

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-413

FEBRUARY TERM, 2006

In re K.R., Juvenile	}	APPEALED FROM:
	}	
	}	Chittenden Family Court
	}	
	}	DOCKET NO. 113-2-04 Cnjv
		Trial Judge: David A. Jenkins

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

Mother appeals from the family court=s order terminating her residual parental rights in K.R. She argues that the family court=s conclusion that she will not be able to parent within a reasonable time is based in significant part on an unsupported finding of fact. We affirm.

K.R. was born in January 2004 addicted to opiates and was placed on methadone when he was six days old. Mother has a long history of substance abuse; another child was removed from her care in 2002 for this reason. Mother used methadone, klonopine, cocaine, OxyContin, and other drugs while pregnant with K.R. She missed numerous prenatal care appointments and began missing doctor=s appointments after K.R.=s birth as well. In February 2004, the Department for Children and Families (DCF) became concerned about drug use in mother=s home. K.R. was placed in mother=s custody subject to a protective order. Mother violated the protective order in March 2004 and K.R. was placed with his maternal grandmother subject to another protective order. Among other conditions, mother was not to engage in any violent, threatening behavior or abuse her mother either verbally or physically, and she was not to have any unsupervised contact with K.R. Shortly after the placement, mother assaulted her mother in K.R.=s presence. K.R. was taken into DCF custody and mother admitted that he was CHINS due to her ongoing substance abuse problems and her medical neglect of him. K.R. was placed in DCF custody, where he remains. DCF initially sought to reunify K.R. with mother but in light of mother=s failure to comply with the case plan in any meaningful way, it changed its goal to adoption and filed a petition to terminate mother=s residual parental rights in November 2004.

After two days of hearings in June 2005, the court issued an order terminating mother=s residual parental rights. The court made numerous findings of fact, only one of which mother challenges on appeal. The court began by recounting mother=s failure to comply with the case plan. It explained that within one month of the disposition hearing, mother failed to appear for a court hearing, missed counseling sessions, and tested positive for opiates and cocaine. She repeatedly missed her methadone doses and did not attend her anger management session. Her visits with K.R. were suspended as a result. The court found that mother had the opportunity to bond and attach with K.R., but she did not take advantage of it. From his birth through his first year of life, she continued to use drugs, which presented a risk of harm to K.R. and rendered mother unavailable to him. Additionally, while K.R. was in DCF custody, mother was convicted of four crimes. She was placed on probation, which she violated. Mother continued to have difficulty complying with conditions of probation. The court found that, at a case plan review in September 2004, mother suggested that she might move to Arizona. In a footnote, the court stated that, subsequent to the hearings in this case, DCF was notified that mother had in fact moved to Arizona.

The court found that at the time of the termination hearing, mother had not been in any counseling other than anger management counseling. She had not visited K.R. for four weeks, and her visits had been sporadic throughout the

time that K.R. was in DCF custody. Although mother had tested clean for substances since January 2005, the court found it apparent that her level of addiction and substance abuse required more than mere methadone monitoring and anger management counseling. Mother was pregnant again as well, which further complicated her methadone treatment. The court explained that mother minimized and blamed others for her problems since the inception of the case and her mother had enabled and supported her in this denial. Mother had demonstrated an inability to put K.R.'s needs before her own. K.R. was now eighteen months old and had been in DCF custody and placed away from mother for all but two months of his life. The court stated that this was not only a significant time in his life but also a critical time to have missed out on the nurture and caregiving of his biological parent. The court found that mother was presently unable to parent K.R. and would be unable to meet K.R.'s needs in the foreseeable future. It explained that K.R. was thriving with his foster parents and agreed with expert testimony that it would be harmful to remove him from their home. Based on these and other findings, the court concluded that mother had stagnated in her ability to care for K.R. and that termination of mother's residual rights was in K.R.'s best interests. Mother appealed.

On appeal, mother asserts that the court's findings that she planned to move to Arizona and that she did in fact move to Arizona are not supported by the record. She argues that the court's conclusion to terminate her residual rights was based in significant part on these findings.

When the termination of parental rights is sought, the trial court must conduct a two-step analysis under 33 V.S.A. § 5532(a). *In re B.W.*, 162 Vt. 287, 291 (1994). The court must first find that there has been a substantial change in material circumstances, which is most often found when a parent's ability to care for a child has either stagnated or deteriorated over time. *Id.* The court must next assess whether termination of parental rights is in a child's best interests. *Id.* The most important factor in this analysis is the likelihood that the natural parent will be able to resume his or her parental duties within a reasonable period of time. *In re B.M.*, 165 Vt. 331, 336 (1996). As long as the court applied the proper standard, we will not disturb its findings unless they are clearly erroneous, and we will affirm its conclusions if they are supported by the findings. @ *In re G.S.*, 153 Vt. 651, 652 (1990) (mem.).

Mother's assertion that the court's conclusion rested in significant part @ on its finding that she had moved to Arizona is wholly without merit. The court's analysis plainly reflects that its decision was based on mother's substance abuse problems and her failure to secure proper treatment, among numerous other factors. As the court explained, mother failed to make sufficient progress during the time that K.R. had been under the court's supervision. Her participation in services had been minimal and had little impact on the crucial issues that brought K.R. into DCF custody. Mother admitted actively abusing substances from the time that K.R. came into custody in February 2004 until January 2005, and, despite her claimed sobriety, mother had not participated in a meaningful way in substance abuse counseling. Mother maintained a level of denial of the impact of her own substance abuse and mental health issues on K.R. both at the time that he was taken into DCF custody and the present time. She failed to demonstrate that she had learned how to protect K.R., and she could not provide a safe home for K.R. She did not fully understand or accept the depths and magnitude of her substance abuse and mental health problems, nor had she put any solutions into practice in any effective manner. Any error in the court's finding that mother was contemplating a move to Arizona, or that she had in fact moved, is harmless. The court's conclusion that mother would not be able to resume her ability to parent within a reasonable period of time is well-supported by the court's remaining findings. See *In re A.E.*, 160 Vt. 175, 178 (1993) (upholding family court's decision to terminate parental rights despite erroneous finding of fact where remainder of court's findings were sufficient to sustain decision); *In re C.M.*, 157 Vt. 100, 103 (1991) (erroneous finding does not require reversal where other evidence supported termination of parental rights). We find no error.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice