

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-050

AUGUST TERM, 2007

In re N.R., F.R. & D.R., Juveniles	}	APPEALED FROM:
	}	
	}	Rutland Family Court
	}	
	}	
	}	DOCKET NO. 42/43/44-2-04 Rdjv
	}	
	}	Trial Judge: Theodore S. Mandeville

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

Mother appeals the family court’s order terminating parental rights to her children N.R., F.R., and D.R. On appeal, mother argues that: (1) the family court’s findings are merely recitations of the evidence, (2) the family court’s analysis of whether mother can resume parenting within a reasonable time is unsupported by the evidence, and (3) the family court’s analysis of mother’s bond with her children is inadequate. We affirm.

The children were placed in the custody of the Department for Children and Families (DCF) on February 2, 2004, when mother was arrested for the use and sale of heroin. On April 8, 2004, based on the parents’ admissions, the court found that the children were in need of care or supervision. The children were placed in foster homes by DCF and have been in DCF custody ever since. In May 2004, the court accepted a disposition plan, which recommended ongoing DCF custody and reunification. The case-plan goal changed to adoption in December 2005, and DCF filed petitions to terminate parental rights in January 2006. Following three days of hearings, the family court concluded that neither parent would be able to resume parenting the children within a reasonable period of time and terminated parental rights in January 2007.

Our role in reviewing a termination decision “is not to second-guess the family court or to reweigh the evidence, but rather to determine whether the court abused its discretion in terminating” parental rights. In re S.B., 174 Vt. 427, 429 (2002) (mem.). We review the trial court’s findings of fact under a clearly erroneous standard and will uphold the court’s legal conclusions if supported by the findings. In re D.B., 2003 VT 81, ¶ 4, 175 Vt. 618 (mem.). To terminate parental rights, the court must find by clear and convincing evidence that there has been a substantial change in material circumstances, and that termination is in the child’s best interests. 33 V.S.A. § 5532(a); In re B.W., 162 Vt. 287, 291.

Mother first argues that the family court’s findings are mere recitations of the evidence at the hearing and are not findings of fact. In particular, mother contends that the court simply recited testimony, but made no findings regarding mother’s drug treatment prognosis and the children’s emotional needs. We agree with mother that a recitation of evidence is not a finding of fact, Embree v. Balfanz 174 Vt. 560, 562 (2002) (mem.), and that the court’s findings should reflect its own “independent evaluation of the case.” In re B.M., 165 Vt. 331, 335 (1996). We disagree, however, that in this case the trial court failed to make material findings. The trial court’s order summarizes

some of the evidence at trial, but also contains the court’s findings based on that evidence. Pertaining to mother’s drug use, the court accepted the testimony of mother’s treating physician that she will require at least eighteen months of treatment to resolve her ongoing drug-dependency issues. In addition, the court found that future drug use is more likely than not. Regarding the children’s emotional needs, the court found that they were loved by, and had adjusted to, their foster homes. These findings are not merely recitations of evidence, but reflect the trial court’s analysis of evidence in the record.

Mother next argues that the court’s finding that mother will not be able to resume parenting within a reasonable time is not supported by the evidence. The most important factor in determining whether termination is in a child’s best interest is whether the parent will be able to resume parenting within a reasonable period of time, as measured from the child’s point of view. 33 V.S.A. § 5540; In re B.M., 165 Vt. at 336. The court found that mother had a history of drug abuse, that her ability to improve her parenting skills depended on being drug-free, and that her current drug treatment program required a minimum of eighteen months to complete. Given the lengthy rehabilitation period and the likelihood of relapse, the court concluded that mother would not be able to parent her children within a reasonable period of time. Mother claims that the court did not properly address why the children could not be transferred into her custody in eighteen months, if she remained drug free. The court’s conclusion was not solely based on the eighteen-month rehabilitation program. In determining mother’s prospective ability to parent, the court considered mother’s past behavior, see In re B.M., 165 Vt. at 337, and concluded that mother’s ongoing drug problem, marked by relapses, prevented her from assuming parenting role within a reasonable period of time. This finding is supported by the evidence, and we will not disturb it.

Finally, mother contends that the court inadequately analyzed the role of the mother-child bond in assessing the best interests of the child. 33 V.S.A. § 5540(1), (4). We conclude that the family court considered mother’s bond with her children, but nonetheless concluded termination was in the children’s best interests based on all of the statutory factors. The court recognized that mother loves her children, but also found that mother’s commitment to them has been “overwhelmed” by drug addiction and criminal behavior. The court also found that the children were loved by, and adjusted to, their foster families. 33 V.S.A. § 5540(1). As directed by the statute, the court considered these findings along with the other factors—including the most important, mother’s ability to resume parenting within a reasonable time—and concluded that termination was in the children’s best interests.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice