

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-347

JANUARY TERM, 2007

A.M. and J.M., Juveniles

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APPEALED FROM:

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Bennington Family Court

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DOCKET NO. 84/85-5-04 Bnjv

Trial Judge: Nancy Corsones

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

Mother appeals the family court=s decision terminating her parental rights.* We affirm.

The relevant findings of the family court are as follows. The children, A.M. (born December 22, 1994) and J.M. (born March 25, 1996) came into custody of the Department for Children and Families (ADCF@) in May of 2004 on an emergency detention order. The order was based on a danger of physical abuse from father and the belief that mother could not protect the children from such abuse. At the preliminary hearing,

mother and father conceded that the children were in need of care and supervision (ACHINS@) and that the children should remain in DCF custody. At this time, the family court made further findings that, in addition to violence and poor conditions in the homeCthe parents conceded that Athe home had frequently been uninhabitable@C Athe parents had been non-compliant with voluntary efforts made by DCF to improve the children=s circumstances [and] that parents did not obtain needed medical care for the children.@ When the children entered custody, both had Aserious learning impairments.@ J.M. had additional difficulties due to hearing loss resulting from multiple, untreated ear infections. Both children had limited social skills and poor hygiene, including long-term lice infestations. These problems caused the children to be ostracized at school and to suffer emotional damage as a result.

At the original disposition hearing, DCF proposed reunification. As the family court later described, the disposition report Awas very clear as to the expectations for safe reunification of the family,@ including specific results that were required and specific strategies for achieving them.

In the meantime, the children were placed with foster parents. Mother and father initially had unsupervised visits at their home with the children. Problems arose, however, with the home visits. Parents failed to set a bedtime, and, as a result, the children had difficulty getting up in the morning. Also, the mobile home was unsanitary because parents allowed their dog to urinate and defecate in the house and garbage bags were piled up in front of the home, and unsafe because broken windows remained unrepaired and heat was not obtained for the home. During subsequent, supervised visits away from the home, parents inappropriately exposed the children to their arguments and adult issues. Parents separated in March 2006.

Ultimately, after two years of effort, the family court concluded that parents had made no notable progress toward the goals set forth in the disposition report, either in terms of parenting skills or establishing a safe home. Notwithstanding repeated offers of fuel assistance and other community services, basic problems such as no running water and no fuel for heat persisted at the mobile home, and at the time of the termination hearing, the home remained uninhabitable. While mother had made and kept medical appointments, finished a Anurturing parent@ program, and attended the majority of visits with her children, she was unable to implement

good parenting practices or provide a safe home for the children. She never followed through on their therapy needs.

In deciding that termination of mother=s parental rights was necessary, the family court first concluded that there were changed circumstances requiring modification of the disposition order; namely, that mother=s parenting skills had stagnated. Second, the court concluded that termination of parental rights would be in the best interests of the children by examining the statutory factors listed in 33 V.S.A. ' 5540. The court noted that mother=s interactions with her children had to be supervised Ato safeguard the children=s emotional and physical well being.@ Mother was not able to set limits for the children, often screaming at them in an attempt to control their behavior. By contrast, the children were achieving to their potential in the community with their foster parents, in large part due to the emotional support and stable home life the children were now receiving. In foster care, the children had improved their hygiene and social habits, and had been able to fight less with each other. They established regular eating habits and a regular sleeping schedule. They also began to participate in extracurricular activities with the support of their foster grandparents. The court determined that mother would not be able to resume parenting within a reasonable period of time because she was homeless at the time of the proceedings and had no source of income. In addition, mother had Ademonstrated negligible progress in learning, much less applying parenting skills to ensure that her daughters are safe and achieve their potential.@ The court concluded that mother Aseverely neglected her children, both emotionally and physically, before they came into custody@ and that Anothing improved@ since the children went into custody.

The decision to terminate parental rights Ais committed to the discretion of the family court.@ In re D.M., 162 Vt. 33, 38 (1994). We review the family court=s findings of fact for clear error, and will affirm its conclusions of law if supported by the findings. Id. On appeal, mother does not contest the family court=s findings of fact, nor does she challenge the conclusion that changed circumstances existed. Rather, she alleges that the family court erred in its best-interests analysis by failing to consider the impact on the children of losing their relationship with their mother at a time when there was very little stability in their lives otherwise. In particular, she emphasizes that, at the time of the termination hearing, the children did not have an established adoption placement and their foster parents had decided to relocate to another state.

Mother has not demonstrated that the family court abused its discretion. The family court acknowledged that neither the foster parents nor the foster grandparents had committed to adopting the children. Nonetheless, the court made ample and detailed findings that, while mother loved her children, her interactions with them were harmful on multiple levels. As we have previously held, Aa valid termination of parental rights does not depend on the availability of permanent foster care or adoption.@ Id. at 40. Contrary to mother=s assertion, the overarching concern of the ' 5540 analysis is the impact of termination on the children; this issue was not overlooked by the family court.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

- * Father voluntarily terminated his parental rights and is not a party to this appeal.