

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-546

JUNE TERM, 2003

	}	APPEALED FROM:
	}	
Kimberly Otten	}	Orange Superior Court
	}	
v.	}	
	}	DOCKET NO. 118-6-02 Oecv
Stephen Garand and Lori Garand,	}	
C.L.O., Juvenile	}	Trial Judge: Mary Miles Teachout
	}	
	}	

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

Mother appeals from a superior court order granting a petition to terminate her parental rights filed by the minor' s guardians, Stephen and Lori Garand. Mother contends: (1) the evidence and findings fail to support the court' s conclusion that grounds exist for termination of parental rights; (2) the evidence and findings fail to support the court' s conclusion that termination of parental rights was in the best interests of the minor; and (3) the court erred in ordering termination absent expert evidence on the nature of the bond between the minor and mother and the effect of severing that bond. We affirm.

The facts are comprehensively described in the trial court' s exhaustive twenty-one page decision and may be summarized for purposes of review as follows. C.L.O. is the youngest of mother' s three daughters. The oldest, who was fifteen years old at the time of these proceedings, lives with her father and stepmother. The middle child lives with mother' s sister and her husband, who are her legal guardians. C.L.O., who was eight at the time of these proceedings, has lived essentially her entire life with mother' s great aunt and her husband, Steve and Lori Garand, who are her legal guardians.

Mother has struggled with substance abuse for many years and has been periodically incarcerated or on furlough, probation or parole throughout C.L.O.' s life. The Garands cared for C.L.O. for a period shortly after she was born when mother experienced complications from the delivery. In August 1994, when C.L.O. was eight months old, mother asked the Garands to care for her because mother was going to jail. Mother was released in November and cared for C.L.O. until December, when she returned to jail. She again entrusted C.L.O. to the Garands, who have had physical custody of the minor and served as her de facto parents ever since.

In January 1995, mother and the Garands entered an informal agreement providing that the Garands would care for C.L.O and mother would have visitation. Over the next year and a half, mother was incarcerated on four occasions for periods from three weeks to three months. Mother' s visits during this time were sporadic. In August 1996, mother consented to a formal court-ordered guardianship. Visitation continued by informal agreement. In February 1997, when C.L.O. was three, mother informed the Garands that she was leaving for Florida because she believed that an arrest warrant was about to issue against her. She was gone for over one year. The court found that apart from one or two calls, mother failed to pursue an active relationship with C.L.O. from the age of three to five.

Mother returned from Florida in November 1997, but made no contact with C.L.O. or the Garands. In October 1998, mother was convicted of DUI fourth offense. Shortly thereafter, Ms. Garand learned of mother' s whereabouts, took C.L.O to see her, and invited mother to C.L.O' s birthday party and for Christmas. She attended neither. The following year, in October 1999, mother was incarcerated for violating probation. Thereafter, she expressed an interest in

resuming visitation. Through counseling with Casey Family Services, an informal plan for visitation was adopted. Visits with all three of mother's daughters commenced in January 2000, when C.L.O. was six, and continued until February, when the Garands stopped the visits because they blamed mother for upsetting C.L.O. Shortly thereafter, mother hired an attorney, who wrote the Garands requesting expanded visitation.

In October 2000, mother filed a motion to terminate the Garands' guardianship. As a result, in January 2001, the probate court issued an order maintaining the guardianship in effect and setting forth a new visitation schedule for mother with all three daughters. The visits continued through May 2001. In June, following a visit with the two older girls in which mother appeared to have been drinking or consuming drugs and later tested positive for cocaine, the Garands stopped visits. Later that month, after being released from jail on probation violation charges, mother disappeared and was placed on escape status until mid-September, when she was arrested and incarcerated for a month. In November, the Garands filed a petition to adopt C.L.O. In December, they filed a related petition to terminate mother's parental rights.

In the meantime, mother spent another period in jail in November 2001, and was charged with grand larceny in December. She was incarcerated for an additional five months, from mid-December until May 2002. After her release, mother had several relapses with alcohol and cocaine and, as a result, spent two weeks on a work crew and two separate periods in jail through the Fall of 2002.

Following hearings in March and April 2002, in which mother was represented but did not attend because she was incarcerated, the probate court issued a decision terminating mother's parental rights. Mother appealed to the superior court, which held a de novo hearing in October 2002. Shortly thereafter, the court issued a written decision and order, finding that mother was not able or interested in resuming her parental duties within a reasonable period of time, that mother's continued relationship with the minor was detrimental to her interest, and that C.L.O.'s need for permanency in the only stable and loving relationship she had known demonstrated that termination of parental rights was in her best interests. Accordingly, the court granted the Garands' termination petition, and remanded to the probate court for further proceedings in connection with the petition for adoption. This appeal followed.

Mother first contends the court erred in finding statutory grounds for termination. The claim is governed by 15A V.S.A. §3-504, which sets forth the grounds for termination of parental rights where, as here, a petition is filed by a prospective adoptive parent. The statute provides that the court shall order termination if it finds, first, that certain enumerated grounds exist and, if so, that termination is in the best interests of the minor. *Id.* §3-504(a); *In re J.C.*, 169 Vt. 139, 141 (1999). In the case of a minor over six months of age, the court may find grounds for termination of parental rights if the parent "did not exercise parental responsibility for a period of at least six months immediately preceding the filing of the petition." 15A V.S.A. §3-504(a)(2). In making such a determination, the court may consider "all relevant factors," including the parent's failure to "make reasonable and consistent payments . . . for the support of the minor, although legally obligated to do so," to "regularly communicate or visit with the minor," or "to manifest an ability and willingness to assume legal and physical custody of the minor." *Id.* §3-504(a)(2)(A)-(C). The statute provides further that if the parent establishes "good cause" for not exercising parental responsibility, the court may not terminate parental rights except upon a finding of certain additional grounds. *Id.* §3-504(b).

In claiming that the court erred in finding grounds for termination, mother cites the court's statement that, while "not persuasive by itself," mother's financial contribution to the minor's welfare "has been practically nonexistent." Mother asserts the court erred in relying on this factor because she was under no legal obligation to provide support. We rejected a similar argument in *J.C.*, however, observing that "[a]bsent a specific provision to the contrary, nothing in the certificate of appointment of a guardian abrogates a natural parent's fundamental duty to support his or her child." 169 Vt. at 143. Moreover, the court here also found that mother had no contact with the minor during the six months prior to the termination petition. Mother asserts that the trial court ignored her claim that she had "good cause" for the lack of contact based on a combination of her incarceration and the Garands' efforts to interfere with visitation during this period. On the contrary, the court explicitly based its finding not on mother's incarceration, but on her consistent failure to maintain communication with the minor even while incarcerated, which she could have accomplished through phone calls, cards, letters, messages and gifts. Similarly, the cessation of visits by the Garands in June 2001, followed by mother's incarceration, was precipitated by mother's appearance at a visit while intoxicated or on drugs. Thus, we reject mother's claim that she had established "good cause" for her failure to visit or communicate with the minor.

Mother also contends the evidence failed to support a number of the court's findings concerning the best interests of the child. Our review in this regard is deferential. We will uphold the court's termination order if its findings are not clearly erroneous and its conclusions will be affirmed if supported by the findings. In re J.M., 170 Vt. 611, 613 (2000) (mem.); In re D.C., 168 Vt. 1, 4 (1998). When findings are challenged on appeal, they will be upheld if supported by reasonable or credible evidence, even if contrary evidence exists. See D.C., 168 Vt. at 4; In re T.R., 163 Vt. 596, 596-97 (1994) (mem.).

Mother first takes issue with the court's finding that the timing and circumstances of her sporadic visits with the minor were controlled by mother to meet her own needs rather than the minor's, with little regard for the impact on the child of such inconsistency or the child's need for stability. She asserts in this regard that the court erroneously criticized her for having group visits with all three children rather than individual visits with C.L.O. The court's finding, however, was not based on a criticism of the group visits, but rather on mother's overall pattern of inconsistency, appearing briefly in the minor's life only to disappear and disappoint her time and again.

Mother also challenges the court's finding that her relationship with the minor has "been characterized primarily by self interest, impulsivity, and inconsistency" rather than nurturing and commitment." She cites evidence of her efforts to obtain greater and more regular visitation, and of the Garands' actions in purportedly blocking those efforts. Although there is evidence of sporadic efforts by mother for additional visitation, the record evidence amply supports the court's finding that these occasional efforts were consistently undermined by mother's continual failure to follow through, or disappearances, or criminal activities resulting in incarceration and virtual abandonment of contact. See T.R., 163 Vt. at 596-97 (we uphold findings if supported by reasonable or credible evidence, even if contrary evidence exists). Mother also contends the evidence failed to show that she used drugs during a visit with the older children in June 2001. The finding, however, was that mother appeared to be intoxicated or under the influence of drugs during the visit, and there was ample evidence to support it, including mother's own admission that she had taken drugs sometime before the visit. Thus, the evidence supports the court's implied finding that the Garands reasonably terminated mother's visits in June.

Mother also contends the court clearly erred in finding that she had she been incarcerated or on furlough, probation, or parole "throughout" the last eighteen years. Although, as mother observes, there were times when she was not in jail or under supervision, and most of the incarcerations were for relatively short stretches, the record evidence shows that mother was continually incarcerated throughout the period and amply supports the court's finding. Mother additionally contends the court misconstrued her parole officer's testimony to imply that mother resisted arrest on one occasion. The court's finding was that mother had reacted to the arrest by kicking and banging walls. This accurately reflected the officer's testimony, and does not imply that the court found that she resisted arrest.

Mother further contends the court erred in finding that the Garands stopped mother's visits with C.L.O. only after years of attempting to foster a relationship between them. The finding was amply supported by evidence that the Garands had facilitated visitation with mother during the child's early years, had sought out mother after she returned from Florida, and had cooperated in counseling to re-establish a visitation schedule. Mother also cites instances in which the Garands interfered with visitation, but the court's implied finding that their actions were justified by mother's behavior is supported by credible evidence and will not, therefore, be disturbed. D.C., 168 Vt. at 4.

Mother next contends there is no evidence to support the court's finding that termination of parental rights was necessary, in part, so that the minor can have confidence in the permanency of her relationship with the Garands. The court noted, in this regard, that mother had previously moved to terminate the guardianship as a tactic related to visitation, and that mother remained free to do so again. The court also noted that mother had repeatedly upset and destabilized the minor's life by appearing and disappearing and asserting and abandoning visitation rights, and that her continued legal status had become a detriment to the minor's stability and best interests. We thus conclude that the evidence supported the court's finding.

Mother next contends the court erred in failing to make findings examining the bond between mother and C.L.O., and ignoring evidence of a loving, positive relationship. On the contrary, the court recognized that a relationship had developed between the minor and mother and explored the nature of that relationship at length, finding that it was characterized principally by self-interest and disregard for the minor's interests on mother's part, and uncertainty on the child's. The court acknowledged that C.L.O. regarded mother as someone whom she enjoys seeing, but also as someone

who is unreliable and, worse, is capable of upsetting the only loving and stable parental relationship she has ever known. Accordingly, we discern no omission in the court's findings.

Finally, mother devotes considerable briefing to evidence that her visits with C.L.O. often went well, that mother occasionally made efforts to regularize or increase visitation, and that the Garands obstructed mother's access to C.L.O. and school activities and improperly discussed the case with the minor. As noted, however, the record contains ample credible evidence to support the court's findings that mother's efforts were sporadic and inconsistent and undermined by her own irresponsible behavior, that they created an intolerably destabilizing situation for the minor, that the Garands acted reasonably when they limited mother's visits, and that the minor had an overwhelming need for assurance that the parental care, love, and guidance she had received from the Garands would be stable and permanent. Accordingly, we discern no basis to conclude that the court's findings were clearly erroneous or fail to support the judgment. See T.R., 163 Vt. at 596-97 (court's findings must be upheld if supported by credible evidence, even if contrary evidence exists).

Lastly, mother contends the court erred in ordering termination of parental rights absent expert evidence on the nature of the bond between the minor and mother and the effect of severing that bond. Although mother cites statutes from other states requiring expert evidence for termination of parental rights on certain grounds, there is no such requirement in Vermont. Additionally, we note that a psychiatrist gave her opinion that, given the amount of time C.L.O. had actually spent with mother, it was highly unlikely they had developed a relationship that would be traumatized from termination. A clinical social worker who performed a pre-placement evaluation as part of the adoption process, see 15A V.S.A. §2-201, also testified that termination of the mother's parental rights was in the best interests of the minor. Accordingly, we discern no error.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned