

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-134

AUGUST TERM, 2005

In re K.B., Juvenile	}	APPEALED FROM:
	}	
	}	Bennington Family Court
	}	
	}	DOCKET NO. 126-8-00 BnJv
	}	Trial Judge: Nancy Corsones

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

Father appeals the family court=s order terminating his residual parental rights with respect to his daughter, K.B. We affirm.

K.B. was born in April 1995. The Department for Children and Families (DCF) became involved with the child=s family in 1999. That same year, father was convicted of assaulting K.B.=s mother. In 2000, the mother obtained a relief-from-abuse order against father after she alleged that father had physically abused both her and K.B. Later that year, father and the mother divorced, and K.B. was placed in the Department=s custody. In October 2000, the family court found K.B. to be a child in need of care and supervision. The January 2001 case plan developed for K.B. included a long-term goal of reunification with K.B.=s mother. The plan noted that father had begun an intimate relationship with the mother=s twin sister, and that both the twin sister and father had been substantiated as sex offenders. Accordingly, unless or until the substantiation was reversed, father would be permitted to have only supervised contact with K.B. The case plan required father (1) to participate actively and productively in individual psychotherapy services, (2) to participate in scheduled supervised visits with K.B., (3) to attend a parenting course, and (4) to appeal the sexual abuse substantiation. In February 2003, a new case plan set forth concurrent goals of reunification with mother or termination of parental rights. The case plan noted that father had not continued in therapy, and that his sex offender substantiation had been affirmed.

In February 2004, the case plan goal changed to adoption. In June of that year, K.B.=s mother voluntarily relinquished her parental rights. Following a two-day hearing in February 2005, the family court terminated father=s parental rights, concluding that his ability to parent K.B. had stagnated and deteriorated, and that termination of father=s parental rights was in K.B.=s best interests. Father appeals, arguing that the family court failed to use its best judgment in determining that terminating his parental rights is in K.B.=s best interests, considering that K.B. has benefitted from the contact with her father and that her placement possibilities are very indefinite. Father disputes the family court=s conclusion that keeping him in his daughter=s life will prolong her lack of permanency. According to father, because he has a positive bond with K.B., the availability, or lack thereof, of a permanent placement for her is highly relevant.

We find these arguments unavailing. When DCF presents a petition to the family court Afor custody of a child without limitation to adoption, and the court finds changed circumstances, it is required by statute to weigh the best-interest-of-the-child factors contained in 33 V.S.A. ' 5540 to determine whether termination of parental rights is warranted.@ In re T.T., 2005 VT 30, & 5. Here, the court examined each of those statutory factors, making the following findings and conclusions: (1) K.B. is a child with significant special needs and extreme emotional and behavioral problems; (2) chaotic family dynamics exist within K.B.=s extended family; (3) to her severe detriment, K.B. is used as a pawn in rivalries between family members; (4) the ongoing chaos and turmoil in father=s home are not conducive to safe and positive home visits with K.B., particularly given K.B.=s extensive psychological needs; (5) father missed one quarter of the scheduled visits with K.B. from December 2003 to October 2004, often failing to call ahead to cancel the appointments, which was harmful to K.B.; (6) father has not made any progress in achieving the goals set for him in the various case plans since K.B. came into DCF custody; (7) the bond between father and K.B. has been constrained by the supervised visitation resulting from father=s sex offender substantiation; (8) father will not be able to assume parental duties within a reasonable period of time; (9) father has not played a constructive role in K.B.=s life because of his inability to provide a safe and stable home conducive to K.B.=s extraordinary needs; (10) although father and K.B. have a bond, K.B.=s best interests dictate that she be free to be adopted into a stable and permanent home; and (11) keeping father in K.B.=s life through a long-term foster arrangement would prolong her lack of permanency and deprive her of the predictability and stability that she needs to thrive. These findings and conclusions, which are supported by the record and, for the most part, are unchallenged by father, amply support the family court=s termination order.

Father argues that termination of parental rights cannot be in K.B.=s best interests, given that there is not yet any permanent home in place for her, and that he has always been a part of her life. We have consistently stated, however, that the absence of prospective adoptive parents does not preclude the family court from terminating parental rights when the statutory criteria are met and termination is in the child=s best interests. In re E.B., 158 Vt. 8, 14-15 (1992); In re L.A., 154 Vt. 147, 160

(1990). Here, the record is replete with evidence demonstrating K.B.'s need for stability and permanency in her life, and father's inability to provide it. Accordingly, the family court acted well within its discretion in terminating father's parental rights. See In re S.B., 174 Vt. 427, 429 (2002) (mem.) (this Court's role in reviewing termination order is not to second-guess the family court or to reweigh the evidence, but rather to determine whether court abused its discretion in terminating parental rights).

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice