

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2006-485

FEBRUARY TERM, 2007

In re T.C., Juvenile

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APPEALED FROM:

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Caledonia Family Court

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DOCKET NO. 102-11-05 Cajv

Trial Judge: Thomas J. Devine

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

Father appeals from the family court=s order terminating his residual parental rights in T.C. He argues that the court abused its discretion because its decision lacks a reasonable basis. We affirm.

T.C. was born to parents in April 2005. Parents abused alcohol and drugs. In November 2005, mother was discovered in a highly intoxicated state, sitting in a car with the child. Mother admitted that T.C. was a child in need of care and supervision (CHINS), and he was taken into the custody of the Department for Children and Families (DCF). In May 2006, DCF filed a petition to terminate both parents= rights over the child. [\[1\]](#)

After a hearing, the family court issued a written order terminating father=s rights. It made numerous

findings, including the following. Mother and father met in California in February 2004. Mother had a severe alcohol problem, and she began using methamphetamine after meeting father. Parents smoked methamphetamine on almost a daily basis. In May 2004, police raided parents' apartment and seized drugs and drug paraphernalia. Father was convicted of possession of a controlled substance, possession of a dangerous weapon, and possession of drug paraphernalia, and he was sentenced to three years in jail, all suspended but ninety days, with probation. When father was released from prison in July 2004, he contacted mother and told her that he stopped using drugs. The parties resumed their relationship but within weeks, father disclosed that he was again using methamphetamine. Mother began using drugs again as well.

In September 2004, mother moved to Arizona to get away from father. Father discovered where she was and informed her that he no longer used drugs. Mother observed signs to the contrary. Mother then discovered that she was pregnant, and in November 2004, the parties moved in together. Mother continued to struggle with alcoholism, and father continued to use methamphetamine. In July 2005, father was reincarcerated for two months for a probation violation. Mother moved to Vermont, where members of her family lived. Mother continued to abuse alcohol. She was drinking every day and suffering from what she described as anxiety attacks. Father maintained periodic contact with her and sought to resume their relationship. Mother apparently planned to fly to California to meet father, but this plan changed when T.C. was taken into state custody. After T.C. was taken into custody, father maintained frequent contact with the DCF social worker assigned to the case. He displayed an almost obsessive interest in finding mother, and the social worker was concerned that contact between mother and father would cause mother to relapse.

DCF initially recommended continued state custody for T.C. with a plan of services for both parents. It held open the possibility of reunification with mother, but it rejected father's request that he be considered for placement if reunification with mother failed. Under the terms of the case plan, father was required, among other things, to complete a substance abuse evaluation and follow treatment recommendations.

Father traveled to Vermont shortly after the initial disposition hearing and tried to contact mother. He also visited T.C. He has not seen T.C. since that time, although he maintained regular telephone contact until he was again reincarcerated for a probation violation. In April 2006, DCF concluded that mother was not

making substantial progress with the goals and services required in the disposition report. It was also concerned about father, noting that he had failed to supply a substance abuse evaluation and DCF had heard reports through father=s probation officer that father was once again using methamphetamine. In May 2006, DCF moved to terminate both parents= residual rights in T.C.

The family court found it clear from the record that, regardless of whether father was currently using methamphetamine, he had been making, at best, only belated and half-hearted attempts to get himself into treatment. Father minimized the scope of his substance abuse problem, insisting that his use of the drug was simply Aexperimental.@ He also saw no need for residential drug treatment, and indicated that he would resist such an effort. Father had been on notice as early as December 2005 that he needed to obtain a substance abuse assessment and follow treatment recommendations, yet he waited until late May 2006 to register for an outpatient program. He was then reincarcerated, and he now blamed the California corrections system for interfering with his treatment progress. The court found that when this behavior was viewed against other evidence, such as father=s repeated misrepresentations to mother that he had stopped using drugs, it raised serious concern. The court also noted that father failed to provide any child support for T.C.

The court found that while father loved T.C. and wanted to establish a bond with him, he had not played a positive or constructive role in T.C.=s life up to this point. During T.C.=s life, father was either incarcerated or abusing drugs. He had not had a day-to-day role in the child=s life since July 2005. He was reluctant to address his drug abuse problem, and he continued to violate the requirements of probation. While father was now preparing to reenter the community on furlough, he needed to begin a lengthy substance abuse treatment program, and he was without independent housing or immediate prospects of further employment. For these and other numerous reasons, the court concluded that father had stagnated in his ability to parent, and that termination of his rights was in T.C.=s best interests. This appeal followed.

Father argues that the court=s order lacks a reasonable basis. He does not challenge any of the court=s findings as unfounded but rather asserts that the court=s order: (1) needlessly leaves T.C. fatherless and without any prospect of financial support from father through child support or inheritance; and (2) unnecessarily terminates T.C.=s right to contact with father. He suggests that if this were a divorce proceeding, rather than a

termination proceeding, he would not have had his visitation rights suspended indefinitely or terminated, and thus the court's decision here is unreasonable.

These arguments are without merit. The family court is not required to evaluate future child support or inheritance in determining whether termination of parental rights is in a child's best interests. The relevant factors are set forth by statute. See 33 V.S.A. ' 5540. As long as the 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. In re G.S., 153 Vt. 651, 652 (1990) (mem.). The record in this case shows that the court evaluated the statutory criteria, and its numerous findings, cited above, are supported by the record. The unchallenged facts amply support the court's conclusion that father stagnated in his ability to parent, and that termination of his rights was in T.C.'s best interests. See In re K.F., 2004 VT 40, & 12, 176 Vt. 636 (mem.) (affirming family court's decision where family court considered statutory factors in reaching its conclusion, and its findings were supported by the evidence).

There is no support for father's assertion that the court unnecessarily terminated his right to custody or visitation with T.C. To the contrary, the court concluded that it was in T.C.'s best interests that father's rights, including any rights to future contact and custody, be terminated, and this conclusion is supported by the evidence. The fact that T.C. might be reunited with mother does not in any way establish that the court erred in terminating father's rights. Father's reliance on cases that involve the allocation of parental rights and responsibilities in divorce proceedings is equally misplaced. A divorce proceeding does not involve the same considerations present in a termination proceeding, even if the goal in both is a child's best interests. Any decision that a family court might reach if presented with similar facts in a divorce case is both speculative and irrelevant. As previously stated, the factors relevant to the court's analysis in a termination proceedings are set forth by statute, and the court's decision in this case reflects its thorough consideration of these factors. We find no error.

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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[\[1\]](#) DCF is not currently prosecuting the TPR against mother because of her progress in satisfying case plan objectives towards reunification.