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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-272

NOVEMBER TERM, 2003

In re D.S. & E.S., Juveniles	}	APPEALED FROM:
	}	Franklin Family Court
	}	DOCKET NO.83/84-3-00 FrJv
	}	Trial Judge: Howard E. VanBenthuysen

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

Mother appeals the family court= s order terminating her parental rights with respect to two of her children, D.S., born May 14, 1995, and E.S., born August 12, 1997. We affirm.

Mother has a lengthy history of mental illness, dating back to at least 1993. She is diagnosed with schizophrenia, paranoid type. Her symptoms have varied over the years, but they intensified in 1999 and 2000, resulting in her being hospitalized. The Department of Social and Rehabilitation Services (SRS) became involved with the family in January 2000 after police were called to mother= s home to investigate an alleged assault against her thirteen-year-old daughter, C.S. Mother threatened to kill herself and her husband and, later, attempted to take a gun from a deputy sheriff. She was involuntarily hospitalized, and the children= s father died of an apparent drug overdose shortly thereafter. The children were found to be in need of care and supervision and placed with their maternal aunt and uncle, who expressed an interest in adopting them. When the aunt and uncle separated, the children were placed with another aunt, who also expressed an interest in adopting them. The initial case plan goal was reunification, but it later changed to termination, with mother agreeing to relinquish her parental rights conditioned upon her children being adopted by relatives. In April 2002, mother agreed to relinquish her parental rights with respect to C.S., but withdrew her agreement to relinquish her parental rights with respect to D.S. and E.S. after the children= s aunt decided that she could not adopt them. Notwithstanding mother= s withdrawal of her agreement, SRS continued to seek termination of mother= s parental rights and adoption for the children.

Following two days of hearings, the family court terminated mother= s parental rights with respect to D.S. and E.S., concluding that she had not made sufficient progress during the three years the children had been in foster care to resume her parental duties within a reasonable period of time. Mother appeals, arguing that the termination order must be reversed because the family court made two unsupported and erroneous findings that undermine its decision. Specifically, mother argues that the record does not support the court= s finding that A [s]chizophrenia is an incurable disease that normally becomes more intense and more symptomatic over time.@ Mother also contends that the court set an impossible standard for her by concluding that her children would be at risk if returned to her, given that her psychiatrist could not A guarantee, to a reasonable medical certainty, the safety of children returned to [her] care.@

We find no reversible error. Mother= s psychiatrist testified that schizophrenia is an incurable illness and that there was no way to predict with certainty if or when mother would experience psychotic episodes in the future. She acknowledged, however, that given mother= s mental health history, future episodes were likely, particularly if she

stopped taking her medications. She further acknowledged that mother= s insight and judgment would be impaired during such episodes, and that any risk of danger to the children would depend on the severity of the episode. Although mother argues that the court terminated her parental rights because her psychiatrist could not A guarantee@ the children= s safety should mother experience another psychotic episode, that characterization fails to recognize the court= s appropriate consideration of mother= s past psychological history and the psychiatrist= s prognosis of the likely course of mother= s illness. The court found:

> 31. [Mother] is not reporting any delusional or psychotic symptoms to Dr. Charron presently. [Mother] seems to be stabilized now and is in the monitoring phase of her illness. There is no cure for schizophrenia, however, and should [mother] stop taking her medications it is likely that her condition would deteriorate and that she would experience another psychotic episode. There is no medical way to predict future episodes either in terms of seriousness or timing. In Dr. Charron= s opinion, if [mother] had another psychotic episode as severe as the one in 2000 and the children were in her home, they would be in danger. The Dr. also opined, and the Court so-finds, that it is medically likely that [mother] will have another such episode, that complete remission of the disease is unlikely, and that the history of the episodes (two here) is the best predictor of future episodes. During a psychotic episode [mother= s] judgment and insight would be impaired, and she would not be able to recognize her symptoms. Dr. Charron cannot guarantee, to a reasonable medical certainty, the safety of children returned to [mother= s] care.

We do not construe the court= s use of the word A guarantee@ to mean that the court was holding mother to the unreasonable standard of providing her children with a risk-free future. The evidence before the court amply supported its determination that mother= s relapse was medically likely, and that the risk to her children in the event of another psychotic episode was significant. Upon review of the entire evidence, we are not A left with the definite and firm conviction that a mistake has been committed.@ In re Nash, 158 Vt. 458, 464 (1992) (internal quotes omitted) (stating standard for determining when findings are clearly erroneous).

Indeed, both of the challenged findings, except for the court= s statement that schizophrenia becomes more intense over time, are supported by the testimony of mother= s psychiatrist. In making these findings, the court examined mother= s own medical history, noting that mother had experienced multiple psychotic episodes over an extended period of time and yet had been taking medications on her own for only one month prior to the termination hearing. The court also noted that mother had only recently even acknowledged having a mental illness, notwithstanding her ten-year struggle with the disease. The court concluded that, given mother= s history of psychotic episodes, her recent efforts to come to terms with her mental illness was too little too late to put her in a position to care for children who had been in foster care for over three years. The court emphasized that for the foreseeable future mother would need extensive community support just to take care of her own daily needs, let alone those of children who had only recently shown progress in recovering from their own emotional problems. The court further noted that mother was intending to marry a man who had a significant alcohol problem and who had been convicted of assaulting a child. The court determined that the children could not wait any longer to see if mother would be able to provide them a stable and safe environment in which to grow. Putting aside the unsupported finding that schizophrenia gets worse over time, the court= s findings and conclusions amply support its termination order. See In re B.M., 165 Vt. 194, 205 (1996) (even if one or more findings is erroneous or unsupported, reversal of termination order is unwarranted as long as remaining findings support court= s decision).

Affirmed.

BY THE COURT:

_____

Jeffrey L. Amestoy, Chief Justice

_____

Denise R. Johnson, Associate Justice

_____

Paul L. Reiber, Associate Justice