

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-333

JANUARY TERM, 2007

C.C. and E.M., Juveniles

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APPEALED FROM:

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Chittenden Family Court

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DOCKET NO. 373/374-7-04 Cnjv

Trial Judge: Geoffrey W. Crawford

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

Mother appeals the family court=s order terminating her residual parental rights with respect to her two young children, C.C. and E.M. She argues that the evidence and findings regarding the value of her contact with the children do not support the termination order. We affirm.

C.C. was born in December 1998, and E.M. was born in March 2004. In July 2004, after E.M. was admitted to the hospital as a failure-to-thrive baby, the Department for Families and Children (DCF) commenced CHINS (children in need of care or supervision) proceedings, and the family court issued a protective order.

The children remained in mother=s care subject to the comprehensive protective order. As part of the services provided by DCF, a nurse and a parent educator assisted mother with child nutrition, parental responsibilities, and other matters. Mother had a long history of drug abuse and psychological problems with elements of depression and obsessive/compulsive behavior. During the period that her children were the subject of the protective order, she continued to struggle with a drug addiction to opiates such as Oxycontin. She obtained the drugs at that time from a neighbor who had a two-and-one-half-year-old son. In April 2005, mother confessed to physically abusing the neighbor boy by striking him and holding his hand under scalding water. As a result of the abuse, mother=s children were removed from her home. E.M. was placed with her paternal grandmother, with whom she still resides. C.C. was initially placed with his father, but later began a gradual placement with his paternal grandparents. In February 2006, mother was convicted on three counts of cruelty to a child and given a two-to-six-year prison sentence. Her minimum release date is May 2008.

In the spring of 2006, DCF filed separate petitions to terminate mother=s parental rights with respect to each child. The cases were consolidated for a hearing, which took place in August 2006. Shortly after the hearing, the family court issued an order granting both petitions. Mother appeals, arguing that neither the evidence nor the court=s findings regarding the value of her contact with her children were adequate for the court to choose termination of parental rights over other disposition options such as a permanent guardianship. The State opposes mother=s appeal, and the children join in the State=s brief. We affirm.

Mother acknowledges that the court=s explanation of the children=s need for permanency effectively ruled out options such as reunification, protective supervision, and long-term foster care; nonetheless, she contends that the evidence and findings were inadequate to explain how the court chose termination of parental rights over a permanent guardianship. Mother asserts that a permanent guardianship provides more stability than a termination order and has the added benefit of permitting parent-child contact when it is in the child=s best interest. See 14 V.S.A. ' 2663(a) (providing that while permanent guardianship is in effect, parent has (1) right to visitation to the extent allowed by the court based on the child=s best interest, (2) right to inheritance by and from the child, and (3) right to consent to adoption). According to mother, the court=s findings do not reveal any reason to doubt the present or future value of contact between her and her children. In mother=s view, the

State failed to submit evidence on the effects of depriving the children of contact with her, and thus the court=s findings were inadequate to support its termination order.

We disagree. A[W]hen considering a petition to terminate residual parental rights, the trial court must make findings regarding whether there has been a substantial change in material circumstances and whether termination is in the best interests of the child.@ In re A.S. & K.S., 171 Vt. 369, 373 (2000). If the court does so, we must affirm unless the findings are clearly erroneous. Id. Here, in making its termination order, the court reviewed each of the criteria set forth in 33 V.S.A. ' 5540 for determining the best interests of the children. Regarding the first criterion, the court found that although mother had a good relationship with her children in many ways, she had consistently been reluctant to obtain proper medical care for the children because of her beliefs about herbal remedies and her own concerns about her appearance, and she continued to pose a risk of injury to the children because of her uncontrolled anger. The court further found that mother was not stable and that her involvement with drugs and drug users exacerbated her instability. The court acknowledged mother=s attempts to play a constructive role in the children=s lives, but noted that it had been compelled to terminate visits between her and the children because of nightmares and other problems they were having following the visits. The court emphasized the children=s need for stability in a permanent home under the care of responsible adults, and concluded that the children could not wait another two years or more for mother to get out of prison, even assuming she would be able to overcome deeply embedded and unresolved psychological and drug-addiction problems that had interfered with her ability to parent. Nothing in our statutory scheme required the family court to explain why it chose termination of parental rights over a legal guardianship. In any event, the court=s unchallenged findings and conclusions fully support its termination order.

Affirmed.

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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Marilyn S. Skoglund, Associate Justice