

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-394

JANUARY TERM, 2007

K.D., Juvenile

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APPEALED FROM:

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Orleans Family Court

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DOCKET NO. 95-12-05 Osjv

Trial Judge: Howard E. VanBenthuyzen

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

Mother and father appeal the family court's order terminating their parental rights and denying father's request that their child, K.D., be placed with the paternal grandparents. We affirm.

K.D. was born in November 2005, when mother was eighteen years old. The family court issued an emergency detention order in December 2005 a few days after learning that father had shaken the baby. The parents stipulated at the merits hearing that K.D. was a child in need of care and supervision (CHINS). At the

initial disposition hearing in April 2006, father requested a placement with his mother and stepfather, and the Department for Children and Families (DCF) sought termination of parental rights. Father=s request for kinship placement and the termination petition were heard over several days in July and August 2006. Following the hearings, the family court issued an order terminating mother and father=s parental rights. In that order, the court also rejected a placement with the paternal grandparents. On appeal, mother argues that (1) the family court=s findings do not support its conclusion that she will be unable to resume parental duties within a reasonable period of time; and (2) the court improperly based its termination order on the existence of a stable, loving foster home for K.D. For his part, father argues that the court failed to make adequate findings to support its decision not to place K.D. with the paternal grandparents.

Mother first argues that the family court=s conclusion regarding how long it will take her to achieve parental fitness is unsupported by the court=s own findings. Mother finds inconsistency in the court=s first finding that Ait will require at least 6-12 months to bring [mother=s] psychological situation under sufficient control to permit full re-unification with [K.D.],@ but then later concluding that it would likely Arequire years of therapy and rehabilitation for mother@ to obtain the necessary parenting skills, and that K.D. Adoes not have another year or two to wait for mom to get her life together.@ In mother=s view, the inconsistencies in these findings and conclusions demonstrate that the court=s findings do not support its conclusion that mother will not be able to resume parental duties within a reasonable period of time.

Upon review of the record, we conclude that mother=s selective examination of the court=s decision does not demonstrate error. The family court detailed mother=s long history of mental problems and drug abuse. At one point in its discussion, the court referred to a recent mental-health evaluation indicating that mother A may suffer from bi-polar disorder.@ The court accepted the evaluating physician=s opinion that it would require Aat least@ six-to-twelve months to bring mother=s psychological situation under sufficient control to allow her to parent a child. The court noted, however, that one feature of bi-polar disease is that its sufferers are often noncompliant with medications. Later, in determining whether mother could be in a position to resume parental duties within a reasonable period of time, the court considered other factors. The court stated that mother continues to struggle with her anger, as evidenced by recent violations of conditions of probation and pending

criminal charges against her. According to the court, right up through the termination proceedings, she remained on the edge of returning to jail. She also remained unemployed and living with her own mother, who expressed doubts about mother=s ability to parent K.D. The court also noted that mother continued to express a desire to reunite with father, with whom she had an abusive relationship, and who had abused K.D.

According to the court, mother had made some progress in therapy and in addressing her drug problem, but these positives were outweighed by her lack of stability and self-control and by her lack of insight into domestic violence and the other causes that led to K.D.=s removal from her custody. The court concluded that K.D. was in need of a stable permanent home, but that in the ten months since the child had been in state custody, mother had not demonstrated that she was gaining the skills necessary to parent the child. The court opined that, based on the evidence, mother would most likely need years of therapy and rehabilitation to address all of the areas in which she had to show substantial progress to reach the point where she could resume her parental duties. The court concluded that K.D., who had already spent nearly her entire life in foster care, was in need of a stable, permanent home and could not wait another year or more for mother to turn her life around. The evidence and findings support this conclusion.

Mother argues, however, that the family court improperly considered the stability of the foster home in determining that she would be unable to resume her parental duties within a reasonable period of time. Again, we find no error. After detailing the numerous reasons why mother would be unable to resume her parental duties within a reasonable period of time, the court merely noted that K.D. needed a stable home and that her current foster parents were providing one. As mother acknowledges, the court must consider Aa reasonable period of time=@ from the perspective of the child. See In re B.M., 165 Vt. 331, 337 (1996). Moreover, a child=s relationship with foster parents is relevant under the first two criteria of 33 V.S.A. ' 5540, see In re M.M., 159 Vt. 517, 524 (1993), and in this case the court did not address the ' 5540 criteria in discrete sections of its decision. Plainly, the court=s conclusion that mother would not be able to resume parental duties within a reasonable period of time was based primarily on mother=s continuing unfitness, and not on K.D.=s relationship with the foster parents.

Finally, father argues that the family court failed to make adequate findings in denying his request that K.D. be placed with his mother and stepfather. According to father, rather than making its own findings about the suitability of the proposed placement, the court merely noted the testimony of the DCF caseworker who had rejected the paternal grandparents as licensed foster parents. We find no merit to this argument. First, as the court itself acknowledged, once it terminated mother and father=s parental rights, the question of a kinship placement at disposition was effectively moot. In any event, the court carefully detailed the testimony both in favor and against the placement before rejecting it. The court noted that a DCF investigator recommended that K.D.=s paternal grandparents not be licensed to care for K.D. because (1) there was significant turmoil in their household (fifteen recent calls to police) due to their teenaged children=s misconduct, and (2) the paternal grandmother had been untruthful in her foster-care application by failing to report or downplaying the problems in her household. The court concluded that the investigator=s testimony was credible, accurately reported the state of affairs in the paternal grandparents= household, and supported a conclusion that the household was not an appropriate placement for K.D. The court also noted that the paternal grandmother had encouraged mother to drop a relief-from-abuse petition against father for having shaken K.D., had misled police regarding the incident that led to K.D.=s removal from her parents= home, and was in denial as to her son=s responsibility for K.D.=s placement in state custody. Thus, even assuming that the court was required to make a determination regarding placing K.D. with her paternal grandparents, the court=s rejection of such a placement was amply supported by its findings.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice