

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-225

OCTOBER TERM, 2008

In re T.M. and E.S., Juveniles	}	APPEALED FROM:
	}	
	}	Bennington Family Court
	}	
	}	DOCKET NO. 66/67-5-05 Bnjv

Trial Judge: David Suntag

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

Mother appeals from the family court’s order terminating her residual parental rights in daughters T.M. and E.S. She argues that the court erred by: (1) holding her to an improperly high standard of parental fitness; and (2) failing to consider the value of her relationship with the children. We affirm.

Mother gave birth to T.M. in June 1998 and E.S. in June 1999. Mother had serious drug and mental health problems and she was unable to care for the children. The children’s father is a sex offender who raped and sexually abused a four-year-old child, and who admitted to sexually abusing other children. Father was also violent toward mother during the course of their relationship. In May 2001, father’s parents, the Weedens, were appointed as the children’s guardians. While in the Weedens’ care, the children were repeatedly sexually abused by a nine year old cousin, apparently with father’s knowledge. In May 2005, the children were removed from the Weedens’ home and placed in the temporary custody and guardianship of the Department for Children and Families (DCF). They were adjudicated as children in need of care or supervision (CHINS) in July 2005, and continued in DCF custody. In May 2007, DCF moved to terminate both parents’ parental rights, and after a hearing, the court granted its request.

The court made the following findings. At the time the children were placed in DCF custody, they exhibited a profound lack of social skills, to the extent that they were described as “primitive” in their behaviors. The children began to show improvement while in custody, as did mother, and in early February 2007, E.S. was placed with mother. E.S. quickly and severely regressed while in mother’s care and she was removed from mother’s home after less than three months. While staying with mother, E.S. had to be placed in a crisis center twice, could not succeed even minimally in school, could not be controlled at home by mother, and had to be placed in a specialized care facility where she must remain for at least another six to twelve months. Mother did not ensure that E.S. attended school during this period, and E.S. was absent without excuse for thirteen of thirty-nine school days. Although a van and a school aide were dispatched to mother’s home in the morning, mother would frequently fail to open the door.

Other times, she would indicate that E.S. was too ill to go to school. Mother admitted that on at least one occasion, she promised E.S. that she could skip school if she behaved herself. Of the twenty-six days that E.S. did attend school, she was generally not in mother's care, having been placed in a crisis center.

The court found that E.S. was a deeply troubled child who had suffered greatly in her younger childhood, and that it would be difficult for any parent to manage her behavior well. The fact that mother was unable to do so was not necessarily a weakness of mother's. But E.S. clearly needed a level of highly trained and structured care that would tax anyone and that mother could not provide despite the extensive, appropriate, and ongoing services provided by DCF. E.S. was currently residing at the Howard Center, and she continued to behave in sexually and physically inappropriate ways. The court found that due to the constellation of E.S.'s behaviors, her risk of victimization was high, and even in the intensive, highly supervised program at the Howard Center, she was making slow progress. For the foreseeable future, the court found that E.S. would need care providers who were unconditionally supportive, nurturing and highly skilled who could create and maintain a very stable, safe environment with clearly set and enforced boundaries. They needed the capacity to deescalate E.S.'s physically and emotionally out-of-control behaviors. E.S. would need that type of care provider for a number of years. Mother did not have these skills.

As to T.M., the court found that mother had no visits with her throughout most of 2007. T.M. had never indicated any interest in living with mother, and had in fact consistently opposed it. The court found that T.M. was doing well in her foster placement, where she had been since July 2007, and she wanted to remain there. The foster family provided her with consistency in her living situation, schooling, and other routines, which T.M. needed. The court found it clear that T.M. was in need of a permanent decision on her future living situation now.

Based on these and numerous additional findings, the court concluded that mother's ability to parent the children safely and appropriately had stagnated, if not deteriorated. Regardless of improvements mother may have made in her own life, the court explained, her ability to safely parent a child with such enormous needs as E.S. had not improved and, at a minimum, given E.S.'s current and future needs, it had stagnated for almost three years. Mother's attempt to reunify with E.S. resulted, with or without fault, in a nightmarish regression for a deeply troubled young girl to such a degree that E.S. could not even be expected to transition out of a highly structured institutional placement for another six to twelve months. Even then, E.S. would still need highly trained therapeutic foster care for an extended period of time beyond that, which mother could not provide. The court found no improvement in mother's ability to resume any parental relationship with T.M., noting that mother had not even had contact with T.M. for over one year. The court thus ordered the termination of parents' residual rights. Mother appealed.

Mother first argues that the family court set an improper, unrealistic standard for parental fitness. She asserts that the family court required her to have the skill to care for her severely emotionally disturbed child at home, despite evidence that even regular foster parents did not possess this level of skill.

Mother misstates the record and the standard by which the family court must evaluate a petition to terminate a parent's rights. When the termination of parental rights is sought, the family court must conduct a two-step analysis. In re B.W., 162 Vt. 287, 291 (1994); 33 V.S.A. § 5532(a). The court must first find that there has been a substantial change in material circumstances; second, the court must find that termination of parental rights is in the child's best interests. In re B.W., 162 Vt. at 291. A substantial change in material circumstances is most often found when a parent's ability to care for a child has either stagnated or deteriorated with the passage of time. Id.

If the court finds that there has been a substantial change in material circumstances, it must then assess whether termination of parental rights is in a child's best interests. In doing so, the court considers four statutory factors, 33 V.S.A. § 5540, the most important of which is the likelihood that the natural parent will be able to resume his or her parental duties within a reasonable period of time. In re B.M., 165 Vt. 331, 336 (1996). As long as the court applied the proper standard, we will not disturb its findings on appeal unless they are clearly erroneous; we will affirm its conclusions if they are supported by the findings. In re G.S., 153 Vt. 651, 652 (1990) (mem.).

The court applied the appropriate standard in this case, and its findings and conclusions are supported by the record. Contrary to mother's assertion, the court did not hold her to an improperly high parenting standard. Rather, it properly evaluated whether mother had stagnated in her ability to parent E.S. and whether she would be able to parent E.S. within a reasonable period of time. As set forth above, it concluded that, despite the provision of extensive services, mother remained unable to parent E.S. and she would not be able to parent E.S. in the foreseeable future. See In re B.W., 162 Vt. at 291 ("Stagnation may be shown by the passage of time with no improvement in parental capacity to care properly for the child." (citation omitted)). Mother lacked the parenting skills that E.S. desperately needed. The court's decision was guided, as it must be, by E.S.'s best interests, and the court did not err in concluding that termination of mother's rights served these interests here. See In re B.M., 165 Vt. at 199 (explaining that "the polestar in disposition proceedings is the best interests of the child, considering the four criteria enumerated in 33 V.S.A. § 5540"). Finally, we note that there is no support for mother's assertion that the family court must find that a parent is preventing or interrupting a needed out-of-home placement before it can terminate a parent's rights. The appropriate standard for termination is stated above.

Mother next asserts that the court failed to consider the value of her relationship with the children. According to mother, the court must decide if the children's need for adoption outweighed the benefits of parent-child contact, or whether the permanent severance of the parent-child relationship was in the children's best interests. She maintains that not only did the court fail to focus on that issue here, but several of its material findings regarding the parent-child relationship "are unsupported or lacking."

Again, mother misstates the factors that the family court must consider in reaching its conclusion. While the court looks to the children's interaction with their natural parents, 33 V.S.A. § 5540(1), and considers whether the parent has played and continues to play a constructive role in the children's lives, id. § 5540(4), it is not required to weigh the benefits of

continued parent-child contact against the child's need for adoption. As previously discussed, the family court applied the appropriate test here, and its conclusion that termination of mother's rights was in the child's best interests is supported by the record.

Mother's challenges to the court's factual findings are equally without merit. According to mother, although the court found that all of the statutory factors weighed in favor of termination, it did not specifically analyze the first and fourth factors regarding her relationship with the children. She maintains that the court's statement that "T.M. has no relationship with her mother" is unsupported by the record. Mother asserts that T.M. does not understand the full ramifications of a TPR proceeding and that T.M. clearly has "unresolved issues" with mother. Mother also contends that the court failed to examine her relationship with E.S. beyond considering whether she would be able to parent E.S. within a reasonable period of time. According to mother, there is evidence that E.S. enjoys regular phone contact with mother and that E.S. would be sad and disappointed if mother's rights were terminated.

It is evident from the court's opinion that it considered the children's relationship with mother, as well as whether mother had played a constructive role in their lives. The court's finding that mother had no relationship with T.M. is amply supported by the record. As found by the court, mother had not seen T.M. for over a year, and certainly, it necessarily follows that mother was not playing a constructive role in T.M.'s life. As to E.S., the court described in detail what occurred when E.S. was placed in mother's care, which is not only reflective of mother's ability to parent but also of mother's relationship with E.S. and mother's ability to play a constructive role in E.S.'s life. Any evidence that E.S. enjoyed phone contact with mother could not outweigh the overwhelming evidence that mother lacked the necessary skills to parent E.S. within a reasonable period of time. We find no basis to disturb the court's opinion.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice