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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-301

NOVEMBER TERM, 2006

In re A.C., A.C. and D.J., Juveniles	}	APPEALED FROM:
	}	
	}	
	}	Chittenden Family Court
	}	
	}	
	}	DOCKET NO. 361/362-7-02 & 365-8-05 Cnjv

Trial Judge:

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

Mother appeals a decision of the family court terminating her parental rights to her three children, A.C., A.C., and D.J.[1] We affirm.

At the termination hearing, the State presented the testimony of several witnesses, including the case worker, a police officer, a child therapist, and the children=s foster parents. Mother cross-examined these witnesses but ultimately declined to call witnesses of her own and also declined to testify herself. In terminating

mother=s parental rights, the family court found that mother had not consistently used the services provided to her in conjunction with the case plan, was not consistent in keeping appointments to visit the children while they were in the custody of others, was unable to maintain a stable residence, and when she was staying at a shelter, was asked to leave because of conflicts with the other residents. The court also expressed concern over mother=s behavior generally, which several witnesses described as irrational and erratic. The court considered the likelihood that mother=s situation and parenting abilities could improve, as well as the children=s needs and the viability of their current placements, in concluding that the factors listed under 33 V.S.A. ' 5540 supported termination in the best interests of the children.

On appeal, mother argues, in essence, that the family court erred in failing to take affirmative steps to protect her due process rights in this proceeding. Specifically, mother claims the family court should have (1) provided an additional opportunity for mother to call her own witnesses and (2) inquired further into her decision not to testify. Mother was, however, represented by counsel. The basis of her claim is that an attorney cannot waive a parent=s right to contest terminationConly the parent herself may do so. While this is true, this concept does not apply to what transpired in this case. First, the transcript of the hearing does not support the contention that mother=s attorney Anegate[d] [her] client=s claims without [mother=s] knowledge or permission,@ as was the case in In re J.H., 144 Vt. 1, 4 (1983), cited by mother. Rather, the record shows that mother=s attorney consulted with mother regarding potential witnesses, both at the hearing and during the recess the court allowed for mother to determine whether she would, in fact, call witnesses on her behalf.

Second, mother=s attorney did not concede the termination by any means. Her attorney thoroughly cross-examined each of the State=s witnesses during the course of the two-day hearing. Furthermore, mother had ample notice of the termination hearing and therefore had ample opportunity to determine which witnesses she wanted to call. At the close of the State=s evidence, the family court provided mother with another opportunity to determine if there were witnesses she wanted to call and offered to facilitate that process. But, when asked to describe the testimony that such witnesses would put forward, mother could not identify any contested issues to which such testimony would be relevant. She did not identify witnesses she wished to call. Finally, upon inquiry by the court, mother herself clearly articulated the reasons she did not want to testify. By

all appearances, the absence of an affirmative defense was the result of choices made by mother, not unauthorized action by her attorney or lack of concern for mother=s due process rights on the part of the family court.

Most importantly, mother does not demonstrate how either the testimony of other witnesses or her own testimony would have related to the State=s evidence or affected the family court=s ultimate decision that termination of parental rights was necessary. Mother does not claim that the additional testimony would have undermined or contradicted the evidence presented by the State. In the absence of such a claim, we cannot conclude that the conduct of the hearing prejudiced her case. See State v. Lambert, 2003 VT 28, & 10, 175 Vt. 275 (for reversal of judgment, appellant must show that error prejudiced his or her case).

Affirmed.

BY THE COURT:

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice

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[1] Both the father of A.C. and A.C. and the father of D.J. voluntarily terminated their parental rights.