

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

VERMONT SUPREME COURT  
FILED IN CLERK'S OFFICE

JUL 20 2009

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2009-069

JULY TERM, 2009

In re B.B., Juvenile

} APPEALED FROM:  
}  
}  
} Caledonia Family Court  
}  
}  
} DOCKET NO. 72-12-07 Cajv

Trial Judge: Howard VanBenthuyssen

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

Mother appeals the family court's order terminating her parental rights with respect to her son, B.B. We affirm.

Within two weeks of B.B.'s birth in December 2007, the Department for Children and Families (DCF) filed a petition alleging that he was a child in need of care or supervision (CHINS), and the family court issued an emergency detention order transferring custody of the child to DCF. The court adjudicated B.B. CHINS in January 2008 based upon the parties' stipulation. B.B.'s father had been convicted in October 1998 of beating an infant to death. After he was released from prison in 2003, he and mother began a relationship, which continued even after B.B. was born. Mother has a history of cocaine and heroin abuse. During her pregnancy with B.B., she was participating in a methadone maintenance program and was using marijuana regularly. B.B. was born with THC in his bloodstream and addicted to methadone. The infant required morphine injections to help with his withdrawal from the methadone addiction.

After several continuances, the disposition hearing was concluded, and the family court continued custody with DCF. The case plan called for a goal of reunification with mother, but required her to engage in services and make substantial progress in several areas of concern, including substance abuse, mental health, and an awareness of the risk that father posed to small children, including B.B.

DCF initially placed B.B. with his maternal grandparents, with whom mother was living. During this period mother received assistance in various programs from numerous agencies, and she was also under the supervision of the Department of Corrections based on a 2006 drug conviction. In April 2008, father told caseworkers that he did not feel safe with B.B. and was having thoughts about hurting the child. He also told a caseworker that mother was encouraging him to use drugs and alcohol with her, even though his drug use had been identified as one of the risk factors that made him dangerous to children. That month, after learning that the parents were both using marijuana and that mother was allowing father unsupervised contact with B.B. despite being told that it was not safe, DCF moved B.B. from his grandparents' home into a non-

kin foster home. B.B. lived in two different foster homes until the middle of May 2008, when he and mother moved into the Lund Family Center together.

Mother made some progress at the center until she abruptly left in August 2008, saying that she felt unsafe, mentally unstable, and unable to parent B.B. At that point, she still had little insight into the risks that father posed to B.B. In fact, on a couple of occasions she continued to allow unsupervised contacts between B.B. and father and then was dishonest about those contacts. She had yet to address her drug dependence or her mental-health issues. After she left the Lund Center, mother moved in with father, and continued to use drugs even after she became pregnant again.

When mother left the center, DCF placed B.B. back into foster care, and changed the case plan goal from reunification to adoption. Unable to find an appropriate Vermont kinship placement, in November 2008 DCF placed the child with relatives in the state of Washington. Termination hearings were held in December 2008 and January 2009. On January 30, 2009, the family court issued its order terminating mother's parental rights with respect to B.B. The court focused on B.B.'s very young age and mother's failure to make any meaningful progress in meeting the case plan goals despite the extensive services offered to her.

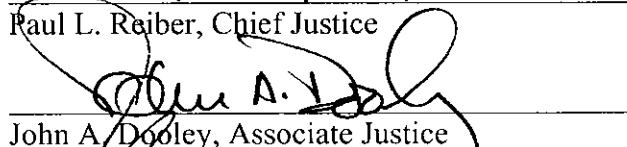
On appeal, mother argues that the family court failed to take into account DCF's substantial responsibility for creating the circumstances that led to the termination order—specifically, DCF's decisions to seek adoption for B.B. shortly after mother left the Lund Family Center and to place the child with relatives in Washington. See *In re S.R.*, 157 Vt. 417, 421-22 (1991) (noting that stagnation caused by factors beyond parents' control cannot support termination order). We find no merit to this argument. The court was well aware of the timing of DCF's decisions to seek adoption for B.B. and place him with relatives from out of state, but nonetheless found that the poor choices mother had made and her inability to address the problems that had led to B.B. being placed in DCF custody were the causes of her predicament. The record plainly supports this view. Mother's unwillingness or inability to comprehend the danger that father posed to B.B. or the effects of her ongoing substance abuse led not only to B.B. being taken into custody but also to DCF seeking termination of mother's parental rights. Mother cannot avoid the consequences of her actions by claiming that DCF was responsible for the termination of her parental rights.

Affirmed.

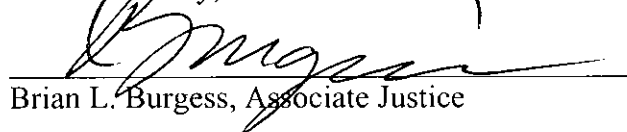
BY THE COURT:



Paul L. Reiber, Chief Justice



John A. Dooley, Associate Justice



Brian L. Burgess, Associate Justice