

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-296

NOVEMBER TERM, 2017

In re C.N., Juvenile

} APPEALED FROM:

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} Superior Court, Franklin Unit,
} Family Division

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} DOCKET NO. 195-12-14 Frjv

Trial Judge: Mary L. Morrissey

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

Mother appeals from the termination of her rights in son C.N., who was born in February 2011. We affirm.

Mother and father are hearing-impaired. Father has played no role in C.N.'s life. In December 2014, C.N. was taken into emergency custody of the Department for Children and Families (DCF). Mother admitted that due to mental health and domestic violence issues, she was unable to consistently meet C.N.'s basic and special needs, including meals, hygiene, and shelter. In February 2017, DCF moved to terminate parents' rights. Following a hearing, the court granted its request.

The court concluded that while mother loved C.N., she did not make substantial progress toward the goals set forth in the April 2015 case plan. She failed to engage in consistent mental health treatment; she did not appear to appreciate the concerns that led to DCF involvement; she failed to demonstrate the ability to effectively manage C.N.'s behavior; and she was inconsistent with visitation and Family Time Coaching. The court determined that all the statutory best-interest factors supported termination. It explained that at the time of the March 2017 termination hearing, mother's contact with C.N. was limited to once a week for an hour, and she had only seen C.N. seven times in seven months. Mother's inconsistency left C.N. indifferent to whether the visits occurred. C.N. spoke very little of mother or mother's husband to caregivers. While mother suggested that her bond with C.N. was impacted by the loss of C.N.'s ability to fluently and articulately use American Sign Language (ASL), the court found that the primary reason for the loss was mother's lack of consistent contact with C.N. The court further found that C.N. had a strong connection with his foster parents and had benefitted from their care. As to the most important factor, the court concluded that C.N. needed immediate long-term stability, and given the length of time that he had been in DCF custody and the lack of demonstrated improvement by mother in her ability to effectively parent, mother could not resume parenting C.N. within a reasonable period of time.

Finally, the court noted that mother's complaints about C.N.'s loss of fluency in ASL did not weigh against granting the TPR petition. Even assuming there had been a violation of the

Americans with Disabilities Act (ADA), it would not be a defense to a TPR petition. See In re B.S., 166 Vt. 345, 351052 (1997) (stating that “the ADA does not directly apply to TPR proceedings,” and even if it did, “there is no specific discrimination against disabled persons in the TPR process,” and thus, “ADA noncompliance is not a defense”). In any event, the court explained, the evidence did not show any ADA violation. The court found that DCF had made every effort to provide mother with interpreter services and to facilitate communication between C.N. and mother using videophones. Any decline in C.N.’s abilities to communicate through ASL, the court explained, were largely due to mother’s lapses in visiting with C.N. to maintain his fluency. Mother did not provide any support for her assertion that DCF was obligated to maintain a child’s fluency in the parent’s native language beyond facilitating visitation with the parents. Additionally, the court noted that mother never raised these concerns with DCF during the pendency of this case. The court concluded that termination of mother’s rights was in C.N.’s best interests, and this appeal followed.

On appeal, mother suggests that the trial court could not rely on the foster mother’s testimony that she has a “good connection” with C.N. because the foster mother also stated that the child has a “good connection” with his therapist. Mother argues that the evidence shows that C.N. does not have a strong relationship with his foster family. In a related vein, mother contends that the court undervalued the importance of C.N.’s relationship with her. She maintains that although C.N. had expressed indifference to visits with her, this was the exception rather than the rule. Mother asserts that the court acknowledged that it lacked crucial information about the mother’s child bond because it noted that C.N. talked very little about mother and her husband to others.

Mother’s arguments turn on the trial court’s assessment of the credibility of witnesses and the weight of the evidence, matters reserved exclusively for the trial court. In re A.F., 160 Vt. 175, 178 (1993). We do not “second-guess the family court” or “reweigh the evidence” on appeal. In re S.B., 174 Vt. 427, 429 (2002) (mem.). Instead, our role is “to determine whether the court abused its discretion in terminating mother’s parental rights.” Id. As long as the court applied the proper standard, we will not disturb its findings on appeal unless they are clearly erroneous; we will affirm its conclusions if they are supported by the findings. In re G.S., 153 Vt. 651, 652 (1990) (mem.).

Mother fails to show any abuse of discretion here. Obviously, the trial court could rely on the foster mother’s testimony concerning her relationship with C.N. The foster mother had also been C.N.’s kindergarten teacher, and the court found that she had gotten to know C.N. well in that role. The court did not suggest, as mother asserts, that it lacked sufficient evidence to evaluate the mother-child bond. It specifically found that mother had very little contact with C.N. and that in the fourteen months leading up to the TPR hearing, mother played no role in meeting C.N.’s basic or emotional needs. The trial court’s findings, including its finding that C.N. had expressed indifference to whether visits occurred, are supported by the evidence, and the findings support the court’s conclusion that termination of mother’s rights was in C.N.’s best interests.

Finally, mother argues that the court overlooked her argument that any diminishment in her bond with C.N. was based in material part on DCF’s lack of effort to maintain the child’s fluency in ASL. In fact, the court specifically rejected this argument. As set forth above, it found that mother, not DCF, was responsible for the child losing ASL fluency due to mother’s

inconsistent visitation. This finding is supported by the evidence, and it does not rest on speculation. We find no error in the court's decision.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Karen R. Carroll, Associate Justice