

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-515

MARCH TERM, 2003

In re J.W., J.W., and M.W.,
Juveniles

}	APPEALED FROM:
}	
}	Addison Family Court
}	
}	DOCKET NO. 33/34/35-7-01 AnJv
}	
}	Trial Judge: Ben W. Joseph
}	
}	
}	

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

Mother and father appeal an order terminating their parental rights in their daughters, J.W. and J.W., and their son, M.W. The parents argue that we should reverse the termination order because the trial court's findings on the parents' sobriety are unclear and contradictory. We disagree, and we therefore affirm.

Both mother and father have a long history of severe alcohol abuse. Father has four convictions for driving while intoxicated (DWI). Although his fourth conviction resulted in a sentence of two to five years, it took father eight years to complete the sentence in part because of father's inability to remain sober. Mother also has a criminal record for DWI. On one occasion, nine-month-old J.W. was a passenger in the car mother was driving while her blood alcohol content was .296. In 1998 and 1999, the parties' drinking precipitated several incidents requiring police intervention at their home.

Mother and father's alcohol abuse led the State to seek protection for the children, through the Department of Social and Rehabilitation Services (SRS), on more than one occasion. In 1999, before M.W.'s birth, SRS removed J.W. and J.W. from their parents' care in accordance with an order of the juvenile court after mother and father persisted in abusing alcohol. When the girls went into SRS custody, father was incarcerated for violating terms of his probation by drinking alcohol, and mother was entering a residential substance abuse treatment program. SRS placed the girls with their maternal grandparents, who had cared for them previously at the request of mother and father.

By June 2000, the children were reunited with their parents at the recommendation of a forensic family evaluator. Although the evaluator acknowledged the harm the parents' alcohol abuse inflicted on the children, the parents represented that they had been sober for the previous six months and voiced a strong commitment to sobriety. So long as the parents remained sober, engaged in couples counseling, developed relationships with suitable Alcoholics Anonymous sponsors, and acquired additional parenting and child-development knowledge and skills, the evaluator opined that reunification between the children and their parents was appropriate. In January 2001, the court discharged the children from SRS custody. By that time M.W. had been born.

In May 2001, SRS and the Department of Corrections learned that mother and father had resumed drinking alcohol. Father returned to prison as a result, and mother continued to drink. On July 5, 2001, a social worker for SRS visited the family's home and discovered mother drunk in a car outside the house. J.W., then about two-and-one-half years old, was naked and dirty outside the house playing near the street. The baby, M.W., was alone inside the house on the living

room floor playing with pieces of styrofoam, which he put in his mouth. When mother and the social worker spoke, mother admitted that she tried to keep J.W. in her room by tying her bedroom door shut with a rope. Two days after the social worker's visit, the juvenile court returned the children to SRS custody again. SRS placed the children back with their maternal grandparents.

In January 2002, SRS petitioned to terminate mother and father's parental rights in all three children. After a six-day evidentiary hearing, the court granted the petition. Mother and father then took the present appeal.

On appeal, mother and father raise a single issue for our review: whether the juvenile court's termination order may stand where its findings on the parents' sobriety are unclear and contradictory. Specifically, the parents allege that the court failed to properly weigh evidence that mother and father had been sober for at least one year before the termination hearing. We disagree with the parents' characterization of the trial court's findings, and we find no reversible error in the court's decision.

When we review an order terminating parental rights, we do not second guess the juvenile court, reweigh the evidence, or decide the credibility of the witnesses. In re S.B., ___ Vt. ___, ___ 800 A.2d 476, 479 (2002) (mem.); In re A.F., 160 Vt. 175, 178 (1993). If credible evidence supports the juvenile court's findings, and those findings support the court's conclusions, we will affirm the order. In re A.F., 160 Vt. at 178. In this case, the court's findings provide ample support for its conclusion that termination of mother's and father's parental rights was in the children's best interests. See 33 V.S.A. §5540 (court may terminate parental rights if doing so is in children's best interests).

We find nothing unclear or contradictory in the court's findings. The court found that mother and father have had extensive treatment for their alcohol abuse and possess extensive knowledge about the problem. Despite that knowledge and treatment, both parents have tried to hide their drinking. Indeed, the court found that father boasted about his success in concealing his drinking problem. Both father and mother admitted to lying about the extent of their drinking under oath during the merits hearing in November 2001, although each claimed to have been sober since May and July 2001 respectively. Further, neither parent sought assistance for the other's alcohol abuse even though the abuse was taking a heavy toll on the couple's children. Due to father's history of admitted deception, the court found incredible his claimed commitment to participating in Alcoholics Anonymous. The court also found that mother and father appeared committed to sobriety only when they were under scrutiny by the State, but as scrutiny lessened, they would return to drinking alcohol and neglecting their children. Moreover, the parents did not participate in couples counseling as called for in the SRS case plan for the children. All of those factors compelled the court to conclude "that it is likely that the parents will resume drinking and once again neglect the needs of their children." The persistence and severity of their alcoholism, the court concluded, demonstrated that neither parent will be able to resume his or her parental duties within a reasonable time. See In re D.B., 161 Vt. 217, 219 (1993) (whether parents can resume parental duties within a reasonable time is most important factor to consider in termination proceeding).

Father and mother complain, however, that the court failed to credit the testimony of witnesses who supported the parents' assertion that they were sober and were committed to remaining that way. Even if the court found those other witnesses credible, the fact remains that neither parent persuaded the court that they were truthful about their claims of sobriety or their ability to follow through on their asserted commitment to cease drinking alcohol. We emphasize that we will not disturb such credibility determinations on appeal. In re A.F., 160 Vt. at 178. Moreover, even if the court believed that mother and father were sober at the time of the termination hearings, the court's order reflects that it was convinced that their sobriety was only temporary. Accordingly, we find no reversible error in the court's order terminating mother's and father's parental rights in J.W., J.W., or M.W.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

Denise R. Johnson, Associate Justice

Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned