

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2008-154

AUGUST TERM, 2008

|                                |   |                            |
|--------------------------------|---|----------------------------|
| In re A.R. and C.R., Juveniles | } | APPEALED FROM:             |
|                                | } |                            |
|                                | } |                            |
|                                | } | Caledonia Family Court     |
|                                | } |                            |
|                                | } |                            |
|                                | } | DOCKET NO. 40/41-7-07 CaJv |

Trial Judge: Harold E. Eaton, Jr.

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

Mother appeals the family court’s order terminating her parental rights to her two children, A.R. and C.R. On appeal, mother argues that: (1) there is no support in the record for the court’s conclusion that mother will not be able to parent in a reasonable amount of time, and (2) the record does not support the court’s findings that mother has no bond with the children and plays no constructive role in the children’s lives. We affirm.

The family court found the following facts. Mother’s two children, A.R. and C.R., were born in January 2002 and April 2005 respectively. They are mother’s fifth and sixth children. In July 2007, the Department for Children and Families (DCF) detained A.R. and C.R. because of concerns about their sexualized behavior. The parents stipulated that the two were children in need of care or supervision. In the stipulation, the parents agreed that A.R. had been victimized by her older half-brother, L.F., and that she displayed violent and aggressive behavior.<sup>1</sup> They also agreed that they failed to understand the extent of trauma experienced by A.R.

The trial court found that mother is the victim of domestic physical and sexual violence herself. As a child, family members physically and sexually abused her, including her father who she admits was very physically abusive and who she previously reported had raped her. A.R. and C.R.’s father has also abused mother, including hitting her, punching her, threatening her with a firearm and raping her. Father has also struck both A.R. and L.F. Despite father’s ongoing violence and mother’s admission that he presents a danger to the children, mother continues to maintain nearly daily contact with him. DCF’s case plan called for mother to

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<sup>1</sup> L.F. was taken into DCF custody in January 2006, when he was five, following mother’s report that he was having sex with A.R., who was then four years old. L.F. has been diagnosed with severe post-traumatic stress disorder and a generalized anxiety disorder. L.F. remains in DCF custody.

undergo domestic violence counseling, but she has not completed it. In addition, although mother admits that it is important for her to understand her own victimization, she has not followed through on obtaining therapy. As it relates to the children, mother has been unable to keep the children safe from abuse while in her care. She is aware that L.F. has said that he and father had sex with A.R., but mother refuses to confront father about it and does not believe it. She believes that L.F. has witnessed her being assaulted and raped by father, but makes no connection between the sexual violence L.F. witnessed and the allegations. She has witnessed the children being sexually and physically abused, but has not intervened. She also does not understand the effect of domestic violence on children who witness it.

Mother plans to move to North Carolina, where her sister lives. She believes she would be safe from father there and would be able to parent her children effectively. Mother's sister has explained that she does not want to coparent the children with mother.

The children are in a foster home together and have adjusted well. The children require services as a result of the past physical and sexual abuse and they are receiving these in foster care. In addition, they display affection towards their foster mother and are improving in their social and developmental skills.

In September 2007, DCF submitted a disposition recommending termination of father's parental rights and reunification with mother. In October 2007, the juveniles filed a petition to terminate mother's parental rights and DCF filed its own petition prior to the termination hearing. Father voluntarily relinquished his parental rights and the court held a termination hearing concerning mother on March 25, 2008. The court made extensive written findings based on the testimony. Based on these findings, the court concluded that termination was in the children's best interests. Mother appeals.

A termination at disposition requires the family court to consider the best interests of the child. The statutory factors are:

- (1) The interaction and interrelationship of the child with his natural parents, his foster parents if any, his siblings . . . ;
- (2) The child's adjustment to his home, school, and community;
- (3) The likelihood that the natural parent will be able to resume his parental duties within a reasonable period of time; and
- (4) Whether the natural parent has played and continues to play a constructive role, including personal contact and demonstrated love and affection, in the child's welfare.

33 V.S.A. § 5540. In this case, the family court concluded that A.R. and C.R. "have been exposed to sexual and domestic violence so pervasive that it nearly defies description. Virtually every member of these children's natural family is either a victim and/or perpetrator of sexual and/or domestic violence." The court explained that, although mother loves the children, she has been unwilling or unable to escape father's abusive behavior and unable to protect the children. The children have significant needs a result of their victimization, and mother has not demonstrated an ability to meet them. The court found that mother would not be able to resume parenting within a reasonable period of time and that termination was in the children's best interests.

On appeal, mother first argues that the family court erroneously concluded that she would not be able to parent within a reasonable period of time. The most important factor when considering termination is whether a parent will be able to resume parenting within a reasonable period of time. See In re B.M. et al, 165 Vt. 194, 199 (1996). The amount of time that is reasonable is measured from the perspective of the needs of the child. In re B.S., 166 Vt. 345, 353 (1997).

Mother contends that the court essentially concluded that she has no hope of being able to parent. We do not agree with mother's characterization of the court's order. The court stated: "With respect to both of these children, there is no possibility that [mother] will be able to resume her parental duties within a reasonable period of time." We construe the court's statement to mean simply that mother will not be able to parent these children within a reasonable period of time. The court's conclusion was based on its findings that mother has serious issues that she has not addressed and that mother had not demonstrated any progress in being able to protect the children and meet their needs. The court explained that mother had not taken steps to understand her own victimization, had not followed through on therapy, and had not demonstrated an understanding of the effects of domestic violence on her children. These findings more than adequately support the court's conclusion that mother will not be able to parent these children within a reasonable period of time. See In re A.F., 160 Vt. 175, 178 (1993) ("Individual findings of fact will stand unless clearly erroneous, and conclusions of law will be upheld if supported by the findings.")<sup>2</sup>.

Mother next argues that the court erred in finding that the children have no bond with mother and that she plays no constructive role in their lives. According to mother, the court's findings are erroneous because the evidence demonstrates that there is at least some bond with mother and that mother plays some constructive role in their lives.

We conclude that the court's findings are based on the evidence and not erroneous. See id. The court found that A.R. and C.R. "are beginning to make some progress with their special needs. They have bonded with their foster family. They have not bonded with their mother." The evidence supports this finding. The children's foster mother testified that despite their serious problems, the children are attaching to her and are improving their social and developmental skills. The court has discretion to determine the credibility of the witnesses and to weigh the evidence, id., and it did not err in relying on this testimony. As far as mother's role in the children's lives, the evidence supports the court's finding that mother does not play a constructive role in the children's lives. As the court explained, mother failed to protect the children from physical and sexual abuse, she failed to understand the serious effects of the abuse they suffered, and she failed to take steps to create a safe environment for them.

Even accepting mother's assertion that some bond exists with the children and that she plays a limited constructive role in the children's lives, we find no basis for reversal. The remainder of the court's findings, in particular the court's conclusion that mother will not be able

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<sup>2</sup> In a related argument, mother argues that the court did not consider whether mother's lack of progress was attributable to mother or the quality of the services provided to mother. Contrary to mother's assertion, the court is not required to conduct "an open-ended inquiry into how the parents might respond to alternative [DCF] services and why those services have not been provided." In re B.S., 166 Vt. at 353.

to resume parenting within a reasonable period of time, is sufficient to sustain the court's conclusion that termination is in the children's best interests. See id. (even if a finding is erroneous, reversal is not required where other evidence supports termination); see also In re J.F., 2006 VT 45, ¶ 13, 180 Vt. 583 (mem.) (explaining that where parent-child bond is harmful to children, court may not rely on bond to reject termination).

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