conditions that led to R.A.’s removal within 12 months of R.A.’s entrustment and because termination would have been in the best interests of R.A. The Department argues that mother moved “for no obvious good reason,” which prevented the Department from referring her to services. The Department

further argues that mother failed to attend 32 of the supervised visitations and did not provide proof that she had completed any of the foster care plan requirements other than a psychological evaluation. The Department also highlights that, as of the date of the circuit court hearing, R.A. had been in foster care for over 15 months.

Although Code § 16.1-283(C)(2) contains a twelve-month time limit “designed to prevent an indeterminate state of foster care ‘drift’ and to encourage timeliness by the courts and social services in addressing the circumstances that resulted in the foster care placement,” *L.G. v. Amherst Cnty. Dep’t of Soc. Servs.*, 41 Va. App. 51, 56 (2003), a court may “consider evidence before or after the twelve-month time period in order ‘to evaluate the *present* best interests of the child,’” *Thach v. Arlington Cnty. Dep’t of Hum. Servs.*, 63 Va. App. 157, 171 (2014) (emphasis in original) (quoting *L.G.*, 41 Va. App. at 57).

Since R.A. entered foster care, mother secured long term housing, earned income, and addressed her substance abuse issue. Mother completed the psychological evaluation, engaged in individualized counseling, registered for parenting classes, and participated in medication management. Notwithstanding her move to Northern Virginia, she maintained contact with R.A. and attended some visitations with the child. Mother explained some of her missed visitations, which also included cancellations by the Department of some visitations, and she testified that she had requested video calls when in-person visitation was not feasible. Mother attended some of R.A.’s medical appointments and was prepared to find appropriate medical providers for the child if R.A. were in her custody. She maintained contact with the Department and with R.A.’s foster mother. Mother made this progress without referrals from the Department—due to the New Kent County DSS social worker’s lack of “personal contacts” in Northern Virginia.

Although the Department challenges mother’s credibility on appeal, “this Court cannot re-weigh the evidence or alter the circuit court’s credibility determinations.” *Canales v. Torres*

Orellana, 67 Va. App. 759, 787-88 (2017) (en banc). The circuit court acted within its discretion as factfinder to accept mother’s evidence of the efforts she made to meet the Department’s requirements, and the circuit court’s findings of fact in this regard were not plainly wrong. *See Welch*, 64 Va. App. at 44.

The Department next argues that the circuit court erred in finding that mother had only seven months to complete remedial services. The Department asserts that the circuit court wrongly calculated the remedial period from the date of the parental capacity evaluation report, rather than from when R.A. entered foster care. The Department is correct that mother has had the opportunity to make changes since R.A. entered foster care, but the circuit court specifically stated that mother had seven months *since receiving the parental capacity evaluation* to make changes—not that the circuit court was not considering mother’s actions during the entire time since the child had entered foster care. “Absent clear evidence to the contrary in the record, the judgment of a trial court comes to us on appeal with a presumption that the law was correctly applied to the facts.” *Lisann v. Lisann*, 304 Va. 242, 260 (2025) (quoting *Yarborough v. Commonwealth*, 217 Va. 971, 978 (1977)). “[N]othing is better settled than that everything is to be presumed in favor of the correctness of the rulings of a court of competent jurisdiction, when brought under review in an appellate tribunal, until the contrary is shown.” *Precision & Performance Auto Care, LLC v. James River Petroleum, Inc.*, 87 Va. App. 508, 534-35 (2026) (alteration in original) (quoting *Commonwealth v. Jackson*, 304 Va. 515, 529 (2025)). Because the record now before us on appeal does not show that the circuit court failed to consider the time before or after mother received the parental capacity evaluation, this Court cannot presume that the circuit court failed to consider the entire time period since R.A. entered foster care.

Considering the entirety of the record now before us in the light most favorable to mother, as we must because the parents prevailed below, we simply cannot say that the circuit court erred

when it denied the Department's petition for the termination of mother's parental rights under Code § 16.1-283(C)(2). *See Joyce*, 75 Va. App. at 695.

CONCLUSION

For all of the foregoing reasons, we do not disturb the judgment of the circuit court.

Affirmed.