

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-488

MARCH TERM, 2003

In re J.A., Juvenile

}	APPEALED FROM:
}	
}	Caledonia Family Court
}	
}	DOCKET NO. 5-01-02 Cajv
}	
}	Trial Judge: Stephen B. Martin
}	
}	
}	

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

Mother appeals the family court's order terminating her parental rights over J.A., her minor child. She contends that the court based its decision on an unsupported premise that J.A. has a reasonable prospect for permanence in his current foster placement. We affirm.

J.A.'s parents have a long history of involvement with the Department of Social and Rehabilitation Services (SRS). They have had four other children removed from their care due to neglect and abuse. Both parents also have an extensive history of drug abuse and criminal conduct. In light of this history, SRS obtained an emergency detention order and took custody of J.A. at birth on January 11, 2002. The court later determined that J.A. was a child in need of care and supervision (CHINS).

SRS subsequently petitioned the court to terminate mother's and father's residual parental rights, and the initial disposition hearing went forward as a termination hearing. The court granted SRS's request to terminate parental rights after concluding that such action was in J.A.'s best interests.

The family court may terminate all parental rights of an individual parent during the initial disposition proceeding if the court finds by clear and convincing evidence that this is in the child's best interest. See In re J.R., 153 Vt. 85, 98 (1989). In order to determine the best interests of the child, the court must consider " (1) The interaction and interrelationship of the child with his natural parents, his foster parents if any, his siblings, and any other person who may significantly affect the child's best interests; (2) The child's adjustment to his home, school, and community; (3) The likelihood that the natural parent will be able to resume his parental duties within a reasonable period of time; and (4) Whether the natural parent has played and continues to play a constructive role, including personal contact and demonstrated love and affection, in the child's welfare."

33 V.S.A. §5540. We have stated that the most important factor in this analysis is the likelihood that the natural parent will be able to resume his parental duties within a reasonable period of time. See In re B.M., 165 Vt. 331, 336 (1996). 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.).

In this case, the court evaluated the statutory criteria set out in §5540 and found that (1) there is no interaction or

interrelationship between the parents and J.A., but J.A. seems to be doing well with his foster parents; (2) J.A. is adjusting well to his new home; (3) there is no likelihood that the parents will be able to resume their parental duties within a reasonable period of time, given that both parents have periods of incarceration remaining on sentences already imposed and now face unresolved felony charges that may lead to further periods of incarceration, there is nothing before the court indicating that either parent will be released any time soon, and each parent has severe ongoing substance abuse issues that will take at least a year to treat; (4) neither parent has played a constructive role in the life of this child or in the lives of any of their other children. In its order, the court explained that J.A. " is in need of permanence and it is unlikely that these parents will be able to resume their parental duties within a reasonable period of time." The court consequently ordered the termination of the parents' residual parental rights over J.A. and transferred legal custody and guardianship of J.A. to the Commissioner of SRS.

Mother argues on appeal that there is no evidence to support the court's belief that J.A. had a reasonable prospect for permanence in his current foster placement. She maintains that permanence is achieved through adoption, and SRS presented no evidence that J.A.'s foster parents would be suitable candidates to adopt J.A. We find this argument without merit. Here, the court analyzed and applied the relevant statutory criteria set out in 33 V.S.A. §5540. As to the most critical factor, the court concluded that mother would not be able to assume parental duties within a reasonable time due to her continued drug abuse and criminal activities. There is no statutory requirement that the court determine the likelihood that a child will be adopted. Thus, any uncertainty regarding J.A.'s adoption by his foster parents does not undermine the court's determination that termination of mother's parental rights was in J.A.'s best interests. The court's findings and conclusions are well supported by the record, and we find no error in its decision to terminate mother's residual parental rights.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

Denise R. Johnson, Associate Justice

Frederic W. Allen, Chief Justice (Ret.),

Specially Assigned