

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2015-285

NOVEMBER TERM, 2015

In re M.J., Z.A., T.J., N.J. & N.A., Juveniles	}	APPEALED FROM:
	}	
	}	Superior Court, Franklin Unit,
	}	Family Division
	}	
	}	DOCKET NOS. 87/88/89/90/91-5-13

Trial Judge: Walter M. Morris, Jr. (Ret.)

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

Mother appeals from a superior court judgment terminating her parental rights to the minors M.J., Z.A., T.J., N.J., and N.A. She contends the trial court improperly failed to give due consideration to the possibility that at least two of the children may not have permanent placements. We affirm.

At the time of the final hearing in this termination-of-parental rights action, the five children who were the subject of the proceeding ranged in age from twelve to five years old. Mother also has two older children who were nineteen and sixteen years old at the time of the hearing. Prior to the hearing, the biological father of the five children voluntarily relinquished his parental rights.

Following a three-day evidentiary hearing in February 2015, the court issued an exhaustive written decision containing extensive findings and conclusions. In brief, the court noted that the case had commenced with the filing of CHINS petitions in May 2013 based on concerns about physical abuse of the children by father, lack of parental supervision, unsafe and unsanitary home conditions, and sexualized behaviors among the children. The children were initially released to the conditional care of the parents, but this was revoked in September 2013 based on a report that T.J. had been sexually assaulted by her nineteen-year-old sibling. The five children have since remained in foster care. The parents stipulated to an adjudication of CHINS in October 2013.

The initial case plan adopted in November 2013 called for concurrent goals of reunification or adoption. The plan set out a number of requirements for the parents, including provisions that they maintain a safe home with adequate supervision to protect the children; that the older child not reside in the home; that mother actively engage in mental health counseling, participate in scheduled parent-child visitation, and engage in parent-education programs; and that the parents make adequate and increasing progress in their acquisition of parenting skills.

Based on a lack of progress, the State filed petitions to terminate parental rights in July 2014. As noted, the court held an evidentiary hearing in February 2015 and issued a written decision granting the petitions in July 2015. In summary, the court found that all five children had special needs; that all had either been a victim of sexual molestation by a sibling or had sexually abused a sibling, or both; and that, as a consequence, all had significant psychological and behavioral disorders. The court further found that mother—herself a victim of abuse—had failed to reasonably protect the children from sexual molestation, and had either failed to reasonably perceive the risk of harm from such abuse or was in denial about its occurrence. The court noted, as well, that mother suffered from a number of significant psychological disorders, and that it was necessary for her to engage in a consistent program of therapy in order to safely and adequately parent the children. Although initially resistant to therapy, mother had found a therapist she trusts, but at the time of the hearing had gained little insight into the circumstances that necessitated DCF intervention, continued to struggle with her own profound trauma, and remained in denial about the children’s abuse, which compromised her ability to protect the children.

While acknowledging that mother had engaged in some of the case plan services, the court found that she had made no meaningful progress toward the critical goal of attaining the ability to independently and safely parent the children, and concluded that there was no reasonable likelihood that she would be able to resume parenting responsibilities within a reasonable period of time measured by the children’s needs. While mother had maintained contact with the children, and loved them, her constructive role in meeting their needs and protecting their welfare was minimal. In the meantime, the children had formed positive relationships in their individual foster care placements, some stronger than others, but all had obtained a degree of safety and stability unknown before, and were generally adjusting well to their new homes and communities. Accordingly, the court concluded that termination of mother’s parental rights was in the best interests of the children. This appeal by mother followed.

Mother contends the court “failed to weigh properly the possibility that two or more of the children may not have permanent placements and therefore abused its discretion by withholding it.” She relies on the court’s statement in a footnote that “[t]he availability of an alternative placement is not statutorily required, nor is it a best interests factor in termination of parental rights cases.” Mother asserts that the court’s statement conflicts with our recent observation in In re J.M., 2015 VT 94, ¶ 11, that “we have never held that the absence of an alternative placement cannot be considered by the court in deciding whether a termination of parental rights is in the child’s best interests.” While J.M. thus permits the court to consider the existence or nature of a child’s relationship with all of the meaningful persons in the child’s life, including the child’s foster parents, it does not require the court to factor the availability of a permanent placement into its best-interests analysis. Moreover, in this case, the court acknowledged the lack of certainty as to whether two sets of foster parents were willing and able to adopt the children in their respective foster care but concluded, “even recognizing these circumstances,” that the children’s best interests warranted termination of parental rights. Accordingly, we find no support for mother’s claim that the court improperly withheld its

discretion in failing to consider the possibility that two or more of the children might not have permanent placements, and thus find no basis to disturb the judgment.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice