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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-300

JANUARY TERM, 2009

In re L.W., Juvenile	}	APPEALED FROM:
	}	
	}	Bennington Family Court
	}	
	}	DOCKET NO. 67-7-07 BnJv
		Trial Judge: David A. Howard

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

Mother appeals the termination of her parental rights with respect to her daughter, L.W. We affirm.

L.W. was born in Oklahoma in November 1992 but later moved to New York with her parents. Child neglect proceedings concerning L.W. and her brother commenced in 1994 in New York as the result of a report from the children's paternal grandmother. In 1995, a New York court awarded custody of the children to the grandmother. The parents moved back to Oklahoma and the grandmother followed not long afterward. At some point in the mid-1990s, the parents separated and mother began a relationship with another man. At times during this period, the children lived with mother and her boyfriend, although custody remained with the grandmother. By 2001, L.W.'s father had died and L.W. was alleging that mother's boyfriend had sexually abused her. No court action followed from these allegations, but grandmother took the children with her to Vermont. During the ensuing years, mother had only sporadic contact with L.W.

In July 2004, the Department for Children and Families (DCF) filed a petition alleging that grandmother had physically abused L.W. The family court found L.W. to be a child in need of care and supervision (CHINS) and transferred custody from grandmother to DCF. Eventually, L.W. moved back into grandmother's home, and the court transferred custody back to grandmother in October 2006. Throughout this time, mother had only occasional contact with L.W. and was not active in court proceedings concerning the child.

In July 2007, DCF filed another petition, this time alleging that grandmother had been informed of sexual contact between L.W. and her live-in companion and yet had continued to allow the man to have contact with L.W. Once again, the court made a CHINS finding, and in August 2007, L.W. was placed with a paternal aunt and uncle. In November 2007, at grandmother's request, the family court terminated her New York guardianship over L.W. By the end of 2007, the case plan goal was for adoption, with the aunt and uncle being identified as potential adoptive parents. DCF filed a termination-of-parental-rights (TPR) petition, and a hearing was held in May 2008. Following the hearing, the family court terminated mother's parental rights based on its consideration of the criteria set forth in 33 V.S.A. § 5540. Mother appeals the termination order, arguing that it lacks a reasonable basis.

According to mother, the termination order must be reversed because the court based the order, in part, on its faulty conclusions that the mother-daughter relationship is not significant to L.W. and that adoption is necessary to provide permanency for L.W. In mother's view, her undisputed disinterest over the past thirteen years in obtaining custody of L.W. demonstrates that termination of her parental rights is not necessary to achieve permanency for L.W. We find no merit to this argument. To the extent that mother is arguing that the court should have created a permanent guardianship, she has waived that argument because no request for a guardianship was made before the family court. See In re A.G., 2004 VT 125, ¶ 25, 178 Vt. 7 (stating that the mother's failure to propose guardianship to family court effectively waived her claim on appeal that court erred by not considering permanent guardianship). In any event, as we have stated on numerous occasions, "once the family court applies the criteria in § 5540 and determines that the child's best interests warrant giving the State custody of the child without limitation to adoption, the court need not revisit the permanency hearing options contained in 33 V.S.A. § 5531(d) and explain why it is choosing termination of parental rights over other options enumerated therein." In re T.T., 2005 VT 30, ¶ 7, 178 Vt. 496. Moreover, long-term foster care and permanent guardianships are the least desirable permanency options. See 33 V.S.A. § 5531(d)(4) (stating that long-term foster care is option only where there is compelling reason not to order one of other permanency options, including adoption); In re M.W., 2007 VT 90, ¶ 9, 182 Vt. 580 (recognizing that the Legislature considered permanent guardianship to be a "last resort appropriate only when the options of return to the parents and adoption have been fully explored and ruled out based on clear and convincing evidence (quotation omitted)).

In this case, upon examining the factors set forth in § 5540, the family court found that: (1) mother had had limited and sporadic contact with L.W. over the years; (2) mother had not made any attempt during the previous thirteen years to assume custody of L.W.; (3) mother had not played a significant or constructive role in L.W.'s life during that period; (4) no evidence indicated that mother would be able to resume a parental role within a reasonable period of time; (5) L.W. had adapted well to her current surroundings; and (6) L.W. wanted and needed a sense of permanency in her life, which had been marred by disruption and insecurity. These findings, which are supported by clear and convincing evidence, overwhelmingly support the court's termination order. Mother seems to suggest that because she is not a real threat to L.W.'s future stability, adoption is not necessary, and thus her parental rights should not be terminated. Mother fails to acknowledge as inconsistent that, notwithstanding her longstanding absence from the child's life and her marriage to a man whom L.W. claims molested her, she has expressed an interest in bringing L.W. to live with her in Missouri. The "safety and permanency of children is the paramount concern in the administration and conduct of [child protection] proceedings." 33 V.S.A. § 5501(a)(4). The court's termination order is consistent with this goal and the evidence in this case.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice