

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2005-434

FEBRUARY TERM, 2006

In re D.W., Juvenile

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APPEALED FROM:

Chittenden Family Court

DOCKET NO. F352-7-04 CnJv

Trial Judge: Thomas J. Devine

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

Father appeals the termination of his parental rights, arguing that the family court did not allow sufficient time to assess whether there was a substantial change in material circumstances justifying the change in disposition to termination. We affirm.

Father does not dispute the factual findings of the family court. Child was born on May 21, 2003. Father physically abused mother, both while mother was pregnant and after child was born. Father was incarcerated on October 28, 2003, for an assault against mother. Before his incarceration, father did not assume the role of a parent with child. On July 4, 2004, while father was in prison, mother was murdered. Child was transferred to DCF custody on July 12, 2004, went to live with a foster family on August 25, 2004, and continued to live with the same foster family as of the date of the termination hearing. In the Fall of 2004, father was released from jail into a furlough program and sought reunification with his child. A disposition hearing was held on December 20, 2004, and DCF proposed reunification of father with child, but further recommended termination of parental rights if father did not make substantial changes to his material circumstances within the next three months.

Upon his release, father was subject to a number of requirements through his furlough program and also through the DCF case plan. These included: participating in a parenting skills program, participating in a domestic violence program, completing a mental health assessment, finding and keeping employment, and finding a residence suitable for child. Many of the core requirements of the DCF case plan overlapped and were consistent with father=s furlough conditions. It is uncontested that father repeatedly failed to meet the requirements of either his furlough program or the DCF case plan. As a result of these violations, father was put in jail again from December 28, 2004 until February 3, 2005. On March 25, 2005, DCF moved for termination of father=s parental rights. On April 6, 2005, while the motion was pending, father was again returned to jail for violations of his furlough program. As of July 7, 2005, father was determined to be ineligible to participate in the furlough program for at least another six months. Thus, on the date of the contested TPR hearings (July 29 and August 5, 2005), father was again incarcerated due to his failure to meet the requirements of the furlough program.

After a detailed and careful review of the evidence, the family court determined that the change of disposition to termination was warranted because father had repeatedly violated both his furlough requirements and the DCF case plan. As the family court noted, father Adid not seem to be taking the furlough program (and by extension, the DCF case plan) seriously.@ The family court acknowledged that three months was an Aexceedingly short time@ in which to evaluate a parent=s circumstances, but recognized, also, that Athree months is a long time for a little boy of [this child=s] age and development. A two year [old] child who has spent almost a full year in DCF custody cannot wait an inordinate amount of time for an adult parent to show . . . substantial progress.@ In addition, father had difficulties not only during the three months between the original disposition and the termination petition, but also during the more than five months following the petition and before the final hearing was held.

Ultimately, the family court concluded that father=s progress had not just stagnated, but had deteriorated: AAt the time of the disposition hearing, [father] was at least living in the community at a residence he secured and while not employed, he

had employment prospects on the horizon. At the time of the termination case, [father] was incarcerated, had lost his residence and had no employment prospects. @

Father argues on appeal that three months is simply too short a time for anyone in his position to turn his life towards responsible parenthood, and that such a deadline deprived him of his right to parent in violation of due process.\* Essentially, father contends that requiring him to make substantial progress in housing, employment and rehabilitation within three months of the disposition hearing was unreasonable as a matter of law. Father offers no reason why three months was patently unreasonable, other than to cite a dozen examples where parents were given longer periods of time, ranging from five to eighteen months, to achieve reunification goals.

Nothing about the three month deadline appears so fundamentally unfair in this case to constitute a per se violation of due process as claimed by father. Father had to do little more for the disposition plan than what was already required of him to stay out of jail on furlough. It is not as if father=s efforts at reunification were frustrated by an arbitrary deadline. Father made little or no progress by the end of three months, and then regressed through the next five months so that his most likely horizon at the time of the final hearing was another six months of incarceration.

Any judgment about the reasonableness or fairness of a period of time must be tempered by the recognition that even a relatively short period of time may be experienced as significant by a child, particularly depending on the child=s age and developmental stage. We have explicitly recognized this principle with respect to assessing whether termination is in the best interests of the child. In that context, we have held that in judging whether a parent is capable of resuming a parental role in a reasonable period of time, reasonableness must be judged from the perspective of the child. In re B.S., 166 Vt. 345, 353 (1997). Here, the family court correctly emphasized that, three months is a substantial period of time in the emotional and developmental life of a two-year-old.

The conditions imposed on father were basic: he was to find a home, find a job and stay out of jail. In light of father=s failure to achieve these conditions in the face of known and serious consequences, DCF was entitled to pursue termination after only three months. The record here is not mixed: as the family court found and father does not contest, father violated the conditions of his furlough program and the DCF case plan repeatedly and with some indifference to the consequences of his actions. In the three months prior to the filing of the termination petition, father wilfully exposed himself to re-incarceration, which eventually was imposed, resulting in father being unavailable for up to another eight months (his incarceration from April through July and the additional six months of program ineligibility). See In re K.F., 2004 VT 40, & 6, 176 Vt. 636 (mem.) (termination of parental rights were in child=s best interests where father had demonstrated a pattern of unavailability due to incarceration, criminal behavior, and nonparticipation in Corrections programming@); In re A.D.T., 174 Vt. 369, 376 (2002) (termination decision properly relied on mother=s lack of relationship with children which was due to her criminal activity and repeated imprisonment).

Although DCF filed its termination petition only three months after the original disposition, the termination hearing was not held until five months later. Thus, the family court was able to, and did, consider father=s actions up through the date of the TPR hearing. Noting father=s continued inability or unwillingness to comply with his furlough and DCF programs, the court reasonably concluded that A[t]here is little evidence to suggest that a more extended time frame for [father] would have created a greater sense of urgency about the situation or produced measurably better results. @

Given the undisputed facts of this case, we cannot conclude that the family court erred in adopting an initial three-month deadline for father to show substantial improvement in his parenting capabilities, and in determining that termination of father=s parental rights was justified after he failed to make any progress eight months after the disposition plan went into effect.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice

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\* DCF argues that father did not present this argument for the trial court's consideration. In fact, the trial court specifically refers to father's argument that three months was a Apatently unrealistic@ period of time in which to demonstrate his ability to be a parent to child.