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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-277

NOVEMBER TERM, 2007

In re E.S. and D.S., Juveniles	}	APPEALED FROM:
	}	
	}	
	}	Caledonia Family Court
	}	
	}	
	}	DOCKET NO. 114/115-10-06 Cajv
		Trial Judge: M. Kathleen Manley

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

Mother appeals termination of her parental rights to her two children, E.S. and D.S. On appeal, mother argues that the family court (1) impermissibly based its findings solely on hearsay evidence, and (2) prematurely terminated her parental rights. We affirm.

E.S. and D.S. were born in 2002 and 2005, respectively. In October 2006, the family court granted the Department for Children and Families (DCF) custody of E.S. and D.S. based on DCF's concerns that mother was endangering the children by exposing them to her then-live-in boyfriend, who is a convicted sex offender. Although mother initially indicated that she was leaving her boyfriend, they became engaged in December 2006 and continued to live together. In January 2007, mother stipulated that her children were in need of care or supervision. In March 2007, DCF filed a petition to terminate mother's parental rights at the initial disposition proceeding, based on mother's continued residence with a convicted sexual offender. Following a contested hearing in June 2007, the family court terminated mother's parental rights. Mother filed this appeal.

Mother first contends that the family court erred in terminating her parental rights because the court's central findings were based solely on hearsay. To terminate parental rights, the State has the burden of demonstrating, "by clear and convincing evidence, that there is no reasonable possibility that the causes and conditions which led to the filing of the petition can be remedied and the family restored within a reasonable time." In re R.B., 152 Vt. 415, 421 (1989) (quotation omitted). Hearsay is admissible in a termination proceeding, and the court can rely on hearsay evidence in combination with other evidence to support its termination decision. Id. at 424. The court's findings will stand unless clearly erroneous. In re B.W., 162 Vt. 287, 291 (1994).

Mother argues that the court's key findings regarding the risk her fiancé presents are error because the court relied solely on her fiancé's Federal Bureau of Prisons' Sex Offender Discharge Report. Because the court's findings were also supported by non-hearsay evidence, including the testimony of mother and her fiancé, we find no error. We also emphasize that the court admitted the report based on the parties' agreement to do so. Mother did not object to its admission, or to any of the questions at the hearing pertaining to contents of the report.

The family court found that mother's fiancé is a convicted sex offender who spent twelve years in federal prison for forcible acts of sodomy and indecency upon multiple child victims of both sexes. Mother admitted that her fiancé is a sex offender, and her fiancé testified that he had sexually offended with sixteen children in the past and was diagnosed as a pedophile. Both mother and her fiancé admitted that they had showered naked with the children, and that father had bathed with mother's young daughter. The court found that mother had put the children at risk of harm by allowing her fiancé to be alone with the children and to shower with the children naked. Mother's fiancé testified that he had not participated in treatment since his release from prison. Although mother acknowledged that her fiancé was a sex offender, she testified that she believed he did not pose a risk to the children. In mother's judgment, her fiancé acted fatherly toward the children and would not harm them. Mother's plan to protect the children, if they were returned to her, was to make sure that her fiancé was not "alone with the kids more often." The court expressed concern with mother's inability to understand the risk her fiancé posed and specifically how sex offenders use "grooming" to make friends with children before molesting them. The court explained that mother "does not have the understanding to recognize grooming for what it is. Instead, misinterpreting it as [fiancé] trying to be a father figure." Based on this evidence, the court found that mother did not appreciate the level of risk that her fiancé posed to the children.

Of all the court's findings, the only evidence contained solely in the discharge report was the explanation of grooming, although mother testified about her understanding of grooming. Given all of the other evidence supporting the court's finding that mother did not fully appreciate, nor protect, her children from the harm presented by her fiancé, the court did not err in relying on the discharge report to explain the concept of grooming. See In re R.B., 152 Vt. at 424 (affirming termination disposition based in part on admission of hearsay evidence because hearsay played a minor role in the court's conclusions and "there was credible, nonhearsay evidence of parental unfitness").

Next, mother argues that the court prematurely granted termination at the initial disposition hearing because there was insufficient evidence to support the court's finding that she could not resume parenting within a reasonable time. We agree with mother that generally the court should avoid termination at the initial disposition hearing, but conclude that the court did not err in granting it in this case. See In re B.M., 165 Vt. 194, 199 (1996). At disposition, the court must consider the best interests of the child. 33 V.S.A. § 5540. The most important factor is "[t]he likelihood that the natural parent will be able to resume . . . parental duties within a reasonable time." Id. The primary concern about mother's parenting was her ability to adequately supervise her children and provide them with a safe home, free from the presence of an admitted pedophile. Despite her engaging in some parenting classes, the court found that mother was unwilling to accept that her fiancé presented a risk or to consider living apart from him so the children could be safe. In fact, mother testified that she intended to marry her fiancé

and to stay with him permanently. Thus, there was no reasonable possibility that the causes leading to the filing of the petition would be remedied within a reasonable time, and the court's finding was not erroneous.

Finally, we reject mother's contention that the court improperly based its termination decision on a comparison between her and the foster parents. The court's decision did not rest on a comparison between mother and the foster parents, rather the court properly considered the children's relationship with the foster parents, as required by statute. See 33 V.S.A. § 5540(1); In re T.T., 2005 VT 30, ¶¶ 5-6, 178 Vt. 496 (mem.) (considering child's relationship with foster parents as part of the best-interests analysis). This was only one factor in the court's decision. As explained, the major factor was mother's inability to resume parenting within a reasonable time. The court's findings support its decision to terminate, which is therefore affirmed.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice