

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2007-296

NOVEMBER TERM, 2007

In re A.A. and M.A., Juveniles	}	APPEALED FROM:
	}	
	}	
	}	Windsor Family Court
	}	
	}	
	}	DOCKET NOS. 11-2-06 WrJv & 49-4-07 WrJv

Trial Judge: Harold E. Eaton, Jr.

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

Father appeals from a family court judgment terminating his parental rights to the minors A.A. and M.A. Father contends that the court’s findings fail to support its conclusion that father will not be able to resume parental responsibilities within a reasonable period of time. We affirm.

The two young children who are the subject of this appeal, A.A., born in February 2006, and M.A., born in April 2007, were taken into the custody of the Department for Children and Families almost immediately after their births, and both were adjudicated CHINS shortly thereafter. Both have lived essentially their entire their lives with the same foster family, having almost virtually no contact with mother or father. Prior to this proceeding, mother—who is developmentally disabled—voluntarily relinquished her parental rights on the condition that father relinquish his rights either involuntarily or voluntarily. Father, who is also developmentally disabled, lives with his mother and brother, who serve as his co-guardians under a guardianship order of the probate court. In 2004, father was charged with several counts of aggravated sexual assault on a minor. He was released on conditions including the requirement that he remain in the company of his mother and brother at all times and have no contact with persons under the age of sixteen. Although several of the sexual-misconduct charges were later dismissed, others remain pending. Despite the restrictions, father was able to engage in a relatively short-term relationship with mother, leading to the births of A.A. and M.A.

The initial DCF case plan called for father to engage in parenting education and other services, but he failed to do so. The court found that this was primarily the result of the restrictions in father’s conditions of release, although the court also noted that father made no effort to modify the restrictions. DCF moved to terminate parental rights at the first disposition hearing. Both foster parents, a DCF case worker, a police officer, and father testified at the

termination hearing in June 2007. Thereafter, the court issued a written decision, concluding by clear and convincing evidence that termination was in the best interests of the children. Applying the statutory criteria of 33 V.S.A. § 5540, the court found that father has virtually no relationship with the children nor they with him; in fact, he has never seen either of them. On the critical question of whether father could resume parental responsibilities within a reasonable period of time, the court ruled against father on several grounds. The court found that father had no child-care experience or parenting skills, and that his demonstrated inability to live independently, maintain stable employment, or care for himself made it virtually certain that he would not be able to develop the skills and judgment necessary to care for two young children within a reasonable period of time. Adding to the instability of father's life was the fact that he continued to face sexual misconduct charges and the possibility of future incarceration. In addition, while acknowledging that father had not been convicted of the pending charges, the court noted that DCF had substantiated several of them, i.e., had found them to be based upon reliable and accurate information, and the court found that this raised serious concerns regarding father's recognition of sexual boundaries. Any of these circumstances standing alone, the court concluded, would be sufficient to find that father could not assume parental responsibilities within a reasonable period of time. In addition, the court found that both children were well adjusted to their foster parents, with whom they had developed a close parenting bond, that they were happy and thriving physically and emotionally, and that the foster parents hope to adopt. The court, therefore, granted the petition. This appeal followed.

On appeal, father contends that the court's findings were insufficient to support its conclusion that termination was in the children's best interests in two essential respects. See In re M.B., 162 Vt. 229, 238 (1994) (in reviewing a termination of parental rights, this Court will not disturb the court's findings unless clearly erroneous, nor its conclusions if reasonably supported by the findings). First, father asserts that, absent a conviction, the court could not rely on the pending charges as proof of sexual misconduct or as a potentially destabilizing factor in the children's lives, should they lead to conviction and incarceration. Although we have upheld terminations based on substantiated allegations of sexual abuse in the past, see id. at 236-37, the court's findings here concerning the charges were limited to a concern about father's awareness of what is sexually appropriate behavior with minors, and the potentially disruptive impact of future incarceration. Even excluding these findings, however, it is clear that the court's decision was based on overwhelming independent evidence of father's unfitness in several respects, any one of which, the court determined, be would be "sufficient in this case for a conclusion against father." These included the virtual absence of any relationship between father and the children; father's lack of any experience with children, lack of parenting skills, and the unlikelihood that he could acquire such skills within a reasonable time; and father's demonstrated inability to manage his own affairs or maintain stable employment. Even assuming error, therefore, we find no grounds to reverse the judgment. See In re D.C., 163 Vt. 517, 520-21 (1995) (upholding termination of parental rights where, even excluding findings based on hearsay, the court's remaining findings "easily support the court's conclusion that . . . [the minor's] best interests called for terminating appellant's parental rights").

Father also asserts that the court improperly relied upon the existence of his legal guardianship in determining the best interest's of the children, and erroneously discounted the assistance that his mother and brother could provide in raising the children. The claim misconstrues the court's reasoning, which was not based upon the existence of the guardianship

per se, but rather on the evidence—supported by the guardianship—that father had been unable to care for himself or live independently for several years, which raised serious doubts about his ability to care for two young children. Nor, as father claims, did the court dismiss as irrelevant any assistance that the co-guardians might provide. Rather, the court properly observed that it was father who was seeking custody, and therefore father whose parental abilities were at issue. Accordingly, we find no error.

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