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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-251

SEPTEMBER TERM, 2006

In re S.M. and E.M., Juveniles	}	APPEALED FROM:
	}	
	}	
	}	Orleans Family Court
	}	
	}	
	}	DOCKET NO. 10/11-1-05 Osjv

Trial Judge: Alden T. Bryan

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

Mother appeals the family court=s order terminating her parental rights with respect to her two children, S.M. and E.M. We affirm.

S.M. and E.M. were born in September 2003 and October 2004, respectively. In January 2005, mother=s sister and her boyfriend informed the Department for Children and Families (DCF) that the children were homeless and temporarily residing with them. As a result, the DCF obtained emergency custody of the children. The family court later found that the children had been left with the mother=s sister in deplorable

physical condition, and that their medical and sanitary needs had been neglected. In March 2005, the court found the children to be in need of care and supervision (CHINS) because they were without adequate and proper parental care. At the disposition hearing, the court adopted a report requiring the parents to obtain stable housing, engage in mental health and substance abuse treatment, participate in parent education classes, and address issues concerning domestic violence and sexual abuse. The parents initially participated in the required programs, but after they separated in June 2005, mother=s visitation with the children became inconsistent, her mental health therapy was temporarily discontinued, and her home situation became unstable. In September 2005, father voluntarily relinquished his parental rights. The following month, DCF filed a petition seeking termination of mother=s parental rights, citing mother=s lack of progress in achieving the goals that would allow reunification with her children. Following two days of hearing in January 2006, the family court issued a written order terminating mother=s parental rights.

Mother appeals the termination order, arguing that the court erroneously concluded, without adequate support and based on an overemphasis on her past intelligence test results, that she lacks the capacity to learn and apply parenting skills. See In re B.M., 165 Vt. 331, 339 (1996) (state=s power to terminate parental rights cannot be exercised solely on basis of inherent personality traits revealed by psychological tests). As mother states, the family court set forth in some detail the history of her long involvement with the Department dating back to her youth, including the results of the various tests she took. For the most part, however, the court addressed the test results in the context of discussing the differing views of the court-appointed attorney and mother=s expert on the extent of mother=s mental limitations. The court rejected the opinion of mother=s expert that mother had normal intelligence and had been misdiagnosed for years.

In challenging the termination order, mother focuses on one sentence in which the family court concluded that mother was not able to learn appropriate parenting skills, and even if she were, would not be able to apply them. Mother is incorrect, however, in asserting that the court=s conclusion is based primarily on its findings concerning mother=s previous test results. The court-appointed expert did not testify that mother=s test results demonstrated that mother was incapable of adequately parenting her children. Rather, the expert testified that although mildly retarded individuals such as mother are capable of attaining some independence, mother had

refused to acknowledge problems that affected her ability to care for her children and that needed to be addressed in counseling. The court too focused primarily on mother=s conduct, not her test results. The court found that mother never took responsibility for the deplorable condition the children were in at the time they came into foster care, and that she continued to deny the need for counseling, parent education, or anger management. The court further noted that, despite substantial DCF intervention: (1) the quality of mother=s visits with her children had not improved; (2) mother had made little headway in coping with her own significant problems; and (3) she had shown little ability to care for the children in a responsible manner. The court determined that, based on mother=s Abehavior and coping skills in real life situations,@ a rational person would have to conclude that children in her care would be unable to thrive.

In short, in determining that mother would be unable to resume parental duties within a reasonable period of time, the family court relied primarily on mother=s actual conduct over the previous year, not on prior test results. The evidence plainly demonstrated that mother had made no significant progress in achieving the goals that would allow her to successfully parent her young children, who had been in foster care for a significant period of their lives by the time of the termination hearing. See In re B.S., 166 Vt. 345, 353 (1997) (in determining whether parent will be capable of resuming parental duties within a reasonable period of time, reasonableness must be judged from perspective of children). Accordingly, the evidence supported the court=s termination order.

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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Brian L. Burgess, Associate Justice