

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-028

MAY TERM, 2007

In re T.G., Juvenile

}
}
}
}
}
}
}

APPEALED FROM:

Chittenden Family Court

DOCKET NO. 261-5-04 Cnjv

Trial Judge: Christina Reiss

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

Mother appeals the family court's order terminating her parental rights to her son, T.G. On appeal, mother argues that the court erred in finding termination in T.G.'s best interest because the court did not specifically consider the effect of severing the mother-child bond and material findings are unsupported by the evidence. We affirm.

In November 2000, the family court found that T.G. was a child in need of care and supervision (CHINS), based on his parents' admission that they could not control him. At that time, mother retained custody of T.G. subject to a protective order. In 2001, mother moved to South Carolina with her children and in December 2001 the South Carolina family court placed T.G. and his siblings in foster care, finding they were in imminent danger. In November 2002, the children were returned to mother and soon thereafter they all moved back to Vermont. On May 11, 2004, the State filed a CHINS petition, alleging that mother's boyfriend had physically abused T.G. and that T.G. was out of control, and requesting that the Department for Children and Families (DCF) place T.G. and his siblings in its custody. The family court kept the children in mother's custody, but issued a comprehensive protective order. Then, at a status conference on May 19, 2004, over mother's objection, the court issued a detention order for T.G., and placed him in DCF custody, where he has remained ever since. On June 1, 2004, based on mother's admissions, the court found T.G. was CHINS. The disposition report, adopted by the family court, set reunification as its goal and recommended that mother engage in individual and family therapy.

Based on mother's lack of progress, in April 2006, DCF changed its goal for T.G. to adoption. On May 17, 2006, DCF filed to terminate parental rights. The parents contested and the court held a two-day hearing in December 2006. At trial, mother testified, as did several of the service providers. On the second day of the hearing, father conditionally relinquished his residual parental rights. Following the hearing, the family court terminated mother's rights.

In deciding whether to terminate parental rights, the family court must determine that there has been a substantial change in material circumstances and that the best interests of the juvenile require termination of parental rights. In re B.W., 162 Vt. 287, 291 (1994). The court's findings "must be supported by clear and convincing evidence and will withstand review in this Court unless they are clearly erroneous." Id. A substantial change in material circumstances is usually found when a parent's ability to properly care for her child has stagnated or deteriorated. In re A.F., 160 Vt. 175, 177 (1993). The best interests of the child are determined by considering four statutory factors:

- (1) The interaction and interrelationship of the child with his natural parents, his foster parents if any, his siblings, and any other person who may significantly affect the child's best interests;
- (2) The child's adjustment to his home, school, and community;
- (3) The likelihood that the natural parent will be able to resume his parental duties within a reasonable period of time; and
- (4) Whether the natural parent has played and continues to play a constructive role, including personal contact and demonstrated love and affection, in the child's welfare.

33 V.S.A. § 5540. Of these, the most critical is the likelihood that the natural parent will be able to resume parenting within a reasonable amount of time. In re A.F., 160 Vt. at 177.

In this case, the court found there had been a substantial change in circumstances based on its finding that mother had made relatively minimal progress in improving the stability of her home environment or in acquiring necessary parenting skills, notwithstanding the many services she had received. The court considered the statutory factors in turn and concluded that termination was in T.G.'s best interest.

On appeal, mother argues that the family court failed to properly consider the statutory best-interest factors because the court did not specifically address whether permanent severance of parent-child contact was in T.G.'s best interest. Mother argues that the court failed to consider this factor in its decision, and that the court's findings related to the parent-child bond are unsupported by the evidence. The findings that mother contests relate to T.G.'s desire to be adopted. The basic facts are not in dispute. After DCF placed T.G. in a foster home, T.G. began to express a desire to be adopted by his foster father. Mother did not accept T.G.'s desire to be adopted and felt he was being pressured. In December 2005, DCF changed mother's visits with T.G. from unsupervised to supervised because mother was pressuring T.G. about his desire for adoption. Mother requested a meeting with T.G., where she wanted him to look her in the eye and tell her that he wanted to be adopted. DCF arranged and supervised this meeting.

Mother contends that the family court erroneously found that T.G. understood the difference between adoption and foster care. In assessing this argument, our role is to determine whether there is credible evidence to support the family court's findings. In re D.B., 2003 VT 81, ¶ 4, 175 Vt. 618 (mem.). Specifically, mother argues that there was no evidence that T.G. knew that mother would

not have an enforceable right to visitation if he was adopted. We find no merit to this argument. At trial, mother testified that T.G. had been talking about adoption for over year. She further testified that on one occasion she explained the difference between adoption and long-term foster care to T.G. and that in the case of adoption, he might not see his family again. In response, T.G. said that he understood. Thus, there was evidence to support the court's finding that T.G. desired adoption and understood its consequences, and we will not disturb it on appeal. In re A.F., 160 Vt. at 178.

Mother also contends that the family court erroneously found that she exercised poor parental judgment in repeatedly insisting that her son explain his desire for adoption, and in particular requesting a meeting with him. Mother argues that if she exercised poor judgment in desiring a meeting with her son so that he could tell her that he wanted to be adopted, then so did DCF in arranging and facilitating the visit. We disagree. First, whether DCF erred in arranging this meeting is irrelevant to the court's finding that mother's insistence on having the meeting displayed poor parental judgment. Second, we conclude that even ignoring mother's insistence on a face-to-face meeting, there was ample evidence to support the court's finding that mother's role in T.G.'s life was not always constructive. See id. (concluding that an erroneous finding does not require reversal when other credible evidence is sufficient to sustain the decision to terminate). In making this finding, the court relied foremost on the evidence that mother had exposed T.G. to physical abuse. The court also added that mother had exercised poor judgment in repeatedly requiring T.G. to justify his desire for adoption. This latter observation was not the focus of the court's determination, nor was it erroneous.

In summary, we conclude that the trial court properly considered the statutory factors, including the existence of mother's bond with T.G., and that its findings are supported by the evidence. The court noted that mother loves T.G., but because of her choices there were many obstacles in the path of his return home. Although mother maintained personal contact with T.G., she had in the past repeatedly exposed him to situations of physical abuse. Most importantly, the court found that mother was incapable of providing an appropriate home for T.G. and would not be able to parent T.G. within a reasonable period of time. See id. at 177 (explaining that a parent's ability to resume parenting within a reasonable period of time is the most important factor). These findings support the court's conclusion that termination was in T.G.'s best interest.

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice