

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2008-220

OCTOBER TERM, 2008

In re P.D., Juvenile

} APPEALED FROM:  
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}  
} Addison Family Court  
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}  
} DOCKET NO. 18-2-07 Anjv

Trial Judge: Helen M. Toor

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

Father appeals from a family court order terminating his residual parental rights to the minor P.D. He contends that the court erred in failing to ensure the child's adoption by the current foster parent. We affirm.

P.D. was born in March 2007 and immediately taken into custody by the Department for Children and Families (DCF) pursuant to a previously issued emergency detention order based on mother's incarceration for her third DUI. The child was placed with father's adult daughter and her husband where he has since continued to reside. Following a merits hearing in July 2007, the child was adjudicated child in need of care or supervision (CHINS) based on findings detailing mother's chronic substance abuse, DUI convictions, and record showing that her parental rights to three prior children had been terminated. Father was also found to have a history of substance abuse, problems cooperating with DCF, and an inability to recognize mother's substance abuse problem. At a permanency hearing in February 2008, DCF indicated that it had changed the goal from reunification to termination of parental rights. A termination hearing was held over two days in April 2008.

On the morning of the second day of the hearing, the court accepted mother's agreement to voluntarily relinquish her parental rights. Father submitted an agreement to terminate his parental rights and transfer custody to DCF as well, but after questioning by court and counsel the court declined to accept the agreement and ordered the termination hearing to proceed. The court's ruling was based on father's testimony indicating that he believed he was fit and able to parent the child and had agreed to relinquish his rights based on his daughter's wishes and belief that it would expedite her adoption of the child. The court explained to father that termination of his parental rights could not guarantee that DCF would agree to adoption by the daughter,

although everyone agreed that she was the best option and most likely to adopt. Finding father's agreement to be equivocal at best, the court ordered the hearing to proceed.

Following the hearing, the court issued a written decision granting the petition. The court found that there had been a substantial change of circumstances resulting from father's failure to meet the expectations of the case plan, having failed to attend substance abuse counseling and screening or accept parent education. The court also found that while father had a good relationship with the child, there was no likelihood that he could resume parental responsibilities within a reasonable period of time, having completely failed for more than a year to meet the case plan goals for establishing a safe home, addressing substance abuse issues, and showing an understanding of the child's developmental needs. The court also noted that the child was well adjusted to his foster home, where he had lived since birth. Accordingly, the court terminated father's residual parental rights without limitation as to adoption.

On appeal, father has challenged none of the foregoing findings. Rather, he contends that the court failed to choose a disposition in the best interests of the child by failing to ensure that his daughter, the current foster parent, would adopt the child. He asserts that this could have been accomplished by granting the foster parent guardianship over the child or residual parental rights and responsibilities pursuant to 33 V.S.A. § 5528(3)(B).<sup>1</sup> The daughter could then have consented to the adoption, or been granted that authority by the court, under 33 V.S.A. §§ 5502(a)(16) & (a)(6)(c),<sup>2</sup> and the court could have consolidated the adoption action in probate court with the termination proceeding pursuant to 15A V.S.A. § 3-207 (providing that where an action concerning an adoptee is pending in both probate and family courts, either court may order the proceeding for adoption consolidated with the family court proceeding).

Notwithstanding the statutory authority to consolidate, neither father nor any other party raised this purported alternative disposition below, and the claim was therefore waived. See In re C.H., 170 Vt. 603, 604 (2000) (mem.) (we will not reverse a lower court ruling when a party's failure to raise an issue denied the court an opportunity to consider it). The parties framed the issue as whether father wished to relinquish his parental rights and transfer custody to DCF with the understanding that it was DCF's decision to then choose an appropriate adoption placement. Father, who was represented by counsel, ultimately expressed some uncertainty as to whether he could accept this result, and maintained that he was fit and able to resume parental responsibilities. Hence, the court determined to proceed with the termination action. None of the parties requested that the foster parent be appointed guardian or vested with residual parental

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<sup>1</sup> This section provides that, if a child is found to be in need of care or supervision, a court may thereafter "[t]ransfer legal custody, or guardianship over the person, or residual parental rights and responsibilities" to "[a]ny individual operating a foster or group home licensed as required by law to receive such child, or any other individual found by the court to be qualified to receive and care for the child, provided that no charge for such custody shall be made to the state." 33 V.S.A. § 5528(3)(B).

<sup>2</sup> These provisions define "residual parental rights and responsibilities" as including the right to "consent to adoption," 33 V.S.A. § 5502(a)(16), and "guardianship of the person of a minor" as including "the authority to consent to the adoption of the minor if so specifically ordered by the court," id. § 5502(a)(6)(C).

rights and responsibilities, and none raised the option of filing an adoption petition in probate court. See In re A.G., 2004 VT 125, ¶ 25, 178 Vt. 7, 17 (holding that mother waived claim that family court erred in failing to consider legal-guardianship disposition rather than long-term foster care where this option was not raised in the family court). Father appears to claim that the trial court expressly rejected such an approach, but the court merely explained to father at the conclusion of the hearing that “what you want me to do is to say, ‘Okay, I’m going to give him to [the foster mother], and I, legally, I can’t do it simply, and that’s why I’m going to do it the other way, okay?’” The court’s statement, read in context, simply indicates that no issue other than termination was presented to the court, and that this was the issue the court had therefore determined to resolve. As noted, there was no claim or showing by father or any other party that an alternative disposition was available or preferable. Accordingly, we find no basis to disturb the judgment.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice