

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-282

OCTOBER TERM, 2006

In re A.C. and J.C., Juveniles

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APPEALED FROM:

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Orleans Family Court

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DOCKET NO. 68/69-10-03 Osjv

Trial Judge: Alden T. Bryan

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

Mother appeals from the family court=s order terminating her residual parental rights in A.C. and J.C.\* She argues that the family court relied too heavily on hearsay evidence in reaching its conclusion. We affirm.

Mother and father are the biological parents of As.C., born in May 1987, J.C. born in February 1995, and A.C. born in July 1999. In August 2003, while the family was living in New Hampshire, As.C. contacted police to report that father had touched her inappropriately. An investigation ensued, and father was ordered to move out of the family=s home. Shortly thereafter, the family moved to Vermont. The New Hampshire Department of Youth and Families contacted the Vermont Department for Children and Families, and informed DCF that there had been four prior allegations of sexual abuse involving father.

Police discovered the family living with relatives in Derby, Vermont when they responded to a domestic disturbance call. Father was very intoxicated and passed out in a locked car. Mother reported that father had pulled her hair and thrown her on the couch, but she did not appear upset. An investigation revealed that A.C. was not enrolled in school and J.C. complained of being Asmacked@ by both parents. J.C.=s teeth were so rotten that they were black. J.C. also stated that A.C. sometimes slept with mother and father. The children were taken into DCF custody pursuant to an emergency detention order. At a merits hearing, parents stipulated that the children were in need of care and supervision (CHINS), and they were continued in DCF custody. DCF initially sought reunification with mother, but in October 2004, it filed a petition to terminate parents= residual rights. DCF withdrew its TPR petition shortly thereafter but filed a second TPR petition in September 2005. After a hearing, the family court issued its order terminating mother=s residual parental rights.

The court made the following factual findings. When the children were taken into custody, J.C. was at risk of harm from both parents. His health needs were not being met, and he required Aspecialized parenting skills,@ which mother recognized she did not yet possess. A.C. was at risk because of father=s alcoholism, domestic violence, and his sexual abuse of As.C. The children initially had supervised visits with mother with a goal of reunification. In September 2004, however, DCF apparently received additional information about sexual abuse that had occurred in New Hampshire and changed its goal to termination of parental rights and adoption. According to the court, it appeared that DCF discovered that J.C. and another child had sexually abused A.C., and that mother had responded by telling the children not to do it again. There were also reports that: father had Ahumped@a doll until he made a mess, which mother then cleaned up; A.C. slept in bed with parents, and father played with himself until he wet the bed while mother did nothing to intervene; father had put his Aprivate@ next to A.C.=s privates for an extended period of time; and father hit J.C. with various objects. The court explained that it had become clear over time that mother did not report inappropriate incidents like those described above, but simply acknowledged them when they later came to light.

DCF thereafter withdrew its termination petition, and provided mother additional time to meet the goals of the case plan. Mother continued to struggle. She could not provide J.C. with appropriate affection or attention;

she had difficulty advocating for herself and the children; she could not express her needs; she did not appear to be able to control the children; and she was not retaining the information provided to her by DCF. Mother did make some progress, however, and she was allowed to have the children overnight between November and December 2004. By January 2005, however, there were concerns about the children=s behavior, which mother failed to report to DCF. In March 2005, mother agreed to provide the children with constant supervision while they were at her home. The children began living with mother in June 2005, but it became apparent that mother was unable to properly supervise them. The children would report one thing to DCF while mother would report another. The court found that in July 2005, J.C. told mother that A.C. had made an inappropriate sexual comment to him while he was in the bathroom. Mother told J.C. not to tell anyone about the incident because he and A.C. would then be removed from her home. Both children eventually disclosed the incident to others. The court also found that J.C. began losing weight while staying at mother=s home, and as reflected above, A.C. appeared to be engaging in sexualized behavior. Based on these and other findings, the court found it apparent that, after over a year and a half of services, mother was unable to manage the children, keep them safe and out of trouble, and keep up with her household chores.

The court thus concluded that clear and convincing evidence showed that mother had stagnated in her ability to parent J.C. and A.C. It explained that while mother had made considerable effort to absorb the material provided to her by DCF, she was not up to the task. During the five weeks that the children were returned to her care, she was unable to show that she could resume parenting them and provide for their physical safety or emotional needs. She could not maintain a dental hygiene schedule for J.C. Additionally, three trained care providers who worked with mother during this period were convinced by her behavior that the time had come to provide the children with permanent homes elsewhere. The court found that mother was not now and would not in the future play a constructive role, including personal contact and demonstrated love and affection, in the children=s welfare. The court also found that the children had adjusted well to their foster homes, and each had loving and supportive foster parents. They were doing well in school and were relating well to others in their household and at their schools. The court thus concluded that it was in the children=s best interests that mother=s residual parental rights be terminated. Mother appealed.

Mother argues that the family court's decision that she had stagnated in her ability to parent was improperly based on hearsay evidence. She specifically challenges the alleged bathroom incident that occurred between A.C. and J.C. while the children were staying at her home. According to mother, this incident formed the basis of the recommendation by three DCF service providers that she would not be able to parent within a reasonable time. Mother also maintains that a finding of sexualized behavior by the children during an unsupervised moment would be insufficient to support termination, and it is clear that this finding played a significant role in the court's decision.

This argument is without merit. We have explained that A[i]n general, all information that may be helpful in determining the disposition of a CHINS child may be admitted and relied upon during a disposition hearing. @ In re S.G., 153 Vt. 466, 474 (1990) (citing 33 V.S.A. ' 655(d)). While we have cautioned against relying too heavily on hearsay evidence in proving parental unfitness, our holdings affirm the admissibility of hearsay to show parental unfitness provided that there is additional credible, nonhearsay evidence as well. @ Id. As reflected above, in this case, the family court made numerous findings of fact that detail mother's parental shortcomings, and its findings are supported by credible evidence in the record. It is apparent that the court's decision did not turn on one alleged incident but rather on mother's failure to make any meaningful progress in achieving the goals of the case plan over a eighteen-month period despite numerous services provided to her by DCF. Based on the evidence presented at the hearing, the court did not err in concluding that mother had stagnated in her ability to parent, and that termination was in the children's best interests. See In re G.S., 153 Vt. 651, 652 (1990) (mem.) (as long as the family court applied the proper standard, we will not disturb its findings on appeal unless they are clearly erroneous; we will affirm its conclusions if they are supported by the findings).

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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\* Father voluntarily relinquished his residual parental rights.