

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-444

FEBRUARY TERM, 2007

H.W. and I.W., Juveniles

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APPEALED FROM:

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Chittenden Family Court

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DOCKET NO. F17/18-1-04 CnJv

Trial Judge: Mark Keller

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

Father appeals the family court=s order terminating his parental rights with respect to his two children, H.W. and I.W. He contends that the court erred in finding changed circumstances for failure to comply with the case plan when the case plan did not consider reunification as a goal. We affirm.

In January 2004, H.W. and I.W. were placed in the custody of the Department of Children and Families (DCF) due to abuse and neglect by their mother, who was the custodial parent. The court made no finding nor was there evidence that father either abused or neglected the children. At the time, mother and father were separated.

On April 27, 2004, both parents attended the disposition hearing. The court approved the disposition report, which recommended reunification with both parents, and set conditions for achieving this plan. Under the plan, father was to submit to paternity testing for H.W., commit to sobriety and refrain from substance abuse, and demonstrate Aa commitment to parent his children and [] maintain regular contact with them through weekly, supervised visits.@ The plan=s recommendations explained that if the parents failed to make progress within three months from disposition, the goal would change from reunification to adoption.

The family court approved a new plan in December 2004 that recommended reunification with mother as the goal. In the case plan, DCF noted that father had chosen not to engage in services and had not followed the previous case plan and, thus, the new plan did not include any information about or recommendations for father. In July 2005, DCF filed a petition to terminate parental rights. Mother voluntarily relinquished her rights, and the court held a hearing on termination of father=s rights. In its written decision, the family court found that father had totally failed to demonstrate a commitment to parent his children, as required under the original disposition plan. The court noted that between April 27 and June 30, 2004, father had three visits with his children. Even after DCF workers offered to bring the children to father=s work to accommodate his schedule, father saw the children on only three occasions in August 2004. Since that time, father had not visited with the children nor had father contacted DCF to inquire about them. The court found that the children do not know or relate to father and that he is Aa non-factor@ in their lives. The court also found that father had never taken an active role in the children=s lives or spent time alone with them. Additionally, the court found that both children were thriving with their foster families and that it would harm the girls to remove them from their foster homes. Based on these findings, the court concluded that father would not be able to commence parenting the children within a reasonable time and that termination was in the children=s best

interest.

Father does not dispute the family court's findings, but contends that the court erred in terminating because DCF's plan did not include reunification with father as a goal and, thus, he was precluded from demonstrating his worth as a parent. In reviewing a termination decision, we affirm the family court's findings unless clearly erroneous and the conclusions if supported by the findings. In re A.F., 160 Vt. 175, 178 (1993). In order to terminate, the court must first find a substantial change in circumstances, and then determine that the best interests of the children require termination. In re S.M., 163 Vt. 136, 138-39 (1994); see 33 V.S.A. ' 5540 (listing factors relevant to determining bests interests of child). A parent's failure to substantially comply with the expectations in the case plan constitutes a change of circumstances. In re S.M., 163 Vt. at 140. As the court noted, father's failure to commit to parenting his children, the first requirement of the plan, was Atotal.@ Nothing in the DCF plan precluded him from demonstrating a commitment to his children.

In this case, the family court's finding of changed circumstances was supported by credible evidence that father made no commitment to parent and failed to maintain regular contact with his children. See In re D.B., 161 Vt. 217, 219 (1993) (explaining that a parent's failure to meet expectations that his ability to care for children will improve within a reasonable time constitutes changed circumstances). Contrary to father's assertion, the original disposition did include reunification with both mother and father as a goal. It also set out specific goals for father to attain in order to demonstrate his ability to parent the children. Father failed to comply with the goals of this original plan and did not show a commitment to visiting or parenting the children. These findings support the court's conclusion that there was a substantial change in circumstances since the disposition order. The findings also support the family court's conclusion that father could not commence parenting the children within a reasonable period of time, as measured from the perspective of the children's needs. See In re B.M., 165 Vt. 331, 337 (1996) (explaining that child's lack of a significant relationship or bond with father was important factor in determination that father could not resume parental duties within a reasonable time). Thus, we affirm the court's conclusion that termination was in the children's best interest.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice