

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2004-331

JANUARY TERM, 2005

In re S.G. and D.G., Juveniles

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| } | APPEALED FROM:                 |
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| } | Chittenden Family Court        |
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| } | DOCKET NOS. 470/471-10-02 Cnjv |
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| } | Trial Judge: David A. Jenkins  |
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In the above-entitled cause, the Clerk will enter:

Mother and father appeal from a family court order terminating their residual parental rights over S.G. and D.G. Mother argues that the court erred in concluding that termination of her parental rights was in the children' s best interests. Father asserts that the family court abused its discretion in denying his motion to continue the hearing. We affirm.

Mother and father are the parents of S.G., born in August 1992, and D.G., born in July 1993. In October 2002, the children were placed in custody of the Department of Social and Rehabilitation Services because of parents' extensive drug use. Parents have a history of opiate abuse, and are opiate dependent; both have extensive criminal records. The children were adjudicated as children in need of care and supervision in October 2002. In November 2003, SRS filed a petition to terminate mother and father' s residual parental rights.

On the morning of the termination hearing, father' s attorney moved for a continuance, explaining that he had just learned that father was in a residential treatment facility. Father had apparently contacted a caseworker from the Department of Corrections several days earlier, and admitted using cocaine. The caseworker testified that father had chosen to enter a residential treatment facility, and he would have likely been reincarcerated had he not done so. The court denied father' s request for a continuance, finding that father had notice of the termination hearing, and had voluntarily absented himself.

In July 2004, the court issued an entry order terminating parents' residual parental rights. The court found that both parents were dependent on drugs, had extensive criminal records, and had spent significant time in prison due to their criminal activity. Parents had failed to consistently engage in services, and most significantly, they had not adequately addressed their substance abuse problems. They continued to use drugs and engage in illegal activity in violation of the SRS case plan. The court found that the children were aware of their parents' drug problems, and they indicated that they did not believe that their parents would be able to meet their needs given their unstable history. The court explained that father had not had face-to-face contact with the children since October 2003 when he was reincarcerated, and mother' s contact had been limited to weekly phone calls since January 2004. The court found that the children were doing well in foster care.

Based on its findings, the court concluded that there had been a substantial change in material circumstances since the date of the initial disposition order, and termination of parents' residual rights was in the children' s best interests. As the court explained, parents had engaged in criminal behavior, which resulted in their incarcerations; they had stagnated in their ability to care for the children because they had not treated their substance abuse problems; and they were in DOC custody. The court concluded that parents would not be able to resume parenting the children within a reasonable period of time given their current and recent incarcerations, and the instability that was so pervasive in their lives. The court

recognized that parents loved their children but found it clear that they were unable to play a constructive role in the children's lives. The court found it unlikely that parents could stay out of jail, not only given their present situation, but also because of the antisocial lifestyle that parents had maintained throughout their adult lives, and the lives of their children. The court thus concluded that a reasonable amount of time had passed without benefit, and termination of parents' residual rights was in the children's best interests. This appeal followed.

We first address mother's assertion that the family court erred in concluding that termination of her residual rights was in the children's best interests. Mother maintains that the court failed to adequately consider the emotional bond that she shared with the children in reaching its conclusion that a reasonable amount of time had passed. According to mother, the evidence indicated that she could resume her parental duties within a reasonable amount of time.

To determine the best interests of the child, the family court must consider four statutory factors. 33 V.S.A. § 5540. The most important factor is the likelihood that the natural parent will be able to resume his or her parental duties within a reasonable period of time. 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.).

Mother does not challenge any of the family court's findings as clearly erroneous, and the court's findings support its conclusion that termination of mother's residual parental rights was in the children's best interests. We need not repeat all of the court's findings here. We note, however, that the court found that mother continued to abuse illegal drugs and engage in criminal activity, and that she failed to successfully participate in treatment for her substance abuse, despite the numerous opportunities made available to her. Contrary to mother's suggestion, the family court did consider her relationship with the children, as well as her current and past behavior, in reaching its decision. The court recognized that, although mother loved the children and shared a bond with them, she was incapable of playing a constructive role in their lives. The court's analysis reflects its proper consideration of the factors set forth in 33 V.S.A. § 5540, and it did not err in concluding that termination of mother's residual parental rights was in the children's best interests.

We turn next to father's assertion that the family court abused its discretion in denying his motion for a continuance. Father asserts that by denying his motion, the court denied him his day in court, and deprived itself of evidence needed to determine the children's best interests. Father argues that his absence from the hearing was not voluntary because he was forced to choose between entering a residential treatment facility or returning to jail. Even assuming that his absence was voluntary, however, father argues that the family court overlooked his interest in being present to defend his constitutional right to family integrity, and the minimal effect that a short delay would have had.

We find no abuse of discretion. See State v. Ahearn, 137 Vt. 253, 267 (1979) (trial court has discretion in addressing motion for continuance, and party alleging error must show that court failed to exercise its discretion, or that its discretion was exercised for reasons clearly untenable or to an extent clearly unreasonable). At the time of the hearing, the termination petition had been pending for eight months. Father knew the date of the hearing, and he chose to use cocaine several days beforehand. Through his own acts, father faced the prospect of returning to jail, or entering a residential treatment facility. He did not request a continuance until the morning of the hearing. As the family court found, father voluntarily absented himself from the proceedings. Father has not demonstrated how his absence affected the family court's ability to determine the factual issues before it. Father was represented by counsel at the hearing, and the evidence regarding his ongoing drug abuse and criminal activity was well-documented. The trial court reasonably denied father's last-minute request for a continuance, and we find no abuse of discretion.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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

Specially Assigned