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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-474

APRIL TERM, 2004

In re A.M., Juvenile	APPEALED FROM: Rutland Family Court DOCKET NO. 108-6-01 Rdjv Trial Judge: Theodore S. Mandeville

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 daughter, A.M.

A.M. was born on September 21, 1999. This special-needs child came into the care of the Department of Social and Rehabilitation Services (SRS) on March 20, 2001 by voluntary agreement because mother had suffered a seizure while pregnant with her second child[1] and could not care for A.M. Three months later, at the expiration of the voluntary care agreement, SRS concluded that A.M. would be at risk of harm if she were returned home because her parents had missed medical appointments concerning the child' s care and had left the child alone with an untreated sex offender with whom father was living. In August 2001, the family court continued custody with SRS after the parents entered admissions to SRS' s petition alleging that A.M. was a child in need of care and supervision (CHINS). The initial case plan recommended reunification; however, the September 27, 2001 disposition hearing was continued when father' s attorney expressed concerns about the adequacy of the services called for in the plan. In response, SRS had psychologist Donald Mooney perform a cognitive evaluation of the parents. The disposition hearing was continued several more times by the parties, and in May 2002, SRS sought termination of mother' s and father' s parental rights. Later, at the request of the parents, psychologist Patricia Stone performed another evaluation of mother and father. A contested disposition hearing was held over four days in July and August 2003, after which the family court granted SRS' s petition seeking termination of mother' s and father' s parental rights.

Both father and mother appeal the family court' s order, arguing that the evidence does not support the court' s conclusion that the parents are unlikely to resume parental duties within a reasonable period of time. Citing In re B.S., 166 Vt. 345, 352 (1997), for the proposition that A [m]ental retardation is not, by itself, a ground for terminating parental rights,@ father first contends that the family court' s decision to terminate his parental rights was based solely on his mental retardation. We find no merit to this argument. It may be that some of father' s cognitive limitations were the ultimate cause of his inability or unwillingness to put himself in a position to parent A.M., but the family court terminated his parental rights based on its conclusion that father would be unable to resume his parental duties within a reasonable period of time B not because cognitive testing placed him in the category of mild mental retardation. While noting that father' s deficits in cognitive, academic, and living skills would require full-time support for him to care for A.M., the court terminated father' s parental rights because (1) father' s parenting skills had not improved at all during the two-and-one-half years that A.M. had been in SRS custody, notwithstanding the various services offered by SRS; (2) father failed to appreciate the risk of exposing A.M. to the untreated sex offender with whom he was living;[2] and (3) this special-needs child had already spent nearly two-thirds of her life with her foster family, and was thriving under their care.

Father' s real focus on appeal, like mother' s, is that the evidence did not support the family court' s conclusion that the parents would be unable to resume their parental duties within a reasonable period of time. See In re B.M., 165 Vt. 331, 336 (1996) (most critical of criteria set forth in 33 V.S.A. ' 5540 is whether parents will be able to resume parental duties within reasonable period of time). Without any citation to the transcript of the termination hearing, father makes the bald assertion that the testimony at the hearing demonstrated that the parents could resume their parental duties soon, indeed immediately, but that they needed to live together and obtain the assistance of a special educator. This assertion is directly contrary to the court' s findings, which are supported by the evidence, that (1) father is incapable of parenting any child without significant, full-time support, let alone a special-needs child like A.M.; (2) he did not improve his parenting skills at all during the time A.M. was in SRS custody, notwithstanding various services provided by SRS; (3) he did not participate to any significant degree in A.M.' s therapy and rehabilitation; (4) he discounted warnings about the danger of exposing A.M. to the untreated sex offender with whom he was living; and (5) A.M. would fare even worse if she were reunited with father and mother living together rather than with just mother. See In re A.D.T., 174 Vt. 369, 375 (2002) (termination order will be upheld if court' s findings are not clearly erroneous and support its conclusions).

Mother also argues that the family court abused its discretion by concluding that she was not likely to be able to resume her parental duties within a reasonable period of time. She contends that, before making such a conclusion, the court was required to find that A.M. might suffer physical or emotional harm in the event she had to wait another six months or a year to find out if mother would make sufficient progress to resume her parental duties. According to mother, there was no evidence indicating that the child would be placed at risk if the current foster arrangement were maintained A just a little bit longer.@ In our view, mother fails to appreciate the time frame from the perspective of the child. A.M. was taken into SRS custody at the age of eighteen months. She was developmentally delayed B indeed, she could not even hold her head up, sit, or crawl B and she had language limitations. The court found that she made tremendous strides during the two-and-one-half years she resided with her foster family, whom she considered to be her primary care givers. The court further found that her progress was the result of the family' s efforts to assure that she participated in the services necessary for her rehabilitation. Although the court recognized that mother had made some progress in developing parental skills, even her own expert testified that reunification would require six months to one year, assuming that there was adequate support and continued progress. In concluding that it was too late for mother, the family court stressed that the child had spent nearly two-thirds of her life with her foster family, who were the overseers of her safety, health, nourishment, and development, and that mother' s own expert recognized significant hurdles remained before mother could resume her parental duties. Under the circumstances, the court did not abuse its discretion in determining that A.M.' s best interests required terminating mother' s parental rights. See id. (family court has discretion to determine whether termination is in child' s best interests); In re B.S., 166 Vt. at 352 (primary concern of family court is to protect welfare of child).

The principal case that mother and father rely on B In re D.A., 172 Vt. 571 (2001) (mem.) B is distinguishable. In that case, the two-and-one-half-year-old child had been living with her foster family for seven months (there was also an earlier six-month period in SRS custody) when the termination hearing was held. The family court denied SRS' s petition to terminate parental rights, and SRS appealed. We declined to substitute our judgment for that of the family court, given the court' s unchallenged findings that mother had acknowledged her previous deficiencies and addressed certain medical conditions that had been sapping her energy and interfering with her ability to parent. Id. at 573. In affirming the family court' s decision, we noted that although the court had made no explicit findings on the child' s need for permanency, its findings had addressed each of the criteria set forth in 33 V.S.A. ' 5540. Id. The same is true here. The family court addressed each of the ' 5540 criteria and, based on findings supported by the evidence, concluded that termination was in A.M.' s best interests. We find no basis to reverse the court' s order.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

Footnote

1. Mother and father voluntarily relinquished their parental rights with respect to the second child, who was born with significant birth defects.

2. Because of his criminal record, father could not live with mother in public housing.