

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2010-243

DECEMBER TERM, 2010

In re C.C. and M.C., Juveniles	}	APPEALED FROM:
	}	
	}	
	}	Chittenden Family Court
	}	
	}	
	}	DOCKET NOS. 225-5-07 Cnjv & 116-4-09 Cnjv

Trial Judge: Dean B. Pineles

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

Mother appeals from a family court order terminating her parental rights to the minors C.C. and M.C. She contends that (1) the trial court failed to make required findings concerning her ability to resume parental responsibilities within a reasonable time; and (2) the court was responsible for the absence of certain important evidence. We affirm.

Mother, who was thirty-five years old at the time of the termination hearing, suffered traumatic brain injury at birth and has significant cognitive disabilities. She receives social security benefits and social services from the Howard Center. Mother was married in August 2004, and C.C. was born in July 2005. A few months later, C.C.'s father, who had previously struggled with substance abuse and had been incarcerated, took the child to live with his parents, and they became the child's primary care providers. Father filed for divorce in 2006. A court-ordered psychological evaluation found that mother had no ability to provide even basic care for the child, and no understanding of the child's needs. The divorce judgment awarded father parental rights and responsibilities, and mother supervised visits.

Father's mother died in February 2007, and father subsequently deteriorated, abusing drugs and alcohol and assaulting his sister. The Department for Children and Families (DCF) intervened in May 2007 and placed C.C. with father's sister, where she has since remained. The parties stipulated to have C.C. adjudicated as a child in need of care or supervision (CHINS), and the court-approved case plan called for mother to have supervised visits and to receive parental education, and for eventual reunification with father. The parent educators, however, found that mother was unable to learn the basic skills necessary to meet the child's needs, and recommended that all visits remain supervised. The plan for reunification with father was changed after allegations emerged of sexual abuse of the child.

In April 2009, mother gave birth to a second child, M.C. The child's father assaulted mother during the pregnancy and was convicted of domestic assault. M.C. was born with a brain malformation, and was taken into DCF custody shortly after birth. Mother stipulated to an adjudication of CHINS, and she and M.C. participated in a one-month assessment program at the Lund Family Center. The assessment report found that, although mother was cooperative and

followed the daily schedule of program requirements, she remained unable to independently meet the child's basic hygiene or social and developmental needs. In June 2009, the court approved a plan for mother and M.C. to live with mother's family in Virginia, but the arrangement lasted only one week. Mother and M.C. returned to Vermont, and M.C. was returned to DCF custody and placed with a foster parent in Alburg, where he has since remained. Evidence concerning his medical condition indicated that M.C. exhibits massive developmental delays, requires constant assistance to perform basic activities, and receives numerous social and medical services, to which his current foster parent attends.

In August 2009, DCF filed a termination petition as to M.C., and in October 2009, it filed a termination petition as to C.C. Mother continued to have limited supervised visits with both children, and continued to demonstrate no parental skills or ability to attend to the children's basic needs without significant intervention. In October 2009, mother underwent an evaluation through the Sage Haven Center, which resulted in a detailed parental assessment report. The report recommended that mother relocate to an intensive supported living program in Greenfield, Massachusetts, or, alternatively, that DCF and the Howard Center collaborate to create a specialized foster-care home for mother and M.C. to live together in an intensively assisted environment.

Following a three-day termination of parental rights (TPR) hearing in April and May 2010, the court issued a lengthy written decision containing extensive findings and conclusions. As to C.C., the court found that the circumstances had stagnated due to mother's failure to progress under supervision and training to a minimally acceptable level of parental skill. Applying the statutory best-interests criteria, the court further found that mother had little or no meaningful relationship with C.C., that C.C. had fully adjusted to the home of father's sister, and that there was no likelihood mother could develop basic child-care skills sufficient to provide a safe and stable environment and resume parental responsibilities within a reasonable period of time. As to M.C., the court also found no likelihood that mother could develop sufficient skills and understanding to resume parental responsibilities within a reasonable time. As to the Sage Haven recommendation, the court found that there was no evidence that mother would be accepted into the intensive program recommended, nor, more significantly, that such a program could meet M.C.'s extensive special needs. Accordingly, the court ordered the termination of mother's parental rights without limitation as to adoption.\* This appeal followed.

Mother contends, as to C.C., that the trial court failed to make the requisite findings that the child was at risk of physical or emotional harm if more time were afforded mother, or that the child would be harmed by maintaining the status quo. The statutory scheme does not require such findings. As mother correctly notes, a reasonable time to resume parental responsibilities must be measured from the perspective of the child's need for permanence and stability. In re B.M., 165 Vt. 331, 337 (1996). The court's findings here are amply supported by evidence indicating that there was no reasonable possibility of mother's acquiring the skills and understanding necessary to safely resume parental responsibilities within a reasonable time. In re D.A., 172 Vt. 571 (2001) (mem.), on which mother relies, is entirely distinguishable. There, we affirmed a trial court's denial of a TPR petition based on its finding that the parents had not been afforded a reasonable time to address the problems that had resulted in the filing of the petition. Id. at 573-74. Plainly that was not the case here.

Mother further contends, as to M.C., that the trial court was responsible for the lack of evidence concerning the capacity of the Massachusetts program recommended by Sage Haven to

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\* Both fathers had voluntarily relinquished their parental rights prior to the hearing.

address M.C.'s extensive medical needs. As the trial court noted, the report was written before the extent of those needs was known. Mother claims that the court had ruled that testimony by Sage Haven personnel was unnecessary in view of the comprehensiveness of the report, and implies that Sage Haven witnesses could have responded to the issue of M.C.'s needs. The record does not support the claim. Mother's attorney had noted that the witnesses were coming from out of state, and the court responded that they might not be necessary if the report, which was highly detailed, came in without objection. Both attorneys agreed to its admission, and mother's attorney chose not to call the witnesses. Thus, mother was not precluded by the court from calling witnesses or offering evidence in this regard. Moreover, the trial court found that Sage Haven's recommendations were less than persuasive compared to that of the Lund evaluation, in light of the limited time that Sage Haven personnel had spent with mother. Accordingly, we find no error, and no basis to disturb the judgment.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice