

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

**ENTRY ORDER**

**SUPREME COURT DOCKET NO. 2003-350**

**DECEMBER TERM, 2003**

In re A.B., Juvenile	}	APPEALED FROM:
	}	
	}	
	}	
	}	Bennington Family Court
	}	
	}	DOCKET NO 47-3-00 Bnjv
	}	
	}	Trial Judge: Ellen H. Maloney

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

Mother appeals the Bennington Family Court= s order terminating her residual parental rights in her daughter, A.B., now thirteen-years old. Mother argues that the court failed to consider alternatives to termination while acknowledging the desirability of continued contact between mother and A.B. We find no reversible error, and therefore we affirm.

A.B. was taken into State custody in March of 2000 after the Department of Social and Rehabilitation Services (SRS) substantiated an allegation that mother had physically abused A.B. The family court adjudicated A.B. a child in need of care and supervision (CHINS) in July of that same year, and in August, the court transferred custody and guardianship of A.B. to SRS. Prior to her CHINS adjudication, A.B. often played the adult role in the household, attending to her younger sister who was born in 1999. Mother spoke openly to A.B. about mother= s sexual relationships with various male companions, three of whom were substantiated sexual offenders. Consequently, A.B.= s knowledge of sexual matters was far beyond her years, and she exhibited sexualized behaviors and dressed provocatively. Mother failed to understand what was age appropriate for her older daughter. Although mother and A.B. have a bond and love each other, their relationship has been marked by power struggles when they lived in the same household, with A.B. often playing the role of the adult.

SRS prepared a plan of services for the family. The plan interrelated with the plan the agency had previously established for A.B.= s younger sister, who also had been adjudicated CHINS. Mother suffers from borderline personality disorder, and thus SRS= s plan of services called for mother to follow her psychiatric treatment plan, including individual and group therapy, engage with a community support program to gain life skills training, and work with a parent educator for education, training, and support. The plan also required mother to ensure that A.B. continued with her own counseling, set appropriate behavioral limits with A.B. without using emotional manipulation, and ensure that A.B. attended school and went to bed at a reasonable hour.

After A.B. had spent a year in foster care, SRS placed the child in mother= s home again in March 2001. At that point, SRS determined that the risk for physical abuse was low, and emotional abuse became the agency= s chief concern. Nevertheless, SRS hoped that mother= s parenting skills would improve with continued education and support, in addition to mother= s therapy for her borderline personality disorder.

The dynamic between mother and A.B. that had caused the State to seek guardianship of the child returned, however. The mother was emotionally abusive and A.B. would often return to her A adult@ role. A.B. felt threatened by mother= s inability to manage the family= s affairs. Mother did not support A.B.= s education and made it known to A.B. and

others that mother did not like A.B.'s school or her teacher. Mother also made little progress in handling issues of a sexual nature with A.B. For example, after SRS returned A.B. to mother's care, mother participated in a kissing game called "spin the bottle" with A.B., A.B.'s fifteen-year old male cousin, and a friend of A.B.'s who was a member of A.B.'s therapy group for children who had been victims of sexual abuse. After mother finished playing with the children, she left them unattended to play by themselves, giving A.B.'s cousin the opportunity to sexually assault A.B.'s friend. Mother understood neither the inappropriateness of her conduct nor how participating in the game threatened A.B.'s progress toward gaining an age-appropriate understanding of sexuality.

Overall, mother did not make the kind of progress expected under the SRS plan of services. In 2002, she stopped engaging in the specialized therapy to address her personality disorder. And, although mother was generally cooperative with her service providers, she did not follow through consistently with their recommendations. She opposed the suggestions of her parent educator, did not limit her sexual talk with A.B., and disregarded safety and housekeeping suggestions. Throughout A.B.'s time under SRS guardianship, mother failed to gain the parenting skills and judgment necessary to parent A.B. in an appropriate manner. Therefore, SRS sought to terminate her parental rights in A.B., which the family court granted in July 2003.

In its findings, the court described A.B.'s positive relationship with her foster family, the same family that had adopted her younger sister. The court found that A.B. loves her mother and wants to maintain contact with her, but also wishes to stay with her present foster family. The court noted the foster mother's desire to facilitate contact between A.B. and mother even if mother's rights were terminated. The court found that despite the undeniable connection between mother and A.B., mother lacked the requisite skills to parent A.B. and was unlikely to gain those skills in a reasonable amount of time. By the time the court took evidence on SRS's termination petition, A.B. had been in foster care for almost three years. The child's need for permanency and mother's inability to resume her parental role ultimately led the court to conclude that termination of mother's rights were in A.B.'s best interests.

Mother challenges the court's decision to terminate her rights in A.B. She claims that the court failed to explain why it chose termination over an alternative disposition considering that the court recognized the importance of allowing A.B. to have continued contact with mother notwithstanding her removal from mother's care. We review the court's termination order for an abuse of discretion. In re S.B., 800 A.2d 476, 479 (Vt. 2002). We examine the court's legal conclusions to assure that they are supported by the findings, In re A.F., 160 Vt. 175, 178 (1993), which in this case are binding because mother does not challenge them. Bevins v. King, 147 Vt. 203, 206 (1986). The court's decision to terminate mother's rights here is supported by the court's findings and was within the court's broad discretion.

By statute, the court must consider whether termination is in the child's best interests after considering four factors established by the Legislature. 33 V.S.A. ' 5540. The most important factor is whether the parent will be able to resume her parental duties within a reasonable amount of time in light of the child's needs. In re D.B., 161 Vt. 217, 219 (1993); see 33 V.S.A. ' 5540(3) (court must consider whether it is likely that parent will have ability to resume parental role within a reasonable period of time). Irrelevant to the termination decision is the availability of permanent foster care or an adoptive home. See In re S.B., 800 A.2d at 480. Also irrelevant is the potential for visitation between the biological parent and the child after termination because termination severs the parent's legal visitation rights. See In re C.M., 163 Vt. 542, 548 (1995) (family court is not required to address parent-child visitation after termination when deciding whether termination is in child's best interests).

Although mother criticizes the order in this case as relying too heavily on the foster parents' stated desire to facilitate a post-termination relationship between A.B. and mother, we disagree that the court committed reversible error. The court was required by ' 5540(1) and (4) to address A.B.'s relationship with her foster family and her relationship with mother. The court's discussion about A.B.'s possible adoption by the foster family and the potential for visitation with mother after termination does not stray outside the bounds of the court's authority when viewed in light of the statutory factors. More importantly, the court found it unlikely that mother could gain the parenting abilities necessary to properly care for A.B. Those findings fully support the court's decision to terminate mother's rights. We are mindful that mother made genuine efforts to overcome her parenting deficiencies. The key issue is, however, whether those efforts resulted in improvement. The court found that they did not, and notably, mother does not contest that she is presently unable to meet A.B.'s needs. The court's conclusion to terminate mother's rights is supported by its findings, and no abuse of discretion appears.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice