

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

VERMONT SUPREME COURT  
FILED IN CLERK'S OFFICE

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2008-394

FEB 4 2009

FEBRUARY TERM, 2009

In re S.T., B.T. and S.T., Juveniles

} APPEALED FROM:  
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}  
} Franklin Family Court  
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}  
} DOCKET NO. 55/56/57-3-07 FrJv

Trial Judge: Howard E.  
Van Benthuysen

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

Father appeals the family court's disposition order transferring custody of the parents' three children to the Department for Children and Families (DCF), rather than to mother or the children's paternal grandmother. We affirm.

Father and mother have three children. The oldest, B.T., was born in July 1997. He is severely handicapped and wheelchair bound, with a cognitive functioning age of about a nine-month-old child. His condition is expected to deteriorate over time. Sk.T. was born in May 2000. He has significant behavioral issues that cause him to act out in a combative and defiant manner. At school, he has a one-on-one aid at all times to help him. Sa.T. was born in January 2007.

Increasing levels of services have been provided to the family since 2002. Both parents have longstanding substance-abuse problems. Mother has been treated for mental-health issues for many years and has been hospitalized numerous times. Father is currently incarcerated. As the result of the parents' drug problems and neglect of the children, as well as father's abusive behavior toward mother, the family court found the children to be in need of care and supervision (CHINS) in April 2007 and awarded temporary legal custody to DCF. Disposition hearings took place on six different days between February 2008 and August 2008. Sa.T. was initially placed with mother but was brought into foster care in November 2007 following mother's drug relapse. Father appealed an August 2007 disposition order, and, based on the parties' stipulation, this Court remanded the matter for further factfinding.

Following the remand, in September 2008, the family court filed an initial disposition order transferring custody of the children to DCF and calling for a goal of reunification with

mother. The court determined that father was not a placement option because of his incarceration, that mother had made incremental progress toward reunification but was not yet ready to assume responsibility for the children, and that the paternal grandmother was not an appropriate placement under the circumstances. Father appeals that determination, arguing that the family court failed to make sufficient findings to justify (1) not returning custody of the children, particularly Sa.T., to mother, and (2) not ordering a kinship placement for any of the children with the paternal grandmother. Mother did not file a notice of appeal, but, according to father, mother authorized him to state that she joins in his first argument. The children's attorney has indicated that the children oppose father's position and ask this Court to affirm the family court's order.

Father first argues that because mother substantially met DCF's case plan requirements, the court erred by failing to place the children, particularly Sa.T., with her.\* According to father, in attempting to justify its order, the court unreasonably minimized mother's progress and failed to consider the current circumstances. In father's view, the court's findings fail to demonstrate that mother is an unfit parent unable to assume custody of her children. Upon review of the record, we find no abuse of discretion in the family court's decision not to return custody of any of the children to mother. See In re L.T., 149 Vt. 473, 476 (1988) ("Absent an abuse of discretion[,] the findings and disposition order of the juvenile court must stand."). Contrary to father's assertion, the court acknowledged mother's incremental progress toward reunification and noted several areas in which mother had met case plan goals and cooperated with service providers. The court concluded, however, that although mother had made some progress in addressing her substance abuse and other problems, it was too soon to return custody of the children, who were in dire need of a safe and stable environment. The court noted that mother continued to struggle with substance abuse, as indicated by a relapse as recent as the spring of 2008. In the court's view, given her longstanding drug problems, the amount of time she had been drug free was relatively short. The court also cited questions surrounding the children's reactions to visits with mother, mother's unstable housing situation, her ongoing problems with anger management, and her continuing lack of insight as to how her impulsive behavior has had a negative impact on the children and has led to DCF custody.

All of these findings and conclusions, which are supported by the record, in turn support the family court's decision to wait another six months before assuring itself that mother is ready to assume parental responsibility for her children, who require a safe and nurturing environment. See In re J.D., 165 Vt. 440, 442 (1996) (stating that, under 33 V.S.A. § 5528(a), family court must craft disposition order most suited to protection and welfare of children). Father argues that, in particular, mother should be given custody of Sa.T., but fails to explain why. We recognize that Sa.T. does not have the special needs of her brothers, but the same findings and conclusions that justify continued DCF custody with them also justify continuing Sa.T. in DCF custody.

Father also argues that the family court abused its discretion by not placing the children in the custody of the paternal grandmother. Again, the record does not support this argument,

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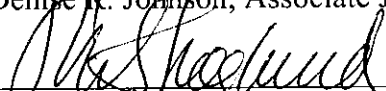
\* Ironically, the family court found that, from the outset, father objected to placement of the children with mother, but instead wanted the court to place the children with the paternal grandmother.

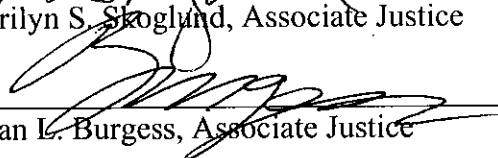
which asks us to reweigh the facts. The family court recognized its statutory authority to award custody of the children to the children's grandmother, and in fact carefully considered that option. The court found, however, that although grandmother plainly loves the children, and had done much on their behalf over the years, she had recently shortened visits with them and expressed reservations about caring for them, given their significant needs. The court considered that (1) grandmother was under significant pressure from father to assume custody; (2) mother did not support custody of the children with grandmother; (3) grandmother often sided with her son against mother; (4) grandmother had not had any contact with the children's school; and (5) there were reliable reports of the children being upset following visits with grandmother. The court also expressed concern that another custody move for the children at this juncture would have a negative impact on their fragile emotional states. These findings and conclusions are supported by the record.

Affirmed.

BY THE COURT:

  
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Denise R. Johnson, Associate Justice

  
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Marilyn S. Skoglund, Associate Justice

  
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Brian L. Burgess, Associate Justice