

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-321

DECEMBER TERM, 2002

In re M.F., Juvenile	}	APPEALED FROM:
	}	
	}	Rutland Family Court
	}	
	}	DOCKET NO. 160-9-98 Rdjv
	}	
	}	Trial Judge: Theodore S Mandeville, Jr.
	}	
	}	

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

Father and mother separately appeal from a family court order terminating their parental rights to the minor, M.F, at the initial disposition proceeding. Father and mother jointly contend the court erred in failing to dismiss the underlying CHINS petition. Additionally, father contends the court erred in relying on his lack of contact with the minor and in applying an improper standard of parental fitness. Mother contends the court erred in failing to make findings concerning her fitness and ability to resume parental duties within a reasonable period of time. We affirm.

Mother and father were married in 1990 and divorced in 1995, when father was incarcerated for sexual assault of a minor. M.F., who was ten years old at the time of these proceedings, is the oldest of the parties' two children. When father was released from prison in 1996, mother stipulated that he was to have sole custody of the children because she was unable to cope with M.F.' s behavioral problems. In June 1998, a school psychologist evaluated M.F. based on reports that he was displaying aggressive physical and sexual behavior. The psychologist recommended enrollment in a special program for sexualized behavior, but father opposed the placement.

In September 1998, M.F. came into SRS custody based on his report to a school counselor that he had been physically and sexually abused by father. Following a merits hearing in October 1999, M.F. was adjudicated CHINS in a written decision issued in April 2000. The court' s ruling was based on testimony by the school counselor and an SRS investigator detailing M.F.' s allegations of sexual abuse, two clinical psychologists who stated that M.F.' s physically aggressive and sexualized behavior was symptomatic of sexual victimization, and M.F.' s therapist who testified that M.F. suffered from post-traumatic stress disorder. M.F. was also diagnosed as having a severe case of attention deficit hyperactivity disorder (ADHD). Although M.F. later made statements recanting the earlier allegations of abuse, the court did not credit the testimony and found by a preponderance of the evidence that M.F. had been sexually and physically abused by father. Father appealed the CHINS adjudication, claiming the evidence was insufficient to support the findings. This Court affirmed. See In re M.F., No. 2000-207 (Vt. Nov. 8, 2000) (mem.).

By the time of the disposition hearing scheduled for the summer of 2000, SRS had changed its goal from reunification to termination of parental rights. Following a number of continuances, forensic evaluations and discovery motions, the disposition hearing took place over six days in February 2002. The court issued its written decision in June, finding by clear and convincing evidence that termination of parental rights was in the best interests of the child. The court' s extensive findings show that M.F. continued to experience severe emotional problems after coming into SRS custody. He spent about one year in a therapeutic foster home, but was removed when the foster parents were unable to control his rages and highly sexualized behaviors with other students and teachers. He was placed at the Brattleboro Retreat because of suicidal ideation, and later transferred to the Abigail Rockwell Children' s Center (ARCC), a residential treatment facility at the Retreat, where he remained, at the time of these proceedings, under the treatment of a

psychiatrist and a regimen of several medications for ADHD and bi-polar symptoms.

The trial court found that father had consistently denied the allegations of sexual abuse, opposed M.F.' s placement in the program for sexualized behavior, rejected the diagnoses of ADHD and efforts to construct an individualized education program, refused to undergo the psychosexual evaluation or therapy called for in the SRS caseplan, did not participate in team meetings or reviews of M.F.' s progress, and has not contacted M.F. since his transfer to ARCC. The court also carefully reviewed the report and testimony of Dr. Jan Tyler, a court-appointed psychologist who evaluated father. While not challenging the fact of M.F.' s sexual abuse, Dr. Tyler was critical of the methods employed by the clinical psychologist whose findings had supported M.F.' s allegations against father. Nevertheless, Dr. Tyler stated that the results of her evaluation of father suggested a diagnosis of paranoid disorder or paranoid personality disorder. Although she recommended against termination at this time, she also concluded that father failed all of the statutory criteria for assuming parental responsibilities, that he fundamentally lacked the skills, temperament or ability to parent M.F., and that he could not acquire those skills within a reasonable period of time.

As for mother, the court noted that after stipulating to father' s custody of M.F. in 1996, mother continued to lead a chaotic lifestyle. She was involved with several abuse prevention orders. She participated sporadically in some of the family-based services called for in the case plan, but these were ultimately terminated as a result of her lack of interest. She failed to undertake individual therapy or participate in a court ordered forensic evaluation and has maintained occasional contact with M.F. in ARCC, although her visits there have resulted in angry and disruptive conflicts with staff. Mother failed to appear at any of the hearings, but was represented by counsel.

Although the court declined to base its decision on the allegations of sexual abuse, it concluded that termination of father' s parental rights was in the child' s best interests based on father' s steadfast refusal to follow any recommendation for evaluation, treatment, anger management counseling, or training to enable him to effectively parent his special needs child, his extended lack of contact with the child and failure to play any significant role in the child' s life, and his demonstrated inability to resume parental responsibilities within a reasonable period of time. The court also terminated mother' s parental rights, finding that she had maintained little contact with M.F., had played no significant role in his life, and would not be able to resume her parental responsibilities within a reasonable period of time. These appeals followed.

Father and mother contend the CHINS petition should have been dismissed because, in contrast with the court' s initial CHINS decision, the trial court here purportedly found that the original allegations of abuse had not been established by a preponderance of the evidence. We reject the claim on several grounds. First, the court did not repudiate the earlier CHINS findings, or the original caseplan requirements, but rather indicated that it based its decision on other grounds. Contrary to the parents' assertion, the record does not show, nor did the court find, that the causes which led to the filing of the CHINS petition had been shown to be without merit or remedied. Thus, there is no merit to father' s related claim that the court improperly relied on his lack of contact with the minor resulting from his failure to engage in counseling and treatment; the initial CHINS findings and caseplan requirements remained fully valid and applicable. Furthermore, as we explained in In re K.B., 154 Vt. 647, 647 (1990) (mem.), "[t]he findings which formed the basis for the original determination that a child was in need of care and supervision must be proven only at the original merits hearing, and are not required in a disposition or modification hearing to terminate parental rights." Thus, the court here properly focused on the best interests of the children. In re C.L., 151 Vt. 480, 489 (1989). In this regard, we note that the evidence on which the court relied, showing that father had consistently refused to acknowledge the minor' s severe emotional and behavioral problems, or to participate in counseling and training designed to address those problems, amply supported its conclusion that father could not resume parental responsibilities within a reasonable time.

Father also contends that the court held him to an unreasonable standard in requiring that he demonstrate the skills necessary to deal with a severely disturbed child. The court' s findings do not support the claim. They indicate, rather, that termination was based in part on father' s unwillingness to participate in any planning, counseling, or training designed to assist him to parent the minor.

Finally, mother contends there was no evidence, and no finding, that she was unfit to parent the minor, or that she could not resume parental responsibilities within a reasonable time. The court found, on the contrary, that mother lacked the present or future ability to parent the minor, and the evidence " including her chaotic lifestyle, failure to participate in

services to improve her parenting

skills, and counter-productive visits at ARCC " supported the findings.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice