

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

ENTRY ORDER

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2009-443

APR 1 2010

MARCH TERM, 2010

In re J.B. and M.B., Juveniles

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APPEALED FROM:

Grand Isle Family Court

DOCKET NOS. 2-2-08 & 3-2-08 Gijv

Trial Judge: Alden T. Bryan

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

Father appeals the family court's order terminating his parental rights with respect to his children, J.B. and M.B. We affirm.

The material facts are undisputed. Father and mother, who voluntarily relinquished her parental rights shortly before the termination hearing, married in 1993. At the time, a third child, who is currently in an adoptive home and not the subject of these proceedings, was an infant. The Department for Children and Families (DCF) became involved with the family shortly thereafter because of reports of abuse and neglect. J.B. was born in November 1997 and M.B. was born in November 2000.

In August 2000, DCF investigated a report concerning the family and substantiated the parents for risk of harm to the children due to the deplorable conditions of their home and mother's unstable mental condition. The investigating social worker found the family living in squalor, with garbage strewn around the house, broken glass on the floor, and numerous live and dead rodents in the house. Conditions temporarily improved with DCF providing services, but in November 2003, within six months of DCF ending its involvement, DCF received another report regarding the unsanitary and unsafe conditions at the home. Upon investigation, DCF found garbage everywhere, decaying food on the floors and counters, rodent excrement on the floors, and urine-soaked mattresses on the children's beds. Mother slept much of the day, requiring the oldest child to care for the other two, and father spent nearly all of his time away from home at work, including volunteer work at the local fire station in the evenings. The DCF social worker referred the family to a service provider, who worked with the family for approximately five hundred hours during the next four and one-half years to help them address the issues that had led to DCF involvement. Notwithstanding these services, by early 2006, conditions at the home had deteriorated so badly that the service provider expressed concerns to DCF about the safety of the children.

In June 2006, the family moved into a new trailer found with the help of service providers. In time, that home too fell into a deplorable state. DCF reopened a protective services case and the assigned social worker informed the parents of what they needed to do to raise their children without DCF involvement. Father was expressly informed that he had to take a more active involvement in the care of the children to assure their safety. Despite continued services, conditions in the home did not change, and in February 2008, DCF filed a petition alleging that the children were in need of care or supervision (CHINS). Instead of attending the noticed CHINS hearing, the parents went on vacation to Florida. Following the hearing, the family adjudicated the children CHINS and transferred custody to DCF. For approximately one year, the children remained in DCF custody with a goal of reunification with their parents. During that time, the DCF social worker spoke to father about his need for therapy and parenting education and referred the parents to an intensive family-based services program. A parent educator worked with the family in their home twice a week for twenty weeks. The parent educator attempted to help the parents: (1) gain insight into the conditions that caused the removal of the children from their home; (2) learn and apply basic information related to the children's cognitive, social, and physical needs; and (3) implement routine and structure in their home.

The services failed to bring about the necessary changes, however, and in February 2009, DCF filed a termination petition based on a lack of progress by the parents in achieving the goals set out for them. In July 2009, mother voluntarily relinquished her parental rights and, following a hearing, the family court terminated father's parental rights. Father appeals the family court's decision, arguing that the court failed: (1) to make statutorily required findings and conclusions regarding his relationship with his children; and (2) to exclude a letter sent by the children's guardian ad litem (GAL) to the court without the consent of the parties one month after the termination hearing.

Regarding father's first argument, § 5114(a) of Title 33 requires the family court, in reviewing a request for termination of parental rights, to consider the best interests of the children in accordance with four specified criteria, including (1) the children's relationship with the parents and any other persons who may affect their best interests, and (2) the degree to which the parent has played a constructive role in the children's lives and demonstrated emotional support and affection for them. According to father, while the court thoroughly addressed in its findings and conclusions the most important best-interests criterion—whether he was capable of resuming parental duties within a reasonable period of time—it failed to address the criteria noted above concerning his past and present relationship with the children, even though several witnesses testified that he loved his children. We find this argument unavailing. The court cited, and thus was mindful of, each of the four statutory criteria. While the court did not use the specific language of the criteria noted by father, several of its findings and conclusions related to those criteria. The court found that over a period of nine years father stayed away from home to avoid the turmoil there even though service providers had repeatedly informed him that he needed to be there for his children to address the deplorable conditions in the home and protect them. The court's findings also leave little doubt that father's absence from the home and minimal interaction with the children prevented him from having any constructive role in their lives. Notwithstanding father's feelings of affection for his children, the court's findings that the children had been traumatized by the violence and deplorable conditions of their home over the

course of nine years during which father had failed to act to protect them addressed the relevant criteria and supported the court's termination decision.

Father also argues that the family court's decision must be reversed because the court failed to exclude a letter sent by the children's GAL to the court one month after the termination hearing but before the court issued its decision. We conclude that, to the extent there was error, it does not required reversal of the court's decision. The GAL in this case was not asked for, and did not offer, an opinion during the termination hearing. Approximately one month after the hearing and two months before the family court issued its decision, the GAL sent the court a letter stating her belief that although father loved his children he had neither the ability nor judgment to parent them, particularly in light of their special needs. After noting her interactions with all of the principals involved, the GAL indicated several reasons for her opinion, including that M.B.'s foster mother (M.B.'s paternal step-grandmother) had told her that father had a limited ability to help the children with basic life needs, that she and her husband were no longer committed to providing M.B. with a permanent home, and that she would not necessarily be willing to help father care for the children if he were to regain custody of them. The GAL indicated that her primary concern was that the children be placed in an adoptive home together. The court sent copies of the letter to the parties. Father objected to the court's use or consideration of the letter. The court neither ruled on father's objection nor mentioned the letter in its decision.

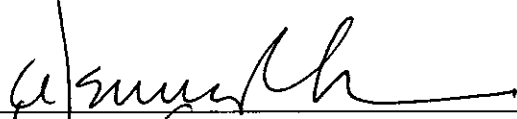
A GAL's role is to "act as an independent parental advisor and advocate whose goal shall be to safeguard the ward's best interests and rights." V.R.F.P. 6(e)(1). A GAL may state his or her opinion and the reasons for the opinion in proceedings other than contested merits hearings, as long as the reasons are based on evidence in the record. *Id.* § 6(e)(3). The rule is intended to ensure that GALs do not assume the role of investigators, which would increase the likelihood of them being called as witnesses and could potentially undermine their ability to protect their wards' interests. See Reporter's Notes, V.R.F.P. 6. If a GAL prepares a written report, in most cases the report "shall be submitted to the court only by agreement of the parties." V.R.F.P. 6(e)(5).

Here, father argues that the GAL's letter was, in effect, a written report based on her investigation of facts not presented as evidence in the termination hearing. According to father, because he objected to the letter, the court erred by not explicitly excluding it from its consideration. Father asserts that the letter was "apparently" considered by the court and that it cannot be deemed harmless because the comments that the GAL attributed to B.M.'s foster mother were inconsistent with the testimony of the foster mother and other family members at the termination hearing. Although the letter should have been excluded, we conclude that any error was harmless in this case. Notwithstanding father's comment to the contrary, it is not apparent from the family court's decision that the court relied upon the letter. Cf. Gilbert v. Gilbert, 163 Vt. 549, 556-58 (1995) (concluding that "[a] careful review of the record demonstrates that the guardian's report significantly influenced the presentation of evidence"). As noted, the court made no mention of the letter in its decision. Moreover, even if the court considered the letter, the statements that the GAL attributed to M.B.'s foster mother were largely consistent with the evidence presented at trial. Regarding the first statement that the GAL attributed to the foster mother, the evidence overwhelmingly demonstrated that father had a limited ability to deal with his children's needs. Regarding the other statements, the foster

mother hedged in her testimony at the termination hearing about whether she and her husband would be willing to provide a permanent home for M.B., stating that they would decide after the termination hearing. In any case, she indicated that she and other family members would be willing to help father out with caring for the children if need be. But a DCF social worker testified that the foster mother and her husband had changed their minds about providing a permanent home for M.B. or helping care for him and his sister. The family court plainly stated in its decision that it was terminating father's parental rights because he was nowhere near capable of caring for the children, who were in critical need of a safe and secure environment in which their significant special needs could be addressed. The GAL's letter had little relevance to these conclusions and was, for the most part, consistent with the evidence at the termination hearing.

Affirmed.

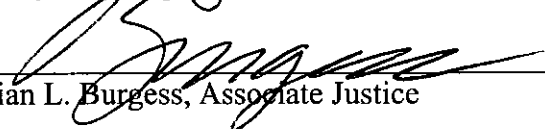
BY THE COURT:



Denise R. Johnson, Associate Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice