

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-370

JANUARY TERM, 2007

In re C.C. and N.M., Juveniles

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APPEALED FROM:

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Chittenden Family Court

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DOCKET NO. F346/347-6-04 CnJv

Trial Judge: David A. Jenkins

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

Parents appeal termination of their parental rights. We affirm.

The following facts were found by the family court. The children, C.C. and N.M., were born in 1991 and 1993, respectively. They entered custody of the Department of Children and Families (DCF) on June 29, 2004, following father=s domestic-violence assault against mother, who was intoxicated at the time, in the presence of one of the children. Mother conceded that the children were in need of care and supervision (CHINS) while father contested the issue. The disposition report generated for mother suggested a goal of reunification. Following a contested hearing where the court concluded that C.C. and N.M. were CHINS, the

disposition report generated for father suggested termination.

DCF filed a termination petition with respect to both parents on June 28, 2005. The termination hearing was held over three days in February of 2006. Both the children and their parents testified. The family court found that, at the time the children were taken into DCF custody, mother had significant substance abuse problems (primarily addiction to alcohol) and father had significant problems with anger and violence toward mother. In addition, the family's home was disorderly and filthy. There was rotting food about, and a pet rabbit that was not kept in a pen that had been allowed to urinate and defecate in the home. There were papers strewn everywhere, and there was no place to sit except for a single chair. Neither mother nor father accepted responsibility for the drinking, violence, and condition of the home, and they did not have insight into how these problems affected their children.

The DCF case plan called for mother to participate in intensive substance-abuse counseling and for father to pursue counseling around domestic-violence issues. Further, as a condition of father's probation, father and mother were to remain separate from one another. A protective order required parents not to discuss the case with their children during visits.

The children had been placed with their paternal aunt and her partner, who were registered as foster parents with DCF. The evidence demonstrated that the children were doing better emotionally, socially, and academically since being placed in foster care, and that they wished to remain with their aunt and her partner. The children explicitly stated that, while they loved their parents, they did not wish to return to their parents' home.

The family court concluded that parents did not comply with the case plan in any meaningful way. While mother visited the children, she inappropriately tried to engage them in secret conversations about returning home with her. She also lied to the children on one occasion, telling them that she was permitted to have an unsupervised visit on that day when this was not the case. The children understood that this was a lie and were upset by it. Mother attended some counseling but did not pursue the intensive outpatient substance-abuse

treatment as required. She continued to deny the significance of her problems with alcohol and its effect on her children. This was in marked contrast to the testimony of the children regarding the impact of their mother=s drinking. Father did not visit the children despite being offered many opportunities to do so. Further, he was asked to leave the domestic-violence counseling group he was participating in after throwing a notebook at the counselor. Also, like mother, father persisted in denying that there were problems in the family that negatively affected the children. Finally, mother and father remained together despite the requirement that they not have contact due to the prior domestic violence between them.

The family court concluded that there had been a change in circumstances allowing modification of the existing disposition order in that mother had failed to make progress in accordance with the DCF case plan. In this respect, the court questioned mother=s credibility with regard to her claimed sobriety. Further, the court emphasized that mother continued to deny how serious her problem had been in the past and did not appreciate that her alcohol use was harmful to her children. Mother had not shown that she knew how to protect her children or provide them with a safe home.

Next, the court analyzed the best interest of the children in accordance with the factors listed in 33 V.S.A. ' 5540.^[1] Regarding the critical factorCwhether a parent will be able to resume parental duties in a reasonable period of timeCthe court determined that father had done nothing to address the domestic-violence issues in the family that led to the children being placed in DCF custody. He refused to participate in recommended parenting services. Mother had not made use of the services available to address her alcohol addiction and had returned to the relationship with father despite his domestic-assault conviction. Finally, both parents continued to refuse responsibility for providing a healthy and safe home environment for the children. Looking also at the children=s experience in foster care and the nature of their interactions with their parents, the court concluded termination was in their best interests.

Mother and father submitted separate briefs on appeal. The decision to terminate parental rights Ais committed to the discretion of the family court.@ In re D.M., 162 Vt. 33, 38 (1994). We review the family

court's findings of fact for clear error, and will affirm its conclusions of law if supported by the findings. Id.

Father argues that the family court made a legal error in not considering other disposition options besides termination. [2] Specifically, father contends that permanent guardianship, see 33 V.S.A. ' 5528 (listing disposition options), would have permitted the children to have future therapeutic contact with father. DCF correctly points out that, once it is determined that termination is in the best interests of the children, other disposition options need not be considered. In particular, 14 V.S.A. ' 2664, which establishes the option of permanent guardianship, states only that permanent guardianship may be considered by the family court. Further, there was simply no evidence that either parent played a constructive role in the children's lives, or would have an opportunity to do so in the future in light of their refusal to recognize the destructive effect of alcohol and violence on the children's lives. Accordingly, it was appropriate for the family court to prefer the permanency of termination as a means of creating a stable placement for children.

In her appeal, mother challenges the family court's threshold finding of changed circumstances. She contends that the evidence did not support the conclusion that she had failed to make progress as required by the DCF case plan. In particular, mother argues that she completed a course of counseling with one provider and was not aware of the requirement that she participate in intensive outpatient therapy for alcohol abuse. The family court's findings are not clearly erroneous. Here, there were contradictory claims regarding what services mother was required to participate in and the extent to which she did so. For example, regarding the intensive outpatient therapy, mother claims she was unaware of this requirement, but the family court noted that the requirement had been put forward at a hearing at which mother was present. Ultimately, the family court's findings that mother had failed to progress in terms of alcohol counseling and treatment involved an assessment of the credibility of mother's testimony which we will not disturb. See Chick v. Chick, 2004 VT 7, & 10, 176 Vt. 580 (family court is in unique position to assess credibility of witnesses).

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

[\[1\]](#) Changed circumstances were not required to be shown with respect to father as termination was the original disposition in his case.

[\[2\]](#) Mother joins father in this argument.