

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-351

JANUARY TERM, 2004

} APPEALED FROM:
}
} Franklin Family Court
}
In re D.I., Juvenile } DOCKET NO. 187-10-01Frjv
}
} Trial Judge: Stephen B. Martin
}
}

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

Father appeals the termination of his parental rights in his daughter, D.I., arguing that the trial court issued clearly erroneous fact findings amounting to reversible error.* We affirm.

D.I., now four-years old, came into the custody of the Department of Social and Rehabilitation Services (SRS) in October 2001 through an emergency petition. In January 2002, the court adjudicated D.I. a child in need of care and supervision upon a stipulation of the parties, including father. The agency prepared a case plan for D.I. that required father to get counseling for substance abuse, attend parenting classes, complete a twenty-seven week program known as DAEP to address issues related to domestic violence, maintain sobriety, and visit with his daughter regularly. In April 2002, the court adopted SRS= s disposition report and the recommendations it contained.

During the ensuing months, father did not follow through with the steps necessary for SRS to consider returning D.I. to his care. The court found that father continued to use illegal drugs and abuse alcohol as revealed by several urine screens, violated conditions of his probation, including having contact with D.I.= s mother who had a restraining order against father, and attended substance abuse counseling inconsistently. Father= s substance abuse counselor was concerned that father was not honest with her, and characterized his recovery as being in the beginning stages only. Father completed the DAEP course, but it took him seventeen months not twenty-seven weeks to do so. Even after completing the course, the court found that father understood little about the effects of domestic violence on children who witness it, like D.I. had done. Father also did not fulfill the requirement to improve his parenting skills by attending parenting courses.

Consequently, in September 2002, SRS changed the goal for D.I. from reunification with her parents to termination and adoption and filed a petition to terminate father= s rights. After SRS filed the petition, father began visiting with D.I. regularly. His visits before September 2002 had been sporadic at best. The court found that although the visits went well, and that D.I. and father love each other, father A has been reluctant to set limits or follow through on discipline@ during the visits.

The court took evidence on SRS= s termination petition in February 2003. Concluding that father could not resume his parenting duties within a reasonable amount of time, the court determined that D.I.= s best interests were served by freeing her for adoption. Following the court= s entry of judgment accordingly, father filed this appeal.

On appeal, father claims the court erred by making two findings without evidentiary support. He argues that the record does not support the court= s findings that he does not play a constructive role in D.I.= s life, and that he showed no

appropriate disciplinary skills during his visits with D.I. We will uphold the court's order if its conclusions are legally sound, its findings support them, and the findings are based on the evidence. In re A.F., 160 Vt. 175, 178 (1993). In cases where the evidence does not support particular findings, we review the order to determine if the remaining findings will support the court's conclusions. Id. If so, reversal is not required. Id.

Deciding whether termination is in a child's best interests turns on how the court assesses the circumstances under the four criteria set forth in 33 V.S.A. ' 5540. See 33 V.S.A. ' 5540 (when confronted with a petition to terminate parental rights, court must decide whether termination is in best interests of child according to four factors). The critical factor in this analysis is whether the parent can resume his parental duties in a reasonable amount of time. In re D.B., 161 Vt. 217, 219 (1993); see 33 V.S.A. ' 5540(3).

The court's determination here that father cannot resume his parental duties within a reasonable time according to D.I.'s needs is not contested. Nevertheless, father claims the court's erroneous findings that he has had no constructive role in D.I.'s life and that he had difficulty following through on discipline during visits warrant reversing the judgment. We disagree. The court's determination that father did not play a constructive role in D.I.'s life is amply supported in this record. The court's findings reflect that father never followed through on the parenting classes necessary to ensure D.I.'s well being, he is oblivious to the impact his violent behavior has had or will have on D.I., and he continues to abuse substances like alcohol and drugs. From those findings, we agree with the trial court that father's role in D.I.'s life was generally unconstructive.

Regarding the court's finding on father's disciplinary actions during visits, even if the finding were erroneous, it would not be enough to reverse on this record. Excluding that finding from our consideration, we conclude that the court properly analyzed the findings under the ' 5540 criteria, the most important being that father cannot resume his parental duties in a reasonable period of time. We observe that the court found that it takes approximately eighteen months of substance-free and stable living for a former substance abuser to parent on a full time basis. The record shows that father has not reached that milestone yet, and D.I. has been in State custody for most of her young life. We thus find no reversible error here, and affirm the court's decision to terminate father's residual parental rights in D.I.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Paul L. Reiber, Associate Justice