

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-084

JUNE TERM, 2002

In re J.D., Juvenile

}	APPEALED FROM:
}	
}	Chittenden Family Court
}	
}	DOCKET NO. 592-11-97 Cnjv
}	
}	Trial Judge: James R. Crucitti
}	
}	
}	

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

Mother appeals from family court order terminating her residual parental rights to the minor J.D. She contends the record evidence failed to demonstrate: (1) a material change in circumstances; and (2) the best interests of the child required termination. We affirm.

J.D., who was four years old at the time of these proceedings, and his younger sister came into SRS custody in November 1997, when J.D. was a little under two years old. J.D. was placed in foster care, where he has since remained. SRS filed a petition to terminate parental rights in June 2000. In an extensive order, dated June 14, 2001, the court reviewed the case history, finding that mother had failed to participate in parent education services or counseling as required by her case plan, had been in and out of jail, had failed to establish a stable residence, and had not had contact with J.D. since April 1999. The court found that mother had played no constructive role in J.D.'s life and that she would not be able to resume parental duties within a reasonable period of time. It concluded that the State had established by clear and convincing evidence "that all criteria of 5540 indicate that [mother's] parental rights to [J.D.] should be terminated." However, because the court further concluded that father had made substantial progress and that termination of his parental rights was not in the minor's best interests, it ruled that termination of mother's rights was "unnecessary," although it declined to consider parent-child contact until mother complied with the initial case plan.

In August 2001, SRS moved to modify the court's June order and for a protective order to ensure that J.D.'s health and safety was protected when he transitioned to father's custody. ⁽¹⁾ At a hearing in September, SRS also requested that the court consider termination of parental rights. The court denied termination, but issued a protective order with detailed conditions for J.D.'s safe transition. We affirmed the order on appeal, noting that it was error to entertain an oral request to terminate parental rights, and that the evidence supported the court's finding that reunification with father remained in the minor's best interests. The order and appeal did not address mother's rights. In re J.D., No. 01-472 (Vt. Dec. 21, 2001) (mem.).

In December 2001, SRS again moved to modify the court's prior orders and terminate parental rights. Following a hearing in January 2002, the court issued separate rulings terminating mother's and father's parental rights. With respect to mother, the court found that since the June 14, 2001 order, mother had made no progress in her original case plan, and had no further contact with the minor. Indeed, the court noted that since then, she had violated probation and fled to Nevada, where she was arrested and returned to Vermont. She was incarcerated at the time of this proceeding, with a maximum release date of July 2002, and there was also a pending charge of escape which had not been resolved. The court further noted that the reunification plan with father, which had formed the sole basis of its earlier decision not to

terminate mother's parental rights, had failed. The court concluded that the continued stagnation under mother's case plan and the change in father's reunification plan constituted a material change in circumstances; that the minor was thriving in foster care; that mother was not able to resume parental duties within a reasonable period of time; and that therefore termination was in the best interests of the minor. This appeal followed.

Mother contends the evidence fails to support the court's finding of a material change in circumstances. The record evidence amply supports the court's finding that since its original ruling, mother had failed to engage in the case-plan services necessary to establish parent-child contact under the June 14, 2001 order, had failed to have any contact with the minor, and had violated conditions of release and been reincarcerated. In addition, the court noted that the only condition that had prevented it from granting the earlier termination petition - reunification with father - had failed. Even if that assessment was premature, the error was harmless because of the father's later failure to resist termination of his parental rights. The findings support a finding of changed circumstances. See In re A.W., 167 Vt. 601, 603-04 (mem.) (in termination proceeding, court's findings will be upheld if supported by record evidence, and its conclusions will be affirmed if supported by findings).

Mother also contends the evidence was insufficient to determine the minor's best interests because much of it was derived from the hearing culminating in the June 14, 2001 order, and therefore, was not current. The court's decision was based on its earlier findings, which mother has not challenged, and which otherwise supported a termination of parental rights, plus stipulated facts presented by the parties at this proceeding which showed that mother had not engaged in services under the caseplan, had made no contact with the minor since April 1999, and had violated her conditions of release and been reincarcerated. Viewed in its entirety, the record evidence was more than sufficient to support the court's decision to terminate parental rights.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

James L. Morse, Associate Justice

Marilyn S. Skoglund, Associate Justice

1. J.D. suffers from severe food allergies that require careful attention. SRS was concerned that father had demonstrated insufficient concern to protect the minor in this regard.