

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-423

JANUARY TERM, 2002

In re K.S., J.S., A.S., & L.S.,	}	APPEALED FROM:
Juveniles	}	
	}	Caledonia Family Court
	}	
	}	DOCKET NO.24/25/26/27-2-99Cajv
	}	
	}	Trial Judge: Dennis R. Pearson
	}	

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

Father appeals the termination of his residual parental rights to his children K.S., J.S., A.S. and L.S. Father alleges that the juvenile court's findings support an order transferring custody and guardianship of the children to their maternal grandparents, rather than termination of his parental rights. We find no error in the court's order and affirm.

In late February 1999, the Commissioner of the Department of Social and Rehabilitation Services ("SRS") filed petitions with the juvenile court alleging that K.S., J.S., A.S. and L.S. were children in need of care and supervision ("CHINS") due to substandard living conditions and exposure to domestic violence. On April 8, 1999, the court adjudicated the children CHINS based on a stipulation signed by both father and mother. (u) The next month, and again based on the parties' stipulation, the court granted SRS custody of K.S and J.S., which placed the two children in foster care, and allowed mother to retain custody of the younger children, A.S and L.S., subject to SRS protective supervision.

In August 1999, SRS placed K.S. and J.S with their maternal grandparents after their foster care placement did not work out. Mother failed to adequately provide and protect her other two children, A.S. and L.S., and disposition was subsequently modified as a result. In April 2000, A.S and L.S. joined their siblings at their maternal grandparents' home where all four children have remained since. While in their grandparents' care, the children have made significant behavioral improvements. The court found that the grandparents provide the children with a stable, loving, and consistent environment which will allow the children an opportunity to heal from the trauma they witnessed and experienced while living with their parents. The children, who express little or no desire to see their father, want to stay with their grandparents. Their grandparents would like to adopt the children if they are given the opportunity to do so and father has supported the children's placement with their grandparents.

On February 1, 2001, the children filed a motion requesting the court to terminate their parents' parental rights, which SRS subsequently joined. That same day, father filed a motion to transfer custody and guardianship of the children to their grandparents. At a February 22, 2001 permanency planning hearing, father indicated that he was not seeking to resume parenting his children, but wanted to preserve his right to visitation.

The court took evidence on the termination petition on May 8 and 9, 2001. On August 15, 2001, the court issued its order terminating mother's and father's parental rights. It found that father has had little contact with the children since 1995 and that there was no real bond between them. It also found that father has done little to comply with the plan of

services in which he was required to engage for visitation and reunification with his children. It found that until father completes all of the conditions set out for him, contact between the children and father "is contra-indicated therapeutically because it would be a step back in the healing process for each of them." The court determined that father could not resume his parental duties within a reasonable period of time and that termination was in the children's best interests. Father thereafter appealed.

This case presents a single issue for our determination - whether the court's findings support guardianship with the children's grandparents rather than termination of father's residual rights. We will not upset a juvenile court termination decision unless the appellant shows that the court exercised its discretion on clearly unreasonable or untenable grounds. See In re R.F., 135 Vt. 275, 276 (1977) (in passing upon a petition for modification, court must exercise sound judicial discretion which will not be disturbed unless shown to be grounded on a clearly untenable or unreasonable basis). The court's duty in cases involving termination of parental rights is to first determine whether a substantial change in material circumstances exists, and if so, whether the children's best interests require termination. In re A.S., 171 Vt. 369, 373 (2000). The children's best interests analysis involves the assessment of a number of factors, the most important of which is whether the parent can resume his parental duties within a reasonable period of time. 33 V.S.A. 5540(3); In re B.M., 165 Vt. 331, 336 (1996).

Father does not contest the juvenile court's findings or conclusions that a substantial change in material circumstances existed or that father was unable to resume his parental duties within a reasonable period of time. Instead, he argues that guardianship rather than termination was in the children's best interests because it would preserve father's right to visitation. However, nothing in the statutes governing CHINS proceedings mandates that "the parent-child bond be maintained regardless of the cost to the child." In re M.B., 162 Vt. 229, 238 (1994). There are times when severing that bond is in the child's best interests. Id. Notably in this case, the court found that the children have no real bond with father, and that his sporadic attempts at resuming visitation with the children have "been deemed counter-productive by each of [the children's] therapists." Father has cited no findings tending to show that the children's best interests are served by maintaining his legal relationship to the children so that he may fulfill his hope for visitation in the future. In sum, the juvenile court's conclusion that termination was in the children's best interests is well supported by the uncontested findings and was not based on untenable or unreasonable grounds.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

James L. Morse, Associate Justice

Denise R. Johnson, Associate Justice

1. Mother did not oppose the request to terminate her rights and therefore her rights are not at issue in this appeal.