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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-087

AUGUST TERM, 2005

In re D.D., Juvenile	}	APPEALED FROM:
	} } }	Washington Family Court
	} }	DOCKET NO. 24-2-03 WnJv

Trial Judge: M. Kathleen Manley

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

Mother and father appeal separately from a family court judgment terminating their residual parental rights to the minor, D.D. Mother contends the evidence fails to support the court=s findings that she has not played a constructive role in the child=s welfare and could not resume parental responsibilities within a reasonable period of time. Father contends the court erred in failing to defer to his request that custody be transferred to the child=s paternal grandmother, and in finding that the grandmother would not be able to control future parent-child contact. We affirm.

The facts may be summarized as follows. The minor, D.D., was born in February 2001. Mother and father, who were not married, were sixteen and seventeen years old, respectively, at the time. Both lived at home with their parents. D.D. initially lived with mother, who obtained child care assistance from her mother. As the trial court here noted, the parents= relationship was tumultuous. They engaged in verbal and physical fights, often with the child present. In the fall of 2002, mother ended her relationship with father, obtained a relief from abuse order, and later moved with the child to live with another man, D.P., and his parents. In February 2003, the Department of Children and Families received several reports of possible physical and sexual abuse of the minor. Pursuant to an emergency detention order, DCF took the child into custody in late February 2003. An investigation confirmed the reports of abuse. The identity of the abuser was not established, although D.P. was suspected. A stipulation to an adjudication of CHINS was entered in May 2003.

Following a disposition hearing in June 2003, the court adopted a plan for reunification with mother predicated upon a number of conditions, including requirements that she maintain a safe home for herself and the minor, maintain a daily routine for D.D., keep scheduled appointments with service providers, and demonstrate progress with Intensive Family Based Services, parenting classes, individual therapy, and an anger management program. Father was working in a Job Corps program away from home during the week and was not considered a viable placement option.

In July 2003, DCF placed the child with mother while retaining custody. Father was accorded weekend visits under the supervision of the paternal grandmother. A permanency report prepared in January 2004 specifically required that mother not allow any contact between D.D. and D.P. or leave D.D. with any babysitter not approved by DCF. Because of continuing and serious concerns about abuse, the court issued a separate order specifically prohibiting contact with D.P. In July 2004, DCF removed the child from mother when it was discovered that D.P. was in the home. That same month, DCF filed a petition to terminate the parental rights of both parents, and father filed a motion to transfer custody from DCF to his mother, and to appoint her the child=s guardian.

A hearing on the petition and motion was held over six days in November and December 2004. Although father=s mother was present, the court denied her motion to intervene and to be accorded party status. The court issued a written decision in February 2005, concluding that termination of both parents= rights was in the child=s best interests, and therefore granted the petition. Mother and father have separately appealed.

Mother contends the evidence fails to support the court=s findings that she has not played a constructive role in the child=s welfare, and that it was not likely she could resume parental responsibilities within a reasonable period of time. Our review is limited. We will uphold the trial court=s findings of fact unless clearly erroneous, and will uphold the court=s conclusions if supported by the findings. In re K.F., 2004 VT 40, &8, 176 Vt. 636, 852 A.2d 584. The court found, and the evidence showed, that despite mother=s stipulation and the strong evidence to the contrary, mother consistently denied that the child had been abused; that mother was unable or unwilling to learn to establish minimal child care routines necessary to maintain a safe and stable home environment; that she violated the provisions of the case plan and court order by exposing the child to potential abusers, placing the child at risk while denying that there was any danger; that she failed to complete anger management classes and failed to consistently take the child to day care; and that she was verbally and physically hostile to service workers. Social workers and parent educators also testified to the almost total absence of any knowledge of boundaries by the child; of withdrawn and extremely needy behavior; of extreme masturbation; of ill health; and of little sign of attachment or bonding with mother. Additional evidence demonstrated that since her placement in foster care, the child=s behavior and health had improved substantially.

The foregoing evidence of mother=s behavior and the child=s condition amply supports the trial court=s conclusion that mother had failed to play a constructive role in the child=s welfare. The evidence of mother=s failure to make significant progress in developing parenting skills and insight into the child=s needs for safety and stability also fully support the court=s conclusion that she could not resume parental responsibilities within a reasonable period of time. See In re A.W., 167 Vt. 601, 603-04 (1998) (mem.) (evidence of parent=s failure to progress in acquiring parenting skills, denial of abuse, stress on child from impermanence, and progress in foster care all supported court=s conclusion that parent could not resume parental responsibilities within reasonable period of time). Although mother cites other evidence that she had not physically abused the child, had completed a parenting class, and had been able to maintain a clean apartment, these instances of minimal progress do not undermine the substantial evidence supporting the court=s findings and conclusion that termination was in the child=s best interest. See In re J.B., 167 Vt. 637, 639-40 (1998) (mem.) (upholding termination of mother=s parental rights where, despite her progress, it had not brought her to a point where she could safely resume parenting within a reasonable period of time). Accordingly, we discern no basis to disturb the judgment terminating mother=s parental rights.

Father does not contest the court=s findings, based on substantial evidence, that father suffers from various mental health disorders and serious anger management problems that significantly impair his ability to be a parent. Despite this, father failed to engage in anger management counseling, as contemplated in the case plan. Furthermore, he was abusive toward mother during their relationship, often with the child present; has never cared for D.D. on his own; and is incapable of doing so. Thus, the evidence showed, and the court found, that there was no likelihood father would be in any position to effectively parent D.D. within the foreseeable future.

Father contends, nevertheless, that the court was required to defer to his request that the court transfer custody to his mother, the child=s paternal grandmother, citing testimony that she loved the child, would be an appropriate caregiver, and that she would obey any order to prohibit or supervise contact between the child and father. Having determined in response to the State=s petition that termination of parental rights was in the child=s best interests, however, the court was not required to address the alternative disposition of a long-term guardianship. In re T.T., 2005 VT 30, & 7, 872 A.2d 334. Of course, the court could consider the grandmother for any post-termination custodial placement.

Father also claims, in this regard, that the evidence fails to support the court=s finding that the grandmother would not be able to prevent or limit contact, as necessary, between father and D.D. The evidence had shown that D.D. had significant reactive behaviors after being with either parent, resulting apparently from trauma sustained while in their

care in the past. The court was concerned that placement with the grandmother would allow for future traumatization. Although the grandmother testified that she would obey any court order requiring that she limit contact with father, there was also substantial evidence that the grandmother had not been able to control an abusive environment in the past, and as a result both the DCF caseworker and child=s forensic evaluator both opined that the child would not feel secure, and could be at risk, in the grandmother=s custody. Thus, there was ample credible evidence to support the finding. We discern no basis, therefore, to disturb the judgment.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice