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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-114

SEPTEMBER TERM, 2005

In re R.C., Juvenile	}	APPEALED FROM:
	}	Franklin Family Court
	}	DOCKET NO. 105-6-03 Frj
		Trial Judge: Mark Keller

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

Father appeals from the family court=s order terminating his residual parental rights in R.C. The family court concluded that father would not be able to resume his parenting duties within a reasonable period of time and termination of his rights was in R.C.=s best interests. Father asserts that the family court erred by overlooking the constructive role that he could play in his child=s life as a noncustodial parent. We affirm.

Mother and father are the parents of R.C., born in December 2002. The Department of Children and Families took custody of R.C. in June 2003 based on a finding that parents were not safely or appropriately caring for him. Mother stipulated that the child was in need of care and supervision. DCF initially contemplated reunification with mother, but when mother failed to successfully complete a program at the Lund Home, DCF changed its focus to reunification with father. In May 2004, DCF filed a petition to terminate the parental rights of mother and father. Mother voluntarily relinquished her rights in October 2004.

After a hearing, the court terminated father=s residual rights. The court made the following findings. While mother was staying at the Lund Home, father consistently visited R.C., although supervisors observed that father was unable to properly care for R.C. Father lacked insight into R.C.=s basic needs and he was unable to perform basic tasks such as feeding and changing the child without being told to do so. After the goal of the case plan changed to reunification with father, father continued to regularly visit R.C. Although he exhibited slight improvement in his ability to parent, father=s parenting skills were still lacking, and he remained unable to address the child=s needs without assistance. During April and May 2004, father=s visits became more sporadicChe missed a number of visits, was late for others, and left other visits early. Father=s ability to care for R.C. deteriorated during this time. Father also failed to comply with other requirements of the case plan, such as obtaining independent housing and stable employment, and participating in substance abuse counseling and a domestic violence awareness program. During a June 2004 visit, father became frustrated by his inability to calm the child. He informed a supervisor that he was leaving and not coming back. That was the last visit between father and child despite attempts by DCF to reengage father in visitation.

Moreover, during the six months that followed the last visit, father had no interaction with R.C. By contrast, the court found that R.C. had a very close, beneficial relationship with his foster parents who provided him with love, affection, guidance, and stability. The court also noted that father=s relationship with R.C. had always been limited. During the periods that R.C. lived with parents, father had delegated responsibility for the child to mother or to others. Father=s contact with R.C. consisted of an hour or so of play time, and father did not assume any other responsibility for the child. Based on its findings, the court concluded that father was an unfit parent who had demonstrated by his actions

and decisions that he was incapable of providing an appropriate home for R.C. The court also found that father had not played a constructive role in R.C.=s life, and it concluded that father would never be able to resume his parental duties. The court thus ordered the termination of father=s residual parental rights in R.C. Father appealed.

Father asserts that the court erred in evaluating R.C.=s best interests because it overlooked the role that he could play in R.C.=s life as a noncustodial parent. Father maintains that it is irrational to terminate his rights merely because he may be unfit to be R.C.=s custodial parent, particularly when, pursuant to 15 V.S.A. '650, maximum contact with a noncustodial parent is considered in a child=s best interest unless such contact is harmful.

We reject father=s argument. In determining whether termination of a parent=s rights is in a child=s best interests, the family court must consider four statutory factors. 33 V.S.A. '5540(1)-(4). The most important factor is the likelihood that the natural parent will be able to resume his or her parental duties within a reasonable period of time. See In re B.M., 165 Vt. 331, 336 (1996). As long as the court applied the proper standard, we will not disturb its findings on appeal unless they are clearly erroneous; we will affirm its conclusions if they are supported by the findings. In re G.S., 153 Vt. 651, 652 (1990) (mem.).

In this case, the family court considered the factors set forth in '5540 and made numerous findings to support its decision that termination of father=s residual parental rights was in R.C.=s best interests. Father does not challenge any of the court=s findings as clearly erroneous. Instead, he asserts that the court overlooked the valuable role that he could have played in R.C.=s life as a noncustodial parent. In support of this assertion, father cites '5540(1), which requires that the family court consider the interaction and interrelationship of the child with his natural parents, his foster parents, and any other person who may significantly affect the child=s best interests. The family court=s findings reflect its consideration of this factor. It specifically found that father had not played a constructive role in R.C.=s life; his interaction with R.C. had always been limited, and that contact ceased altogether as of June 2004. Father offers no persuasive support for his assertion that, although he ceased visiting R.C., the court should have nonetheless concluded that he had the capacity to play a valuable role in his life. Father=s reliance on statutes and cases addressing assignment of parental rights and responsibilities in divorce proceedings is misplaced. A divorce proceeding does not involve the same considerations present in a termination proceeding. In contrast to termination proceedings, allocation of parental rights and responsibilities under the divorce and parentage statutes, 15 V.S.A. "650, 665, is not predicated upon parental fitness, or a lack thereof. The factors relevant in a termination proceeding, as noted above, are set forth in '5540. The family court=s decision reflects its consideration of these factors, and its findings support its conclusion that termination of father=s residual parental rights was in R.C.=s best interests. We find no error.

DV THE COLIDT.

Affirmed.

BY THE COURT:		
Paul L. Reiber, Chief Justice		
Marilyn S. Skoglund, Associate Justice		
Brian L. Burgess, Associate Justice		