

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2001-449

JANUARY TERM, 2002

In re T.C. and B.I., Juveniles	}	APPEALED FROM:
	}	
	}	Chittenden Family Court
	}	
	}	
	}	DOCKET NO. 166/167-3-00 Cnjv
	}	
	}	Trial Judge: Stephen B. Martin

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

Mother appeals from a family court order terminating her parental rights to the minors, T.C. and B.I. Father separately appeals from the order terminating his parental rights to B.I. Mother contends the court erred in finding that: (1) the causes of the CHINS adjudication could not be remedied within a reasonable period of time; and (2) she did not play a constructive role in T.C.'s life. Father contends the court erroneously: (1) shifted the burden of proof to father; and (2) failed to make sufficient findings with respect to the best interests of the minor B.I. We affirm.

In March 2000, T.C. and B.I. were taken into SRS custody based on concerns about mother's ability to parent them. T.C. was ten years old, and B.I. was about seven months old at the time. T.C. had been in SRS custody on three prior occasions, based on evidence of abuse and neglect. T.C. had been evaluated as having multiple physical and emotional problems, including a cleft palate and speech difficulties, learning disabilities, and sexually acting out. T.C. was returned home in March 1999 under an order of protective supervision requiring mother to work with Intensive Family Based Services and other parenting services, obtain stable employment, and utilize SRS-approved day care providers. Reports that mother was having sex with men in front of T.C., was using inappropriate child care helpers, and was severely neglecting B.I.'s needs led to the children's removal in March. Both children were then placed in foster homes, where they have since remained. In July 2000, the minors were adjudicated CHINS.

The initial case plan provided for alternative dispositions of reunification or termination of parental rights, depending upon whether mother accepted family and parenting services. The disposition report filed with the court in December 2000 recommended termination, based upon the reports of mother's service providers indicating that mother had consistently rejected the extensive services offered her. A TPR petition was filed that month.

T.C.'s father voluntarily relinquished his parental rights prior to the hearing. Mother and B.I.'s father contested the petition, which resulted in a three-day hearing in July 2001. Testimony at the hearing, as well as an extensive family evaluation by Martha Strauss, a clinical psychologist at Dartmouth-Hitchcock Medical Center, established that mother has significant cognitive limitations, including an I.Q. of 66 which places her in the mildly mentally retarded range, and which contributed to behaviors that placed the children at risk. These included neglect of certain basic necessities, such as medical care and food, inadequate supervision, and a fundamental inability to place the children's needs ahead of her own. Testimony established that mother continually allowed multiple adults, including boyfriends, to stay in the family's small one bedroom apartment, resulting in a chaotic, unstable, and potentially unsafe home environment which contributed to T.C.'s emotional problems and sexual acting out. Testimony by the family's SRS caseworker, social services workers, and school counselors established that mother had been offered extensive counseling and parenting

services over the years, including daily wrap-around services and assistance oriented to her cognitive limitations, which continued after the children were placed in custody in March 2000. The same witnesses testified that although mother had affection for the children, she was unable or unwilling to recognize the need for assistance, and ultimately refused most of the services offered.

The evidence established that father had initially denied paternity of B.I. and refused visits with the minor after he came into SRS custody in March 2000. Although genetic testing in August established his paternity, father still had almost no contact with the minor, missing scheduled visits and case plan meetings. Father left Vermont in September 2000, and did not return until March 2001, a few months before these proceedings. Father testified that he did not have a job or housing of his own, but indicated that he did not believe the State had the right to provide a different parent for the minor, and stated that in time he could care for him.

Following the hearing, the court issued separate written decisions as to each child, granting the petition to terminate parental rights and free the children for adoption. Reviewing the statutory factors set forth in 33 V.S.A. 5540(b), the court found - as to father - that he had shown no consistent interest in B.I., had no contact or relationship with him, and had provided no support for him. The court further found that father had no home or resources to provide a placement for the minor, and concluded that father would not be able to assume parental duties within a reasonable period of time. As to mother, the court found that although she had affection for the children, the evidence clearly and convincingly demonstrated that her need for counseling, parenting, and family services was substantial and on-going; that despite the provision of extensive services mother had consistently failed to acknowledge the need for help and had rejected assistance; and that her consistent and continuing refusal to accept support made it clear that she could not resume parental responsibilities within a reasonable period of time.

The court further found that B.I. did not reciprocate mother's affection, that he was bonded with his foster mother and fully adjusted to her home, and that his health and development had improved in foster care. The court found that mother and the older child T.C. had something like a peer relationship; although there was affection, there was little evidence that mother's involvement in his life had enhanced it. Moreover, she had not been able to adequately protect him, to attend to his special needs, or provide proper parenting. He had made a good adjustment to his foster home and school, however, where his behavioral and physical needs were being addressed and where, as a result, he had made substantial progress physically, developmentally and emotionally. Based on all of the foregoing, the court concluded that termination of parental rights was in the best interests of the children. These appeals followed.

Mother contends the court erred in finding that she could not resume parental responsibilities within a reasonable period of time, asserting that she had not uniformly rejected all services, and that she should not have been deprived of her children at the initial disposition solely because one methodology had not worked to overcome her cognitive limitations. We will affirm the court's findings unless clearly erroneous, and its conclusions of law if supported by the findings. See In re A.F., 160 Vt. 175, 178 (1993). Findings will be upheld if supported by credible evidence, leaving it to the sound discretion of the trial court to determine the credibility of witnesses and weigh the evidence. Id. The record evidence here - including the testimony and extensive written evaluation of Dr. Straus - amply supports the trial court's conclusion that mother had failed to accept the services necessary to provide the minimal level of care and protection necessary to resume parental responsibilities. The record also contains evidence that service providers attempted to communicate with mother in terms and ways oriented to her cognitive functioning. Accordingly, we discern no error in the court's finding.

Mother also contends the evidence failed to support the court's finding, based directly on Dr. Straus's family evaluation, that mother's involvement in T.C.'s life had not enhanced it. <sup>(1)</sup> Mother notes that Dr. Straus also testified that she favored maintaining some relationship between T.C. and his mother, and acknowledged that severing the relationship could be detrimental. The court's finding was amply supported by the Dr. Straus's evaluation, and was not inconsistent with her other testimony, which recognized that although T.C. would benefit from maintaining contact with mother, his overriding need was for a safe, stable, and nurturing home, which mother had demonstrated she could not provide. Thus, the court's finding was not clearly erroneous.

In his separate appeal, father contends the court erroneously shifted the burden of proof to him. He relies on the court's statement that "[n]o evidence was presented that [father] would ever be able to take on parental duties." We are

persuaded, however, that - as we observed in In re B.C., 169 Vt. 1, 14 (1999), "[i]n noting the absence of any credible evidence that [father] could assume the role of parent, the court was merely commenting on the state of the evidence, not signaling that it was [father's] burden to prove [his] fitness." Father also contends the court failed to make sufficient findings concerning the statutory criteria relating to the best interests of the child. The court's uncontradicted findings that father had failed to contact, visit, support or show any consistent interest in the child; that he had no current or future ability to provide a stable home and support for the child; and that there was no likelihood he would be able to resume parental responsibilities within a reasonable period of time, adequately addressed the statutory criteria for determining the best interests of the child. See 33 V.S.A. 5540; In re C.L. & H.L., 151 Vt. 480, 482-83 (1989) (court need not couch its findings in precise language of statute so long as it is evident court fully considered criteria). We thus discern no basis to disturb the judgment.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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James L. Morse, Associate Justice

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Denise R. Johnson, Associate Justice

1. In her evaluation, Dr. Straus wrote:

Even though [T.C.] has an obvious connection with [mother], there is little evidence for how her involvement in his life has enhanced it materially. . . [T.C.] has survived a very chaotic and confusing 10 years of life. He has some astonishing social coping skills that have enabled him to get through. On the surface, he is a lovely and charming little boy. But he is a shell of a child, with no true reciprocal attachments and a kind of desperate need for attention and affirmation that mirrors his mother's in sad ways. He's at long last getting the kind of comprehensive program for his special educational, emotional and social needs, and he is safe and nurtured. Adults who have cared for and about [T.C.] speak with one voice when they say they do not feel his best interests would be served by returning to his mother's care.