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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-401

FEBRUARY TERM, 2008

In re T.G., Juvenile	}	APPEALED FROM:
	}	
	}	
	}	Chittenden Family Court
	}	
	}	
	}	DOCKET NO. 150-4-05 Cnjv
		Trial Judge: Geoffrey W. Crawford

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

Father appeals the family court's order, terminating his parental rights with respect to his son, T.G. We affirm.

T.G. was born in February 1998. In April 2005, the Department for Children and Families (DCF) filed a petition alleging that the boy was a child in need of care and supervision (CHINS) based on an incident in which father threw T.G. to the ground, injuring his leg. An initial protective order limited contact between father and son to supervised visits, and later, the family court suspended the visits under a revised order. Eventually, father admitted to having physically abused T.G., and the court adjudicated the boy CHINS in August 2005. Father did not attend the September 2005 disposition hearing, in which the court accepted DCF's recommendation that T.G. remain with his mother subject to a plan of services. The court also adopted a disposition plan requiring father, among other things, to obtain a drug assessment, follow his conditions of probation, maintain contact with DCF, submit to random urinalysis, engage in anger-management counseling, and take part in visits with his son.

In January 2006, following her divorce from father, T.G.'s mother married a man who posed a substantial risk of harm to T.G. As a result, the family court transferred custody of the boy to DCF and placed him with his maternal grandparents, where he has remained until the present time. In September 2006, father was charged with aggravated domestic assault against T.G.'s mother. He pleaded guilty to the charge in February 2007 and remained incarcerated through the termination hearing, which he attended by transport from the correctional center.

In early 2007, DCF filed petitions to terminate the parental rights of the mother and father. The mother voluntarily relinquished her parental rights in June 2007. At the termination hearing in August 2007, the State offered twenty-six documentary exhibits, including father's criminal history, the case plans and reports concerning T.G., the previous pleadings and court orders, and a psychological examination and educational assessment of T.G. Father, who was

represented by counsel stipulated to admission of the documents. The State also called father as a witness, although, at the court's suggestion, father was initially questioned by his attorney. Following the hearing, the family court applied its findings to the statutory criteria of 33 V.S.A. §5540 and granted the termination petition, concluding, among other things, that father had not seen his son for more than a year, made virtually no progress in achieving the goals set forth in the disposition report, had not played a constructive role in T.G.'s life, and was unlikely to be able to resume his parental duties within a reasonable period of time. Citing father's lack of progress and T.G.'s significant needs, which were being addressed by T.G.'s foster parents and the special school he was attending, the court determined that overwhelming evidence supported terminating father's parental rights.

On appeal, father argues that the termination order must be reversed because the family court allowed DCF to make its case based on documentary exhibits alone, thereby neglecting its obligation to make informed findings regarding T.G.'s best interests and effectively shifting the burden to father to prove that he would be able to parent the boy. We find these arguments unavailing insofar as father's premise that the State presented only documentary evidence is incorrect. The State called father as a witness, and father's own testimony — including that he remained incarcerated at least for the time being, that he had not completed the tasks outlined in the disposition report, and that it would be at least another eighteen months after his release date before he could complete some of the court-ordered requirements — supported the termination order. Cf. In re M.B., 162 Vt. 229, 233 (1994); 33 V.S.A. §5527(a) (holding that hearsay evidence is admissible in termination proceedings but may not be the sole basis for finding parental unfitness). Accordingly, we need not decide whether documentary evidence alone could ever be sufficient to support a termination order. We note, however, that father neither cites case law in support of his argument or explains why the substantial documentary evidence in this case does not support the court's findings and conclusions and its termination order. Upon review of the record, we conclude that clear and convincing evidence, including father's own testimony, demonstrated that father's conduct prevented him from making any progress toward reuniting with his son, that the boy's significant needs were being addressed in foster care, and that father was unlikely to be able to resume parental duties within a reasonable period of time.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice