

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-391

JANUARY TERM, 2003

	}	APPEALED FROM:
	}	
	}	Franklin Family Court
In re J.R., Juvenile	}	
	}	
	}	DOCKET NO. 29-3-01 Frjv
	}	
	}	Trial Judge: Jane G. Dimotsis
	}	
	}	

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

J.R.' s father appeals an order of the Franklin Family Court, sitting as juvenile court, terminating his residual parental rights in the child. We find no error below, and we therefore affirm the order.

J.R. was born in May 1995, and sometime thereafter his parents married.* The relationship between the child' s parents was violent, and substance abuse was a factor for both mother and father. Between March 1996 and February 2001, police intervention was required due to violence in the home six times. The domestic violence that characterized the relationship of J.R.' s parents negatively affected J.R. On one occasion in 2001, the police were dispatched to the family' s apartment to investigate a domestic dispute. An officer located a very upset J.R. hiding under the covers. The child was so distraught that the officer could not talk to him initially. After the officer was able to calm J.R. down, the boy told the officer that his father and mother had been arguing and that father had slapped mother. J.R. was present during other instances of violence between father and mother. Although father did not strike J.R., he subjected the child to verbal abuse.

In March 2001, the Department of Social and Rehabilitation Services (SRS) received an anonymous telephone call reporting that mother had attempted suicide two days earlier, the conditions in the home were cause for concern, and J.R. and his siblings were without proper parental care. Although father was not present in the home at that time, he conceded that the conditions in the home were the same when he lived with J.R. and the child' s mother, but blamed the situation on mother. Mother was the child' s primary caretaker because father did not participate in any child-care responsibilities. Because the agency' s investigation found the family residence filthy, and the children had little to eat and were frequently without adult supervision, the juvenile court issued an order in April 2001 placing J.R. in SRS custody.

When J.R. first came into SRS custody, he had very poor social and basic hygiene skills. He was afraid to make decisions, had frequent tantrums and meltdowns, and had trouble following simple directions and understanding concepts. It was unclear at the time whether he suffered from a learning disability or from a lack of learning experiences while in the care of his parents. J.R. engaged in sexual play in one foster home, necessitating his move to another home. His behavior and his social and hygiene skills have improved markedly since his placement in his current foster home. While his has behavior improved overall, before and after visits with father J.R.' s behavior deteriorates; he is often rude and demanding after seeing his father.

Visitation between J.R. and father was not possible from February 2001 to early August 2001 due to the conditions imposed on father's release on charges for domestic violence. As soon as father was able to resume visits, he contacted SRS to begin a visitation schedule. An SRS supervisor met with father and suggested that he participate in a program to address his domestic violence issues (a program which father had participated in previously to no avail). The supervisor also advised father to obtain a drug and alcohol assessment. In September 2001, a SRS social worker assigned to the family also met with father to discuss his programming needs. The social worker gave father a written service plan and asked him to set up a substance abuse assessment that included a urine screen and a written report that could be shared with SRS. In addition, she asked father to arrange for a written domestic violence assessment and gave him contacts and telephone numbers to help him make the necessary arrangements. Father thanked the social worker for the information, but explained that he did not need any of the recommended services.

After the court adjudicated J.R. a child in need of care and supervision (CHINS) in October 2001, SRS prepared a disposition report which was the basis of a January 2002 disposition hearing. Although father had some objections to the report which the court addressed, he stipulated to the report with some agreed-upon modifications. The report recommended that the court transfer custody of J.R. to the SRS Commissioner with a plan to reunify J.R. with whichever parent could demonstrate an ability to address the child's needs. It required father to (1) obtain the previously recommended substance abuse and domestic violence evaluations, (2) participate in the DadSafe program and parenting services, (3) join J.R.'s treatment and special education teams, and (4) consult with J.R.'s pediatrician.

By April 2002, J.R. had been in SRS custody for one year. Although father's attendance at visitation with J.R. was excellent, he failed to follow through on the requirements of the case plan. SRS therefore changed the case plan goal to termination of father's parental rights to free J.R. for adoption.

Also in April 2002, father obtained a parenting assessment. The assessment concluded that father (1) is unable to accept responsibility for his violent conduct and how that affected J.R.; (2) has limited parenting skills; (3) fails to recognize the impact of the child's past and how it affects J.R.'s present circumstances; (4) is resistant to change in his parenting as suggested by a parent educator and a social worker; (5) refuses to contact J.R.'s school and does not believe his child requires an Individual Education Plan; (6) believes the incident of sexual play at J.R.'s former foster home was fabricated; (7) states that J.R.'s mother made up all of the incidents of domestic violence; and (8) believes that the violence in the home had no impact on J.R. Father continued to resist participation in the case plan services up to the time of the hearing on termination at the end of July 2002. He did not participate in the DadSafe program, although he did make some contact with it. The court acknowledged that father could not participate in the recommended domestic violence program because he had not been convicted of a crime of domestic violence.

Following SRS's petition to terminate father's parental rights, the court issued an order in August 2002 granting the State's petition. The court found that father's progress towards reunification had stagnated, and that J.R.'s best interests required that he be freed for adoption. Father timely appealed the decision.

We will uphold the juvenile court's termination order if the court's findings are not clearly erroneous and support the court's legal conclusions. In re C.H., 170 Vt. 603, 605 (2000) (mem.). To justify terminating a parent's residual rights in a child after initial disposition, the petitioning party must prove that a substantial change of material circumstances has occurred, and termination is in the child's best interests according to the factors set forth in 33 V.S.A. § 5540. In re J.H., 156 Vt. 66, 70 (1991). A child may be removed from a parent's care and placed with SRS only if the court finds the parent is not able to care for the child, i.e., is unfit. Id. at 71.

Father first claims that the court failed to make any findings that he is unfit and that there is no evidence to support such a finding. Father's claim is without merit. As father acknowledges, he stipulated to the disposition report recommending that custody of J.R. be transferred to SRS. Therefore, father cannot now complain that the court failed to find him unfit to parent J.R. Id.; see also In re A.W., 164 Vt. 412, 417 (1995) (parents who stipulated to SRS custody at child's disposition hearing cannot complain that court did not find them unfit, although stipulation did not indicate that parents agreed with allegations of sexual abuse in the State's CHINS petition or the evidence of sexual abuse at merits hearing). Moreover, the court's findings as summarized above indeed demonstrate that the court considered father unfit to parent J.R. Father was unable to provide J.R. with a clean home free of violence and verbal abuse. The findings indicate that father took little interest in becoming a fit parent to J.R. because he failed to follow through with all of the requirements

of the case plan. We recognize that the court found that father was not at fault for his inability to participate in the domestic violence program SRS recommended, but that was only one of several services outlined in the case plan that father did not complete as required.

Father also claims the court shifted the burden to him to prove he was a fit parent. He alleges that the court did so by basing its termination decision so heavily on father' s failure to obtain the domestic violence and substance abuse assessments necessary for SRS to determine whether father' s issues in those areas required additional treatment. We disagree that the court shifted the burden of proof. Defendant' s failure to follow through with needed and required assessments and services went directly to his fitness to parent J.R. Thus, the court had before it clear and convincing evidence that father was not fit immediately or in the reasonably foreseeable future. The court' s findings and conclusions are well supported, and we cannot find the error father alleges.

Finally, father claims that no substantial and material change of circumstances existed to warrant modifying the prior disposition order. We disagree. The evidence and the findings reveal a nearly complete failure on father' s part to remedy the reason that J.R. was removed from father' s care. See In re M.M., 159 Vt. 517, 521-22 (1993) (stagnation is material change of circumstances and is shown by evidence that parent has made no improvement in his ability to care for child properly). We acknowledge, as the trial court did, that father visited regularly with his son, requested an evaluation of his parenting abilities, and remained sober for many months prior to the termination hearings. Nevertheless, father failed to participate in many of the services SRS identified to allow father to resume his parental duties to J.R. In addition, the court' s order is devoid of findings indicating that father' s parenting abilities as detailed by the evaluator he engaged, and which we summarized above, had improved in any significant way since the evaluation. Moreover, father' s unwillingness to modify his parenting in accordance with the recommendations of professionals with whom he consulted, his inability to fully appreciate how J.R.' s past affects the child' s current circumstances, and his equivocation about his violent behavior contributed to the court' s determination that father' s progress towards reunification had stagnated at the time the court took evidence on SRS' s termination petition. We conclude that the court' s determination that father' s progress had stagnated, and, hence, a material change of circumstances had occurred, was based on clear and convincing evidence, and we find no error.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice