

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-307

NOVEMBER TERM, 2005

In re Z. F., Juvenile	}	APPEALED FROM:
	}	
	}	
	}	Washington Family Court
	}	
	}	DOCKET NO. 161-11-04 Wnjv
	}	
		Trial Judge: M. Kathleen Manley

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

The grandmother and former guardian of Z.F. appeals the family court=s order terminating the parental rights of Z.F.=s father and transferring custody of the child to the Department for Families and Children without limitation as to adoption. We affirm.

Z.F. was born in January 2002 to parents addicted to heroin. The mother began methadone treatment during her pregnancy with Z.F., resulting in Z.F. being addicted to methadone at birth. The father was incarcerated at the time of Z.F.=s birth and for a year thereafter. In July 2002, mother began using heroin again, and Z.F.=s paternal grandmother began to care for the child. The following month, the probate court appointed grandmother as Z.F.=s guardian. In July 2003, Z.F.=s pediatrician referred Z.F. to a child development clinic after noting that she was not progressing developmentally. Grandmother did not follow through, however, with the appointment. Five months later, because of the pediatrician=s ongoing concerns regarding Z.F.=s speech delays and lack of socialization, he referred Z.F. for home-based services. Again, grandmother did not follow through with the program of services. In February 2004, the pediatrician referred Z.F. to a therapeutic day care center structured to allow outside service providers to work with the children and their families at the center. When Z.F. arrived at the day care center in March 2004, she had little interaction with the other children and engaged in frequent self-stimulating behaviors such as rocking and head-banging. She had difficulty eating solid foods because she was still being fed by bottle at home. She began to make progress but became infected with head lice in April 2004. Despite the efforts of service providers, Z.F.=s lice infestation persisted, and, in June 2004, the day care center terminated its services for Z.F.

About the same time, grandmother was evicted from her apartment and forced to move into a hotel room after her son stole her rent money for drugs. Shortly thereafter, the probate court became concerned about the guardianship because grandmother had failed to file a required guardianship report. A social worker conducted an assessment of Z.F.=s home situation for the probate court and discovered that Z.F. was living with her grandmother and other family members in a small, dark, smokey hotel room. The social worker observed the child banging her head and saw the family engage in little activity other than watching television. One service provider described grandmother as vacant and non-responsive at times. The social worker recommended to the probate court that grandmother=s guardianship be terminated. The probate court terminated the guardianship on November 2004.

Meanwhile, upon learning that Z.F. had not attended the therapeutic day care center in five months, and that grandmother had not followed up on other services, the child=s pediatrician informed the Department of his growing

concerns for Z.F.'s welfare. Shortly thereafter, the Department obtained a detention order, filed a petition alleging that Z.F. was a child in need of care and supervision (CHINS) and placed Z.F. with the foster family with whom she has remained ever since. In December 2004, the probate court terminated grandmother's guardianship, and grandmother stipulated to a CHINS adjudication in the family court. At the disposition hearing in June 2005, the Department sought termination of parental rights so that Z.F. could be freed for adoption. The mother voluntarily relinquished her parental rights. Following the hearing, the family court terminated the father's parental rights and declined to award custody of Z.F. to grandmother, who had been granted party status at the CHINS proceeding. The court recognized the close bond between Z.F. and grandmother, but concluded that, despite the considerable support that she had received from community agencies, grandmother did not have the ability to provide the care that Z.F. required to meet her developmental needs. The court stated that it would not give undue emphasis to the emotional bond between Z.F. and her grandmother at the expense of the child's health and developmental needs, which grandmother was unable to meet. Only grandmother appeals the court's decision, so the termination of father's parental rights are not at issue here.

Grandmother argues on appeal that the evidence does not support the family court's decision to transfer custody of Z.F. from her to the Department. According to grandmother, Z.F.'s persistent lice problem resulted from grandmother's adult daughter's refusal to accept treatment, and Z.F.'s best interests could be safeguarded by the court issuing a protective supervision order requiring effective treatment of any future head lice and barring the adult daughter from living with her.

We find no merit to this argument. Although the disposition order legally transferred custody of Z.F. to the Department, grandmother lost her guardianship and physical custody of Z.F. several months earlier because of her failure to attend to Z.F.'s developmental needs. Notwithstanding her protests to the contrary, grandmother must take responsibility for Z.F.'s persistent lice problems and the resulting loss of services from the therapeutic daycare. Grandmother refused to shave Z.F.'s head, as recommended by service providersCa treatment that later resolved the lice problem within two daysCand permitted her adult daughter to live with her despite the daughter's refusal to accept treatment for the problem. More importantly, grandmother incorrectly presumes that the persistent lice problem was the sole factor in the family court's decision not to award her custody of Z.F. The court concluded that grandmother is incapable of addressing Z.F.'s considerable developmental needs. The evidence overwhelmingly supports this conclusion, as well as the court's conclusion that termination of parental rights is in Z.F.'s best interests. Cf. In re T.T., 2005 VT 30, & 7 (mem.) (holding that once family court applies best interests criteria set forth in 33 V.S.A. ' 5540 and determines that child's best interests warrant giving custody to state without limitation as to adoption, court need not revisit permanency hearing options contained in 33 V.S.A. ' 5531(d) and explain why it is choosing parental rights over other options).

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice