

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-019

JUNE TERM, 2010

In re T.A., Juvenile

} APPEALED FROM:
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}
} Chittenden Family Court
}
}
} DOCKET NO. 128-4-09 Cnjv

Trial Judge: James R. Crucitti

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

Mother appeals the termination of her parental rights with respect to her daughter, T.A. We affirm.

T.A. was born in January 2006. Mother's untreated substance abuse and mental health problems had led to the 2005 termination of her parental rights with respect to her first child, born two years earlier. In April 2009, the family court transferred custody of T.A., who at the time was being cared for by her father, to the Department for Children and Families (DCF). Mother's unaddressed substance abuse and mental health problems continued, and she was chronically homeless and unemployed. Because she was unable to overcome these problems and was unwilling to participate in treatment, DCF recommended termination of her parental rights. Following the filing of the termination petition, mother grudgingly participated in some services to satisfy DCF and the court, but did not gain significant insight into her problems. T.A.'s father relinquished his parental rights voluntarily in July 2009. At the same time, the court ordered a competency evaluation for mother after her then-attorney told the court that she and mother were unable to communicate on issues in the case. A competency evaluation was conducted in August 2009, and following a competency hearing, the court concluded that although mother had a rational and factual understanding of the termination proceedings, she was unable "to consult with and work with her attorney with a reasonable degree of rational understanding of the allegations in this case and she is not able to communicate a rational response to the allegations." Accordingly, the court declared mother to be incompetent and appointed a guardian ad litem (GAL) for her.

At a status conference held in November 2009, mother's attorney reported that he and the GAL had discussed the case with mother and were unsure whether the termination petition would be opposed. Mother, however, declared her desire to oppose the petition and her willingness to engage in whatever services were required for her to reunite with T.A. The termination hearing was held in December 2009. At the outset of the hearing, the GAL indicated that after reviewing documentation that mother had prepared to defend against the petition, he concluded that it was in her best interests to voluntarily relinquish her rights to T.A. The court expressed concern that the GAL's views were not in line with mother's, and then took a recess to consider the matter. Returning to the courtroom, the court ruled that the GAL's position must be

to protect mother's parental rights if that's what she desired and that he could not consent to her relinquishment of those rights. Mother's attorney indicated that he was prepared and willing to proceed with the termination hearing if his client agreed. Mother stated that she was willing to proceed with her current GAL and attorney. The hearing then took place, with the State presenting three witnesses and mother presenting two, including herself. Two weeks after the conclusion of the hearing, the family court entered an order terminating her parental rights.

On appeal, mother first argues that the family court erred by finding her incompetent and appointing a GAL for her. According to mother, neither of the bases for a finding of incompetence cited in In re C.L., 143 Vt. 554, 558 (1983)—hospitalization for a mental condition or inability to understand the legal proceedings—were present in this case. We find no error in the court's competency decision. Courts have a duty to appoint a GAL for incompetent litigants when fundamental rights are involved, and retaining custody of a child is a fundamental right. Guardianship of H.L., 143 Vt. 62, 65 (1983). Here, as in H.L., mother's own attorney notified the court of the breakdown in communication with mother. Based on that information and its own observations of mother's rambling statements, the court properly ordered a competency evaluation. The psychiatrist who performed the evaluation testified at the competency hearing that, although mother had a factual understanding of the court process and the seriousness of the case, she would not be able to communicate rationally with her attorney in a manner that protected her legal rights. The court agreed, and we find no basis to disturb its judgment. C.L. is inapposite. There, the trial court found mother to be incompetent based on its own unembellished finding that she had an unspecified "thought disorder" related solely to her inability to care for her children. Here, in contrast, mother's mental state was not relevant solely with respect to her inability to parent her child, but rather it prevented her from effectively communicating with her attorney about, among other things, the legal issues in the case, including her ability to parent T.A.

Next, mother argues that the family court erred by proceeding with the termination hearing given the GAL's position that mother should voluntarily relinquish her parental rights and the attorney's presumed lack of preparation for the hearing. Again, we find no error. The court was fully aware of the circumstances at the onset of the termination hearing and closely monitored the situation to protect mother's rights. After making it clear that the GAL could not consent on behalf of mother to relinquishment of her parental rights, the court inquired about whether a new GAL should be appointed and the termination hearing reset. All of the principals concerned—the GAL, mother's attorney, and mother—indicated a willingness to go forward with the termination hearing. Mother's attorney presented two witnesses on her behalf, cross-examined the State's witnesses, objected to exhibits offered by the State, and filed proposed findings in support of mother's position. Mother makes no proffer as to what evidence should have been submitted at the termination hearing or could have been submitted had the termination hearing been continued. Nor does she explain in any specific way how the GAL or the attorney acted in a manner that failed to protect her rights. Under these circumstances, we find no basis to reverse the termination order.

Mother also files a pro se brief raising a number of issues, none of which have any merit. First, the family court did not err by admitting into evidence, and making findings about, the 2005 termination order involving her son. See In re K.B., 154 Vt. 647, 647 (1990) (mem.) (stating that evidence concerning treatment of siblings is relevant and may be relied upon to support conclusions with respect to juvenile). Second, the family court's issuance of its decision within two weeks of the termination hearing and eight days after mother filed her proposed findings does not suggest that the court acted without thoroughly considering the legal issues. Indeed, there was overwhelming evidence supporting termination of mother's parental rights in

this case. Third, the court's findings were supported by credible evidence in this case, notwithstanding mother's contention that certain witnesses provided false testimony. Fourth, there was no evidence to support mother's claim that T.A.'s placement with her paternal aunt and uncle was inappropriate. Fifth, the court's findings regarding mother's final visit with T.A. were based on credible evidence. Sixth, mother's allegation that a hearing impairment hampered her access to the court process is vague and, in any case, she appears to concede that this was not an issue by the time of the termination hearing. Seventh, the family court's conclusion that mother would be unable to resume her parental duties within a reasonable period of time is amply supported by the evidence and the court's findings. To the extent that mother is asserting that she has or will shortly be addressing her homelessness and unemployment, this Court may not consider events occurring following her appeal of the termination order. In any event, the principal bases for the family court's conclusion regarding mother's inability to resume parental duties within a reasonable period of time extended far beyond mother's homelessness and unemployment. Far more important were mother's unresolved substance abuse and mental health problems and her lack of insight into the problems that led to her losing custody of her children.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice