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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-285

JANUARY TERM, 2009

In re C.G., Juvenile	}	APPEALED FROM:
	}	
	}	Washington Family Court
	}	
	}	DOCKET NO. 87-8-06 Wnjv
		Trial Judge: Thomas J. Devine

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

Father appeals from the family court's permanency findings and order. He argues that the court's findings and its order are not based upon credible evidence. We affirm.

C.G. was born to parents in July 2000. Mother was awarded custody by the family court in October, 2002. G.G. was adjudicated as a child in need of care or supervision in September 2006, based on mother's inability to provide a stable environment for the child. C.G. was returned to mother's care in May 2007, although the Department for Children and Families retained legal custody. At that time, father was limited to supervised parent-child contact until he completed recommended services and an evaluation due to the child's description, never adjudicated, of possibly abusive conduct by father. In November 2007, DCF sought a protective order based on father's threatening conduct with a DCF case worker. The court granted DCF's request and entered a protective order prohibiting father's contact with the caseworker and with C.G. Following a July 2008 permanency plan hearing, the court made findings on the record and issued an order continuing placement of C.G. with mother subject to a protective supervision order.

In reaching its conclusion, the court found that mother was doing a very fine job of caring for C.G. and that she had overcome a number of challenges. The court acknowledged that father had expressed concerns at the hearing about mother's parenting skills. It found that while father's beliefs were passionately held, the specific factual allegations that he raised did not dictate that C.G. should be removed from mother's care. Father referred, for example, to an alleged concern expressed by the child's doctor about mother's parenting three years earlier, which the court found minimally relevant. The court also found this concern outweighed by undisputed evidence that C.G. had been seeing other doctors on a regular basis since that date, and none of those doctors had expressed concerns about mother's parenting. The court also addressed father's assertion that mother may have been inattentive in supervising C.G. because C.G. was allegedly injured in a scuffle with another child. The court found that C.G. did not appear to have been injured in any such incident and there was no clear evidence that the event was caused by some failure on mother's part.

The court noted that there remained serious concerns about father's abilities to interact with C.G. It explained that father had not yet engaged in a sex-offender evaluation, despite an earlier family court

order requiring supervised contact until this evaluation was completed. Indeed, by his own testimony, father remained in denial that there had ever been any inappropriate sexual conduct with C.G. Based on these and other findings, the court continued C.G. in mother's care subject to a protective supervision order. Father appealed.

Father suggests that the family court erred by failing to employ a clear-and-convincing evidence standard in making its findings. Based on this contention, father complains that the court failed to take sworn evidence and it erroneously based its findings in part on oral statements that had not been adjudicated as trustworthy and reliable. He also argues that the court should not have relied on statements made by C.G.'s attorney, who summarized for the court a letter written by the child's guardian ad litem.

We agree with the State that father waived these arguments by failing to raise them below. The record shows that the family court conducted the hearing in an informal way, hearing from parents, parents' attorneys, the attorney for C.G., as well as the DCF case worker. The court also reviewed the case plan submitted by DCF. In reaching its conclusion, the court considered father's concerns about mother's parenting but found them unpersuasive. Father, who was represented by counsel, raised no objection to the way in which the hearing was conducted. He neither sought to introduce sworn testimony nor objected to the introduction of non-sworn testimony. He did not complain when C.G.'s attorney summarized a letter that the guardian ad litem had written to the court, or object when the court announced its findings on the record at the close of the hearing. As we have often stated, this Court "will not consider any matter raised for the first time on appellate review." In re C.H., 170 Vt. 603, 604 (2000). We therefore do not address father's claims of error.

We note, however, that father's argument appears to be premised on a misreading of In re D.G., 2006 VT 60, 180 Vt. 577. We did not hold in that case that the family court must apply a clear-and-convincing evidence standard in all permanency cases. That case involved the creation of a permanent guardianship, which by statute requires the family court to base its findings on clear and convincing evidence. See 14 V.S.A. § 2664(a). The instant case does not involve creating a permanent guardianship and the language of § 2664(a) is not applicable here. As father acknowledges, 33 V.S.A. § 5531(c) provides that at a permanency hearing, "all evidence helpful in determining the questions presented, including oral and written reports, may be admitted and relied upon to the extent of its probative value, even though not competent in a hearing on a petition [for termination of parental rights]." We find no error.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice