

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-186

AUGUST TERM, 2002

In re J.S., Juvenile

}	APPEALED FROM:
}	
}	Chittenden Family Court
}	
}	DOCKET NO. 209-5-01 Cnjb
}	
}	Trial Judge: Ben W. Joseph
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}	
}	

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

Mother and father appeal the family court's order terminating their parental rights with respect to their infant daughter, J.S. We affirm.

J.S. was placed in the custody of the Department of Social and Rehabilitation Services (SRS) on the day of her birth, May 6, 2001. SRS considered the child to be in need of care and supervision (CHINS) because of its belief that mother had failed to sufficiently address the problems that had led to the removal of each of her previous seven children. The family court found J.S. to be CHINS in August 2001, and SRS sought termination of parental rights at the initial disposition proceeding. Following a two-day hearing in April 2002, the family court terminated both mother's and father's parental rights, determining that there was no reasonable likelihood that either of them would be able to resume parental duties within a reasonable period of time. On appeal, mother and father argue that neither the evidence nor the court's findings justify the termination order.

According to mother, given the evidence demonstrating that she was making progress attaining personal and parental skills, the family court erred in concluding that she would be unable to resume her parental duties within a reasonable period of time. She points to the testimony of one of the parent educators indicating that she was open to suggestions and was doing the assignments given to her. Further, she notes that she attended all of her visits with J.S., that she had some individual counseling sessions, and that she participated in a substance abuse counseling program. She challenges the court's reliance on her past and present associations with persons deemed to be a threat to her children, stating that her relationship with father does not necessarily pose a danger to J.S. just because he never successfully completed a sex offender treatment program after being convicted seventeen years ago of lewd and lascivious conduct with a fourteen-year-old girl, and that her likely status as a battered woman might explain why she was unable to leave other persons in the past who may have posed a threat to her children.

In a similar vein, father argues that the evidence does not support the family court's conclusion that he will be unable to resume parental duties within a reasonable period of time, given that at the time of the disposition hearing he had begun services to address his parental deficiencies, and that the court failed to indicate whether J.S. would be harmed by denying SRS's request for termination at this juncture to see if father followed through on those services.

The record does not support any of these arguments. Mother has had a long history of severe parenting deficiencies involving both neglect and abuse, none of which have been resolved despite the availability of services to address the

problems. In the past, she has consistently associated with persons who posed a threat to her children, but has been either unwilling or unable to understand the ramifications of her actions. Over the years, she has failed to develop even a modicum of parenting skills, and has continued to suffer from substance-abuse and mental-health problems. The family court considered mother's troubled past, but also examined her current situation and found that she had made little progress in acknowledging her responsibility for failing to protect her children from persons who posed a risk of harm to them, that she had failed to make real progress in attaining parenting skills despite the multitude of services provided to her, and that her substance-abuse and mental-health problems remained untreated. Although one of the parent educators indicated that mother had made some progress in attaining parenting skills, she also acknowledged that mother had a long way to go before she could become an appropriate parent, and indicated that at this juncture it was impossible to assess at what point that may or may not happen.

As for father, the court found that he was an untreated sex offender, and that he had had a string of convictions between 1997 and 1999 related to incidents of domestic assault. The court further found that, although father had remained sober for a period of three years prior to the disposition hearing, he continued to struggle with a significant anger problem, and he had made virtually no progress toward attaining parenting skills. The court also noted that, meanwhile, J.S. was nearly a year old and had developed a strong attachment to her foster parents and her half-sister, whom the foster parents had adopted.

These findings, and the evidence upon which they are based, clearly and convincingly support the trial court's conclusion that neither mother nor father will likely be able to resume parental duties within a reasonable period of time. See In re J.M., 170 Vt. 587, 588 (2000) (mem.) (termination order at initial disposition proceeding was supported by court's findings that mother's parenting abilities had not changed significantly since prior termination proceedings, that child remained at risk of abuse by father, and that mother failed to comprehend that risk); In re J.J.P., 168 Vt. 143, 148 (1998) (evidence of mother's abuse and neglect of her first seven children clearly established pattern of abuse and neglect relevant to her ability to properly care for her most recent child; moreover, evidence that, despite years of services, none of mother's other children were ever returned to her care, and that mother continued to deny her responsibility for conditions that led to removal of those children, supported court's finding that she would be unable to resume parental duties within reasonable time); In re R.W., 154 Vt. 649, 650 (1990) (mem.) (child's right to stable home life, coupled with complete uncertainty as to when mother might be able to parent child, supported court's determination that she would not be able to resume parental duties within reasonable period of time). Notwithstanding father's arguments to the contrary, the court's conclusion that neither mother nor father would be able to resume parental duties within a reasonable period of time was plainly measured from the standpoint of J.S. and was forward looking despite the court's recognition of the parents' past deficiencies. See In re J.B., 167 Vt. 637, 640 (1998) (mem.) (although mother is correct that past conduct is no barrier to resuming parental responsibilities, court did not err in considering evidence of her past behavioral problems and uncertainty of progress in light of her past behavior); In re B.M., 165 Vt. 331, 337 (1996) (although court must consider parent's prospective ability to parent, and reasonable period must be measured from child's perspective, past events are relevant in determining whether parent will be able to resume parental duties within reasonable time).

Nor did the court base its termination order solely, or even primarily, as mother suggests, on the fact that father was an untreated sex offender. The court merely raised legitimate concerns, particularly given mother's history of exposing her children to harm by abusive partners, that mother intended to raise J.S. in a home with a man who had a history of sexual and physical abuse and who had not fully resolved his problems. This factor was but one of many reasons the court gave in support of its decision to terminate mother's parental rights. See B.M., 165 Vt. at 340 (where overall findings are sufficient to support termination decision, decision will be affirmed). As for mother's contention that the court should have looked into the possibility that she was a battered woman in considering her past conduct, she failed to raise the issue in the proceedings below, let alone prior proceedings. See In re C.H. & M.H., 170 Vt. 603, 604 (2000) (mem.) (refusing to consider matter raised for first time on appeal).

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

James L. Morse, Associate Justice

Marilyn S. Skoglund, Associate Justice