

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. 2010-010

MAY 21 2010

MAY TERM, 2010

In re S.M. and A.M., Juveniles

} APPEALED FROM:
}
} Orange Family Court
}
} DOCKET NO. 16/17-3-09 Oejv

Trial Judge: Thomas J. Devine

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

Mother appeals from the family court's order denying her request to resume parental contact with her two minor daughters who are in the custody of the Department for Children and Families (DCF). We affirm.

S.M. was born in December 2003, and A.M. was born in May 2006. In March 2007, a guardianship was created for the children because of parental neglect, including severe malnutrition.* Parents' home was unsanitary and unsafe, and Mitchell was physically violent to mother. Mother fled the home at some point and left the children in Mitchell's care. S.M. later disclosed being repeatedly sexually abused by Mitchell, and A.M. spoke about being fed cat food and drinking cat water. Visitation with mother was suspended in May 2008 due to the children's severe negative reaction following such visits. In March 2009, the children came into DCF custody, and mother stipulated that they were children in need of care or supervision (CHINS) in June 2009.

Just prior to the October 2009 disposition hearing, DCF moved to terminate parental rights. At the hearing, mother made an oral motion to re-establish visitation with the children. Following several days of contested evidentiary hearings, the court denied mother's request. Based on extensive findings—none of which mother challenges on appeal—the court concluded that a resumption of parental contact would not be in the children's best interest at this time. The court explained that mother had a handful of visits with the children after the guardianship was established, and she ceased all contact with the children for five months, beginning in November 2007. Mother again expressed interest in seeing the children in March 2008, and weekly visitation occurred for a two-month period. The children's behavior severely regressed after these visits, including the resumption of sexualized behavior, incontinence, and severe temper tantrums. The court credited testimony by the children's therapists that there was a substantial risk that the children would resume these regressive behaviors if contact was renewed. The

* The children's father is apparently mother's former partner, J. Mitchell, but his parentage has not yet been verified. Mitchell did not participate in these proceedings.

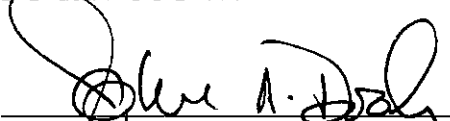
therapists testified, and the court found, that the children were exceptionally vulnerable given their ages, developmental maturity, and extensive trauma history.

A licensed psychologist, Dr. Patricia Stone, conducted a family forensic evaluation of mother, the children, and the children's foster parents. She was adamantly opposed to a resumption of face-to-face contact with mother. She too indicated that resumed contact carried a substantial risk that the children would regress. Given the children's ages and development, she believed the risks of psychological harm from this regression far outweighed any potential benefit to the children from seeing mother. She stated that the children's therapists could try to make "tiny connections" with mother by showing the children photos of mother and, if that went well, introducing letters from mother. Dr. Stone acknowledged, however, that the trauma in this case could be so severe that contact might never be able to occur without significant emotional harm to the children. In its order, the court encouraged DCF to share with the children's therapists Dr. Stone's recommendation that efforts be made to build maternal connections in the context of the ongoing therapy. Mother appealed from the court's order.

Mother argues on appeal that the court should have ordered DCF to follow Dr. Stone's recommendation about building maternal connections, rather than merely suggesting that it do so. Mother waived this argument by failing to raise it below. Sundstrom v. Sundstrom, 2004 VT 106, ¶ 21, 177 Vt. 577 (mem.) (to preserve an issue for appeal, party must "present the issue with specificity and clarity in a manner which gives the trial court a fair opportunity to rule on it" (quotation omitted)). Even if she had preserved this argument, however, we would find it without merit. The question before the court was whether mother's request to resume visitation should be granted. Under 33 V.S.A. § 5319(a), "[t]he court shall order parent-child contact unless the court finds that it is necessary to deny parent-child contact because the protection of the physical safety or emotional well-being of the child so requires." See also In re T.S., 153 Vt. 533, 538 (1990) (recognizing that visitation is a residual parental right, but that right is not absolute and may be denied for good cause). The court here concluded that the children's best interests required that they have no contact with mother. That conclusion is amply supported by the court's findings, which are in turn supported by the record. In reaching its conclusion, the court acted well within its discretion in leaving decisions about specific therapeutic approaches to the judgment of trained therapists and to the children's legal custodian. We find no error.

Affirmed.

BY THE COURT:



John A. Dooley, Associate Justice



Denise R. Johnson, Associate Justice



Marilyn S. Skoglund, Associate Justice