

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

ENTRY ORDER

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2009-174

OCT 8 2009

OCTOBER TERM, 2009

In re J.J., Juvenile

} APPEALED FROM:
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} Chittenden Family Court
}
}
} DOCKET NO. 40-1-08 Cnjb
}
} Trial Judge: James R. Crucitti

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

Mother appeals termination of her parental rights to her daughter, J.J., born January 30, 2008. We affirm.

J.J. is mother's fifth child, and based on a lengthy history with the Department for Children and Families (DCF) resulting in termination of mother's parental rights to her first four children, DCF sought custody of J.J. at birth. The family court granted DCF's request, and J.J. was immediately placed in a foster home. In August 2008, the family court adjudicated J.J. a child in need of care or supervision.

At the initial disposition proceeding, DCF sought termination of the parents' parental rights. Based in part on a mental health evaluation done by an experienced psychologist, the court found that mother "could not parent her child without intensive and constant service intervention, and most importantly, without significant and lengthy involvement in mental health treatment." Some of mother's mental health issues include post traumatic stress disorder, a somatization disorder, which involves an intense preoccupation with bodily problems, and a depressive disorder. These problems result in mother having memory lapses that the court found pose a significant risk to a child in her care. The court also found that mother lacks understanding of child development and needs intensive and lengthy parent education to safely parent a child on her own. The court noted other concerns, including mother's anger control issues that have resulted in interpersonal problems and assault charges. The court was also concerned about the unresolved domestic violence of J.J.'s father and found that mother fails to understand that this situation presents a danger to her and any child in her care. Ultimately, the court found that mother is not able to parent an infant and may not be prepared to do so for some time. Given J.J.'s young age, the court concluded that mother would not be able to parent J.J. within a reasonable period of time and concluded that termination was in the child's best interests.

The family court may terminate parental rights at the initial disposition proceeding if the court finds by clear and convincing evidence that termination is in the child's best interests. In re J.T., 166 Vt. 173, 177 (1997). In assessing the child's best interests, the court must consider the statutory criteria. 33 V.S.A. § 5540 (recodified at 33 V.S.A. § 5114). The most important factor is whether the parent will be able to resume parenting duties within a reasonable period of time. In re J.B., 167 Vt. 637, 639 (1998). On appeal, we will uphold the family court's conclusions if supported by the findings and affirm the findings unless clearly erroneous. Id.

On appeal, mother claims that the court found that mother had made no progress for years and would continue not to make progress, and that these findings are not supported by the evidence. Mother's characterizations misconstrue the court's findings. Contrary to mother's assertion, the court did not find that mother's circumstances have remained static. In its decision, the court explained that the primary obstacles to parenting present in the termination proceedings in 2006 and 2007 for mother's older children persisted until the time of J.J.'s birth and into August 2008. The court acknowledged, however, that since that time mother had made some progress in that mother had qualified for disability payments and had obtained an apartment. The court also noted that mother had been seeing a doctor and is taking some medication to address her mental health issues. Finally, the court found that mother is in an anger management program through the mental health court.

While the court acknowledged this progress, the court found that mother's "failure to address the main need areas of mental health and parent education, renders her unable to parent [J.J]." The record supports the court's conclusion that while mother now has income and housing, she has not addressed her significant mental health and parent education needs and that these deficiencies preclude her from providing a safe and stable home for J.J. in the reasonable future. See In re J.B., 167 Vt. at 640 (concluding that mother's progress, while commendable, had not "brought her to a point where she could safely resume parenting within a reasonable time").

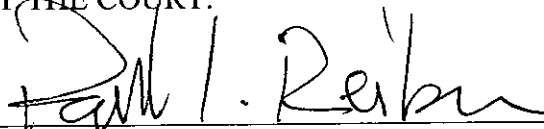
Mother argues that the court's findings in this regard are inadequate because they are based primarily on the results of mother's mental health evaluation, and in the past, we have cautioned the trial court to judge an individual's parenting ability "on [her] conduct, not on [her] test-taking skills or psychological traits." In re B.M., 165 Vt. 331, 338 (1996). Mother proffers that the only relevant conduct evidence was that she attended and performed adequately during supervised visits with J.J. She contends that if DCF had not terminated those visits she would have had an opportunity to demonstrate her adequate parenting skills.

These contentions are without merit. The court did not err in this case in relying on the mental health evaluation because its decision was not based on theoretical test results, but on mother's demonstrated conduct. For example, the court considered credible evidence about mother's assaultive behavior and resulting arrest, her moods, her depression, her memory lapses, the domestic violence with J.J.'s father, and mother's failure to obtain services to treat her mental health issues or to gain parenting skills. In addition, while the court found that mother attended visits with the child and demonstrated love towards J.J., this evidence is not indicative of mother's overall parenting ability as these visits were supervised and for a short duration. Ultimately, the court found that the amount of time it will take mother to be able to safely and

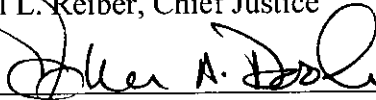
adequately parent J.J. full-time is more than is reasonable for this very young child. The court's decision is supported by the evidence, and therefore we will not disturb it on appeal.

Affirmed.

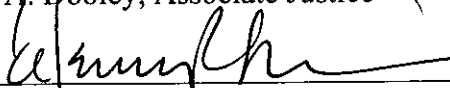
BY THE COURT:



Paul L. Reiber, Chief Justice



John A. Dooley, Associate Justice



Denise R. Johnson, Associate Justice