

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2006-085

JUNE TERM, 2006

In re M.B. and M.B., Juveniles

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APPEALED FROM:

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Bennington Family Court

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DOCKET NO. 29/30-3-05 BnJv

Trial Judge: Theodore S. Mandeville, Jr.

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

Mother appeals from a family court judgment terminating her parental rights to the minors M.B. and M.B. Mother contends: (1) the evidence was insufficient to support the court=s finding that she could not resume parental responsibilities within a reasonable period of time; and (2) the findings improperly failed to address the children=s need for permanency. We affirm.

This is the third termination of parental rights case involving mother. In In re A.B., No. 2002-300 (Vt. Nov. 27, 2002) (unreported mem.), we affirmed a family court order terminating mother=s parental rights to her second child, who was five months old when taken into DCF custody, based on evidence that the child had

suffered two skull fractures while in mother=s care, and findings that mother had failed to develop adequate parenting skills, provide a safe environment for the children, or address significant mental health issues. Subsequently, in In re A.B., No. 2003-350 (Vt. Dec. 4, 2003) (unreported mem), we affirmed an order terminating mother=s parental rights to her oldest child, who was a young teenager at the time, based on substantial evidence that the child had suffered years of physical and emotional abuse and neglect, been placed at risk of sexual abuse, and been forced to assume the parental role for her younger sister.

In November 2004, mother=s treatment team at Southwestern Vermont Medical Center informed DCF that mother was pregnant with twins and expressed concern that mother was not attending to ongoing medical issues, including diabetes, or following up on referrals for mental health services. Mother has a long history of severe mental health problems, including diagnoses of borderline and dependent personality disorder and depression. Mother was also homeless and not caring for herself. In February 2005, DCF received a report that mother was hospitalized and attempting to induce labor because she was concerned that she would not continue to receive financial assistance during her pregnancy.

Mother gave birth to twin boys in March 2005.\* Shortly thereafter, DCF filed an emergency detention order and CHINS petition. The children were taken into DCF custody and placed in a foster home, where they have remained ever since. Following a contested merits hearing in September 2005, the court issued a written decision, noting mother=s history of serious physical and emotional abuse of her older children, and finding that she continued to suffer significant mental health problems and was unable to provide proper parental care or the subsistence necessary for the infants= well being. Accordingly, the children were adjudicated CHINS, and a disposition hearing was scheduled.

The initial case plan called for termination of parental rights, but also set forth a series of services for mother, including requirements that she participate in all aspects of her on-going mental health treatment plan with United Counseling Service, attend supervised visitation with the children, and attend and complete a parenting class. In October 2005, DCF filed a TPR petition, and a hearing was held in December 2005. Because mother failed to appear, the courtCat mother=s requestC reopened the hearing and allowed mother to

testify at a one-day hearing in January 2006. Thereafter, the court issued a written decision, granting the petition.

Based on the testimony of mother=s therapist and DCF case workers, the court found that mother continued to suffer significant mental health issues. Although she had been afforded an extensive program of services, her therapist was of the view that, while continued therapy could be beneficial, any real improvement would take up to several years. Mother had failed to attend meetings under her case plan, and had made no progress toward any of the case plan goals. She had not acquired housing, and was not employed. At the time of the hearing, she had not visited the twins for over a month. The court found that, although they were underweight at birth and suffering from several health problems, the twins had thrived in the home of their foster parents, who hoped to adopt.

Based on the foregoing, and applying the statutory best interests criteria, the court concluded that mother=s relationship with the children was Amarginal at best@; that the children were thriving in their present foster care; that mother had played no meaningful or constructive role in the children=s lives or welfare; and that the likelihood of mother resuming her parental duties within a reasonable period of time was Aextremely remote.@ Accordingly, the court concluded that termination of parental rights was in the best interests of the children. This appeal followed.

Mother initially observes in a footnote that the court erred in characterizing this case as Athe third instance of child abuse and neglect@ involving mother. As noted, concerns about the twin=s well-being, based on the documented history of mother=s physical and emotional abuse of the older children, impelled DCF to obtain an emergency detention order immediately after the twin=s birth. The children have remained in foster care ever since, and mother=s interaction with them has been limited to supervised visits. DCF called for termination of parental rights at the initial disposition hearing. Thus, mother is correct thatCapart from some evidence of risky behavior while mother was pregnant with the twinsCthis cannot accurately be described as a case of active abuse and neglect. Mother does not, however, challenge any of the evidence or findings underlying the decision to immediately remove the children from mother=s custody based upon her history with the two older children,

and the evidence indicating that her mental health and parenting abilities had not improved in the interim. See In re J.M., 170 Vt. 587, 589 (2000) (mem.) (upholding termination of parental rights where emergency detention order removed child at birth based on evidence of abuse and neglect of two older children that resulted in termination, and evidence that services had failed to improve mother=s parenting abilities); E.J.R. v. Young, 162 Vt. 219, 224 (1994) (extensive evidence of physical abuse of older siblings supported detention of younger child and CHINS petition filed immediately after birth); In re L.A., 154 Vt. 147, 154 (1990) (court may rely upon evidence of pattern of abuse of siblings to support finding of CHINS). Thus, we find no error in this particular finding requiring reversal of the judgment.

Mother next contends the evidentiary support for the court=s conclusion that she would not be able to resume parental responsibilities within a reasonable time was Amurky at best.@ She rests the argument on her therapist=s testimony that significant improvement could take two and a half years, and claims that this A does not rule out faster improvement.@ Mother=s therapist testified that he had worked with mother off-and-on for years, observed that mother had achieved some benefit, but also stated that she chronically missed appointments, failed to establish a real therapeutic rapport, and continued to exhibit the same problematic behaviors, mood swings, impulsivity, and poor judgment that she had when they started. He noted that he had occasionally utilized a form of cognitive behavioral therapy as part of mother=s treatment, but acknowledged that it could take substantial timeCup to two and a half yearsCto work, assuming that mother applied herself. Thus, taken as a whole, the therapist=s testimony revealed a general pattern of missed appointments and an overall failure to progress in counseling. There was no suggestion in the therapist=s testimony, as mother claims, that she might show substantial improvement within a shorter time period.

Mother also claims that the court improperly failed to make findings on the children=s need for permanency, suggesting that there was Ano pressing need@ to terminate parental rights to safeguard the children=s risk of emotional harm. As we have held, however, the court was not required to make specific findings on factors not enumerated under 33 V.S.A. ' 5540. In re J.T., 166 Vt. 173, 180 (1997). Moreover, the need to achieve permanency and stability for the children through termination of parental rights was readily apparent from both the record and the court=s findings and conclusions, which overwhelmingly attest to

mother=s marginal relationship with the children and demonstrated inability to resume parental responsibilities in any reasonable time, as well as to the children=s strong attachment to their foster parents, the only family they have known since birth. Accordingly, we find no error, and no basis to disturb the judgment.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice

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\* The paternity of the twins was in question until July 2005, when genetic testing identified their biological father. Father has since voluntarily relinquished his parental rights.