

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-198

SEPTEMBER TERM, 2005

In re K.L., Juvenile

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APPEALED FROM:

Chittenden Family Court

DOCKET NO. 101-2-04 Cnjv

Trial Judge: Dean B. Pineles

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

Father appeals the family court=s order terminating his parental rights with respect to his son, K.L., at the initial disposition hearing. We affirm.

At the time of K.L.=s birth in December 2003, his mother was enrolled in a residential program for expectant mothers. She was discharged from the program unsatisfactorily in February 2004. As a result of the discharge, the Department for Children and Families filed a petition alleging that K.L. was a child in need of care and supervision (CHINS). At the detention hearing, the family court transferred custody of the child to the Department, and he was placed with his current foster family.

K.L. was adjudicated CHINS in May 2004 based on the parties= stipulations. The disposition report recommended reunification contingent upon the parents making sufficient progress in addressing various issues over the next three to six months. Specifically, father was required to address domestic abuse issues, and both parents were required (1) to address their parenting deficiencies and their substance abuse problems, (2) to maintain a safe and stable lifestyle, and (3) to engage in regular visitation with K.L. Mother supported the plan, but because father opposed custody being given to the Department, the disposition hearing was delayed.

Late in the summer of 2004, the Department changed the case plan goal from reunification to termination of parental rights (TPR). Accordingly, the Department=s TPR petition was considered at the initial disposition hearing held over three days between January and March 2005. During the proceedings, mother voluntarily terminated her parental rights, and following the hearings, the family court granted the State=s petition to terminate father=s parental rights. On appeal, father argues that the family court=s decision must be reversed because it failed to make findings regarding the urgency of K.L.=s need for permanency.

Father has a lengthy criminal history and spent a good part of the decade before K.L.=s birth in and out of prison. Following his release from jail in October 2003, he was placed on probation. One of the conditions of his probation was that he engage in substance abuse treatment for his opiate dependence. There is no evidence that father was using drugs during the spring and early summer of 2004, but he tested positive for drugs in September 2004 after the Department filed its TPR petition and he began experiencing problems with visitation. Father participated in a parent education program beginning in March 2004, but his case was closed unsatisfactorily in July 2004 because he was unable to consistently demonstrate parenting skills, notwithstanding the services offered him. Father also often missed or was late for visits with K.L., and he failed to show up for appointments aimed at assessing his parental skills. At a visit in October 2004, a DCF social worker became aware of father=s drug use and suspended him from further visits until he produced three clean urine tests. That was the last time father ever visited or attempted to contact K.L.

In terminating father=s parental rights, the family court concluded that father had failed to develop the parenting skills necessary to provide proper care for the child. The court noted that father had not contacted K.L., by his own free choice, for more than the last third of the child=s life, and that K.L. most likely would not even recognize his father anymore. According to the court, father would be unable to resume his parental duties within a reasonable period of

time, given his lack of parenting skills, the uncertainty over his continued drug use, K.L.'s young age, and the total absence of any recent contact between K.L. and father.

Father argues, however, that the family court's termination order must be reversed because there was no evidence, and the court failed to make findings, regarding the urgency of K.L.'s need for permanency. We find this argument unavailing. The family court addressed the statutory criteria for determining K.L.'s best interests contained in 33 V.S.A. ' 5540, finding that (1) K.L. had developed a loving and healthy relationship with his foster family, and had no current relationship with father; (2) father had played no constructive role in K.L.'s life; (3) and, most importantly, father would not be able to resume parental duties within a reasonable period of time, given K.L.'s tender age, the amount of time that had passed without contact from father, and father's continued drug use and failure to make any significant progress toward attaining the skills necessary to parent K.L.

The court addressed the relevant factors, and applied the facts of this case to those factors in determining that termination of father's parental rights is in K.L.'s best interests. The court need not determine precisely how long the child would have to wait for father before suffering harm. K.L. was taken into the Department's custody and placed with his current foster home when he was only nine weeks old. By the time of the termination hearing, he had spent most of his life with his foster parents. Moreover, he had no relationship with his father, who had relapsed into drug use and had failed, despite being provided services, to show any signs that he would be able to attain the parenting skills necessary to care for K.L. Finding urgency is not necessary in the instant case where, according to the evidence, there is no reason to expect father to assume parenting responsibilities at any time in the future, and so no reason to indefinitely postpone permanency for his child pending father's unlikely evolution. Under these circumstances, the evidence overwhelmingly supports the court's termination order. Cf. In re J.S. & S.S., 168 Vt. 572, 574 (1998) (mem.) (upholding termination order based on parent's lack of progress and child's tender age and exceptional needs).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice