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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-314

JANUARY TERM, 2009

In re A.K., Juvenile	}	APPEALED FROM:
	}	
	}	
	}	Chittenden Family Court
	}	
	}	
	}	DOCKET NO. F161-4-07 CnJv
		Trial Judge: Mark J. Keller

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

Father appeals from a family court order terminating his parental rights to the minor A.K. He contends the evidence and findings fail to support the court's conclusions that he has not played a constructive role in the child's life and could not resume parental responsibilities with a reasonable period of time. We affirm.

The material facts may be summarized as follows. A.K. was born in March 2007. Mother was eighteen years old at the time and had been in DCF custody until the previous October. Father was on furlough from a domestic abuse conviction involving the mother of two of his other children who were in DCF custody. The parents were living with mother's aunt. Based on mother's history of alcohol abuse and mental health and behavioral problems, DCF undertook a family assessment and shortly thereafter, on April 5, 2007, filed an emergency petition. Following a hearing, the court left A.K. in mother's care but required her to undertake parenting classes and substance-abuse counseling. During the same period, based on his history of domestic violence, the Department of Corrections required father to agree not to contact mother. Father refused to accede to this condition, however, and was returned to prison to complete his sentence in mid-April 2007, three weeks after A.K. was born.

In July 2007, DCF took custody of A.K., who was then three and a half months old, when it determined that mother had left the child with inappropriate caregivers and could not be reached. A.K. was placed with a foster family where he has remained to this date. In August 2007, the court approved a case plan calling for reunification with mother in six months or termination if she failed to engage in services. Father was incarcerated out of state at the time and was not considered a placement option. In early March 2008, father was discharged from prison. Shortly thereafter, DCF filed petitions to terminate parental rights. Father requested and was granted visitation with the child in mid-March 2008, but failed to attend the first meeting and did not see the child until late April 2008, a little more than one year since their last meeting.

Father attended seven one-hour supervised visits with the child until the termination hearing in July 2008. The DCF supervisor stated that father generally behaved appropriately during the visits but that the child exhibited no excitement on seeing him.

Father was incarcerated at the time of the termination hearing in July, this time for want of bail on an aggravated assault charge from an incident in June 2008. As father testified, the incident arose when he received a number of text messages from mother and her new boyfriend stating that father was not as big or as tough as the new boyfriend. After a telephone conversation with the new boyfriend, who father knew from both men's time in prison, father decided to go, with his son and nephew, both nineteen years old, to confront the boyfriend, after which a fight ensued. Father denied wielding a bat, upon which the felony assault was charged, and the court assumed the father's version of events for consideration in the termination proceeding.

On the second day of the two-day hearing, mother voluntarily relinquished her parental rights. Following the hearing, the court issued a written decision containing findings and conclusions as to father. Applying the requisite criteria under 33 V.S.A. § 5540 (repealed eff. January 1, 2009), the court determined that termination was in the best interest of the child, concluding that father was not currently able to parent A.K. nor would he be able to do within the reasonably foreseeable future; that father had no significant relationship with the child and had played no constructive role in his life; that A.K. had adjusted well to his foster family, and that his critical need for permanence and stability militated in favor of termination. Accordingly, the court granted the petition and transferred custody to DCF without limitation as to adoption. This appeal followed.

Father contends the court's conclusion that he could not assume parental responsibilities within a reasonable period of time was based on unsupported and inadequate findings. The claim is unpersuasive. The court's conclusion was based on its findings, supported in the record, that father had almost no involvement in A.K.'s life, having chosen to return to prison rather than accede to a non-contact condition regarding mother when the child was less than one month old. Father thus had virtually no contact with the child until his release one year later, and over the succeeding months he had approximately seven hours of supervised visits before he was re-incarcerated on the assault charge. During this time, as the court found, he refused to complete a domestic violence program, despite a history of assaultive behavior, asserting at the hearing that he considered it to be a "waste of [his] time." In response to a direct question from his attorney as to whether he could handle parental responsibilities, father himself acknowledged that his goal was really to spend time with A.K. "until I get to know him." As the court here recognized, the question whether parental responsibilities may be resumed within a reasonable time must be viewed from the perspective of the child's needs, In re B.M., 165 Vt. 331, 337 (1996), and the evidence of father's virtual absence from the child's life due to repeated incarcerations, his demonstrated inability or unwillingness to address domestic violence issues, and A.K.'s critical need for permanence and stability in his life amply support the conclusion that a reasonable time for reunification had already passed.

Father's objections to this conclusion have no merit. He faults the court's finding that father was "vague" as to his parental role during the three weeks between A.K.'s birth and father's incarceration, arguing that he was not asked about his role and it was not his burden to demonstrate his role. Whatever occurred during these three weeks, however, has little

significance in view of father's near total absence from the child's life over the next sixteen months. Father also faults the absence of findings as to how he performed during the seven hours of supervised visits he spent with the child between incarcerations. The court, in fact, noted that father had played with the child during the visits, but also found that the child had not responded with any excitement to his presence, and more significantly that the visits were insufficient to establish any meaningful relationship. Lastly in this regard, father disputes the court's finding that his decision to confront mother's boyfriend in the company of his nineteen-year-old relatives reflected poorly on his "parenting judgment." Although father is correct that the nineteen-year-olds were not minors, the court's point was that, despite the impending termination hearing, the forty-nine-year-old father elected to engage in an entirely unnecessary confrontation and physical risk over a written insult, and enlisted the company of two adolescents in this foolish exercise. The father's choice was patently unsound, immature, and properly taken into account.

As to the court's conclusion that father had played no constructive role in A.K.'s life, father challenges the court's finding that father had "voluntarily" ended any relationship when he chose to return to jail to complete his sentence shortly after the child's birth. Father cites his own testimony that he "thought maybe I could still get by on father-child visits . . . while I was incarcerated." Father's hope in the possibility of occasional prison visits does not undermine the court's finding that father's choice ended any meaningful contact and relationship with the infant for the next year, and we have repeatedly held parents responsible for the lack of parent-child contact that results from their incarceration. In re S.W., 2008 VT 38, ¶ 13, ___ Vt. ___; In re K.F., 2004 VT 40, ¶ 12, 176 Vt. 636 (mem.); In re A.D.T., 174 Vt. 369, 376 (2002). Nor, similarly, were the limited hours of supervised contact that he was able to spend with the child attributable to factors "beyond his control." In re K.F., 2004 VT, ¶ 11. Accordingly, we find no basis to disturb the judgment.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice