

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-118

AUGUST TERM, 2005

In re B.W. & K.B., Juveniles	}	APPEALED FROM:
	}	
	}	
	}	Windham Family Court
	}	
	}	DOCKET NO. 19/20-2-03 Wmjv
	}	
	}	Trial Judge: Ellen H. Maloney

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

Mother appeals from a family court judgment terminating her residual parental rights to the minors K.B. and B.W. She contends the court=s decision is unsupported because the State failed to adduce expert testimony on Battered Women=s Syndrome. We affirm.

The record evidence may be summarized as follows. Mother has three children by three different fathers: K.A., who was not the subject of these proceedings; B.W., who was seven years old at the time of the termination hearing; and K.B, who was two years old at the time of the hearing. B.W.=s father has voluntarily relinquished his parental rights. K.B.=s father was incarcerated at the time of the hearing. His parental rights will be adjudicated in a separate proceeding.

The record disclosed, and the court found, that mother suffered physical and sexual abuse as a child, and has a history of abusive and violent relationships with men. B.W.=s father regularly assaulted mother and sexually abused her older child, K.A. In 2000, mother began a relationship with K.B.=s father, J.B. J.B. was physically abusive of mother and severely beat her on several occasions. In February 2003, B.W. and K.B were taken into custody by the Department of Children and Families following an incident in which J.B. assaulted both mother and B.W. after the child attempted to intercede on mother=s behalf. B.W. was then five years old. Mother also reportedly used the baby K.B. as a shield against the assault.

The children were returned to mother under a protective supervision order contingent on mother=s seeking and maintaining a relief-from-abuse order against J.B. Mother obtained a temporary order but failed to appear for a final hearing in March 2003, and the petition was dismissed. The children were adjudicated CHINS due to a failure to protect. At the initial disposition hearing in April 2003, the court continued the protective supervision order subject to a number of conditions, including requirements that mother maintain a safe environment, participate in domestic violence support groups, and work with DCF workers on obtaining counseling and parent education. A DCF parent educator counseled mother on avoiding relationships with abusive men, referred her to the Women=s Crisis Center and for individual counseling, and urged her to obtain a relief from abuse order. Following a disposition hearing in April 2003, however, the court ordered that the children be removed from the home and placed in foster care based on mother=s failure to supervise and protect the children.

Mother was allowed supervised visits with the children and agreed to a reunification plan requiring, among other conditions, that she maintain a safe home, participate in regular therapy on domestic violence issues and parent

education, choose partners who will be safe for her and the children, and demonstrate that she is able to place the needs of the children first by refraining from contact with persons who pose a risk to her children. In October 2003, however, B.W. had an emotional outburst at school, and a subsequent investigation revealed that it stemmed from J.B.'s continued presence in the home. Police reports indicated that J.B. was continually in the home, although mother denied it. J.B. was eventually arrested at mother's home in February 2004 on several outstanding warrants. Thereafter, mother refused to participate in the case plan requirements for counseling and education, was hostile to DCF workers, and began to abuse alcohol and drugs. In March 2004, mother began a relationship with another man who was a known drug dealer. She later admitted to stealing money from her employer to support her cocaine use during this time, pled guilty to petit larceny, and was placed on probation. Mother also continued to visit J.B. in prison.

In April 2004, DCF modified the case plan goal to adoption, and filed a petition to terminate parental rights the following month. A hearing on the petition was continued several times, until January 2005. In the meantime, in September 2004, mother began a relationship with another man, E.Z., a drug offender, lied about his presence to DCF, and allowed him to be alone with the children. E.Z. brought drugs to mother's home, and mother suspected that he had sexually assaulted K.A., her oldest daughter. In October 2004, E.Z. was forcibly removed from mother's home by the police. Thereafter, another man, B.C., a violent offender who was living in a half-way house near mother's home, began to frequent mother's home. The court noted that as recently as January and February 2005, mother had entertained at her home still another man who had been convicted of selling drugs and was returning to prison for an apparent probation violation.

Following an evidentiary hearing that spanned five days in January and February 2005, the family court issued an extensive written decision containing exhaustive findings and conclusions. Based on the evidence summarized above, the court found that stagnation and, indeed, deterioration had occurred in terms of mother's non-compliance with the conditions of the case plan requiring that she maintain a safe environment for herself and the children. See In re D.M. & T.P., 2004 VT 41, & 5 (mem.) (in considering petition to terminate parental rights, court must first determine whether circumstances in child's life have materially changed, which is most often shown through stagnation or failure to make progress as expected in plan of services). As the court here stated, A[i]n spite of support, education and assistance from service providers she has not been able to free herself of victimization or exposure to risk of harm to herself and her children.@ Indeed, the court noted that mother had failed to utilize services and had consistently lied to caseworkers and the police about her involvement with a series of abusers, at great risk to herself and the children.

In evaluating whether termination was in the best interests of the children, and in particular whether mother could resume parental responsibilities within a reasonable period of time, the court observed that despite two years of DCF assistance and support she had made little or no progress and indeed had Abeen unable to even begin to develop the insight and judgment needed in order to provide a nurturing home which is safe for her children.@ The court found that to be able to resume parental responsibilities within a reasonable period of time, measured from the children's perspectives, mother would Aneed to change her entire life pattern,@ particularly in order to reestablish the trust of B.W., whose trust had been destroyed through repeated exposure to violence, and K.B., with whom she had established little or no parental caretaker relationship. The court found, however, that Athere is nothing in the evidence upon which to base a hope for [mother] to make sufficient progress in the reasonable future.@ See In re J.T. & C.T., 166 Vt. 173, 180 (1997) (pattern of failure to benefit from services is factor in determining whether parent will be able to resume parental responsibilities in reasonable period of time). The court further noted that B.W. will require special skills in the future to address his substantial behavioral problems, and that although he has made progress, there is no likelihood that mother, who lacks even basic skills related to child safety and protection, could address those needs. The court also found that K.B. has thrived in foster care and bonded with her foster mother, who hoped to adopt. Accordingly, the court concluded that termination of parental rights was in the best interests of the children, and granted the petition without limitation as to adoption.

On appeal, mother's sole contention is that the court's finding that she could not resume parental responsibilities within a reasonable period of time cannot be sustained absent A[e]xpert testimony with respect to the prognosis for battered women.@ Mother is correct in asserting that this Court has recognized that victims of Battered Women's Syndrome may Aact in ways that may seem counterintuitive to the average juror,@ State v. Swift, 2004 VT 8A, & 21, and that expert testimony may therefore be admissible to explain to the jury a victim's actions. Id.; State v. Verrinder,

161 Vt. 250, 259-60 (1993). This does not mean, however, that the State is required to adduce such expert testimony in a termination proceeding where, as here, the evidence suggests conduct consistent with the syndrome. The question here is whether DCF recognized and attempted to address mother=s problem, and whether mother utilized such assistance in any meaningful way sufficient to resume parental responsibilities. See In re Cr.M., C.M. & M.M., 163 Vt. 542, 546-47 (1995) (trial court=s findings confirmed that DCF=s case plan Arecognized the mother=s victimization, attempted to safeguard her rights, and maximized her chances of resuming the parental role@). The record here confirms that DCF workers fully recognized mother=s needs and problems as a battered woman and worked diligently and consistently for two years to help her escape the abuse, obtain mental health counseling to address the psychological aspects of the abuse, and obtain the insight and stability needed to provide a safe environment for herself and the children. Expert testimony on the syndrome would not have altered the fact that mother was unable or unwilling to utilize these services or change her behavior, thereby placing her children at substantial risk and rendering her unable to resume parental responsibilities within a reasonable time. Accordingly, we discern no basis to disturb the judgment.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice