

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2003-089

JUNE TERM, 2003

In re A.A., Juvenile

}	APPEALED FROM:
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}	Caledonia Family Court
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}	DOCKET NO. 7-1-02 Cajv
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}	Trial Judge: Mark Keller
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In the above-entitled cause, the Clerk will enter:

Mother appeals from a family court judgment terminating her parental rights. She contends the court erred by: (1) failing to appoint a guardian ad litem; and (2) finding that she would not be able to resume her parental duties within a reasonable period of time. We affirm.

As found by the trial court, the facts may be summarized as follows: Mother has three children, two older sons and a daughter, A.A., who was nine years old at the time of these proceedings. The identity of A.A.' s father is uncertain. Mother has been diagnosed with a major mental illness since 1987. The diagnosis has varied from schizophrenia to schizoaffective disorder. Mother was hospitalized at the Vermont State Hospital in 1987 when she experienced hallucinations. After her release, she moved with her children to Florida, moved back to Vermont in 1992, and returned to Florida in 1993. During this period, various complaints were filed with the Department of Social and Rehabilitation Services, but no official action was taken concerning the children.

In 1994, mother was involuntarily hospitalized in Florida for delusional behavior, and the children were taken into custody by the Florida Department of Health and Rehabilitative Services. The children were adjudicated dependent, and custody was eventually returned to mother under protective supervision. In October 2001, mother abruptly left Florida and drove with the children to Vermont, arriving without proper clothes or a place to live. She was discovered living with A.A. at a relative' s camp, exhibiting delusional behavior and claiming that she had received permission to be there. Shortly thereafter, she moved into a vacant house without permission, claiming that she had owned it since the 1960's, and refused to leave when served with a writ of possession.

In January 2002, SRS filed a CHINS petition, and A.A. was taken into emergency SRS custody and placed with relatives. Mother was found to be delusional and involuntarily hospitalized. In February, her status was converted to voluntary, and in March she was discharged to a short-term supervised living facility. In April, she transferred to a transitional home in Newport, where she remained at the time of these proceedings. She continues to receive supervision and staff assistance at the home, and receives psychiatric services through Northeast Kingdom Mental Health.

In May, a court-appointed psychiatrist filed a report stating that mother' s mental status had improved considerably as a result of her participation in treatment and residence in a structured living environment and concluding that mother was competent to participate in child protection proceedings. That month, the parties stipulated to an adjudication of CHINS based on a finding that, at the time of the petition, mother was suffering from a mental illness for which she was not receiving treatment and which was interfering with her ability to meet the minor' s needs.

A.A. was eight years old when she came into SRS custody and was initially placed in the home of her uncle and his

wife. Although A.A. appeared in some ways to be capable of caring for herself well beyond what might be expected of a child her age, she also exhibited striking deficits, such as not knowing how to use utensils, soiling herself rather than using a toilet, not knowing how to wipe herself or shower properly, and not brushing her teeth. She was clingy and hoarded food. In July 2002, A.A. was placed with her aunt and family in the Town of Craftsbury. The trial court found that A.A. has blossomed in her new environment. She gets along well her foster family, loves their animals, and plays with the other children. They have a close and loving relationship. She fits in well in school, earning A's and B's, and participates in numerous extracurricular activities, including playing basketball, playing the flute, and starting piano lessons. The court found that although her aunt and uncle hoped to adopt A.A. if freed for adoption, they would continue to allow visits with mother and encourage a continuing relationship.

A.A.'s therapist testified that, despite months of counseling, A.A. remains emotionally cut-off and disconnected from mother. She rarely talked about mother, resisted supervised visits, and displayed little or no emotional bond with mother during the visits. The court found, based on the therapist's testimony, that A.A.'s emotional difficulties were the product of dealing with mother's emotional unresponsiveness and periodic psychotic episodes.

Applying the criteria of 33 V.S.A. § 5540, the court found that A.A. had a loving relationship with her foster family and had fully integrated into her new home, school, and community. The court made extensive findings concerning A.A.'s relationship with mother and the likelihood that mother would be able to resume her parental duties within a reasonable period of time. Based principally on the testimony of mother's treating psychiatrist, Dr. Kiley, the court found that, although mother had improved under a regular regimen of therapy, medication, and supervision, she continued to exhibit multiple "negative" symptoms of her mental illness; she is socially and emotionally withdrawn and unresponsive, and is unable to display affection or emotion, converse in a normal manner, or respond to social cues. The court found that mother's condition significantly limits her ability to communicate with A.A., noting that her visits with mother had involved minimal verbal or physical contact, and that A.A., while outgoing and happy in other settings, tended to assume mother's withdrawn emotional affect when she was with her.

With respect to mother's ability to resume parental responsibilities within a reasonable period of time, the court noted Dr. Kiley's testimony that mother could, with assistance and continued treatment, attend to A.A.'s basic physical needs. The court also noted, however, Dr. Kiley's expressed concern about mother's ability to respond to A.A.'s emotional and developmental needs. Although of the opinion that mother's ability in this area could improve, Dr. Kiley stated that such improvement would occur over a period of years, not months. The court thus found that mother did not have the present ability to meet A.A.'s more complex social and emotional needs. She could not engage in discussions with A.A.'s teacher or process and convey information to A.A., deal with the emotional expressions and needs of a nine-year old, or set and enforce reasonable boundaries. The court also found, based on Dr. Kiley's testimony, that any improvement in this area would take years to develop. The court thus concluded that mother was not able to resume her parental responsibilities within a reasonable period of time, and ordered termination of mother's parental rights. This appeal followed.

Mother first contends the court erred in failing to appoint a guardian ad litem for mother. See Guardianship of H.L., 143 Vt. 62, 65 (1983) (court's duty is to appoint guardian ad litem to protect interests of incompetent parent). Mother relies on several sentences in the court's findings indicating that it had observed mother's demeanor to be "very flat," that her face did not "appear to register any emotions" and "appeared to be a mask that did not respond to words, events or the surrounding circumstances," and that when addressed by the court "it was not possible to determine, from [mother's] facial response, whether she heard or understood what was being said to her." Understood in context, it is clear that the court was attempting to convey a sense of mother's emotional detachment and its impact on the minor. The court was not expressing an opinion that mother did not, in fact, understand what was occurring, only that one could not infer such understanding from her face or demeanor. As noted, the court had received an expert opinion that mother was competent to participate in the proceedings, and there was no evidence or claim to suggest otherwise. Accordingly, we discern no error.

Mother also contends the court's finding that mother could not resume her parental duties within a reasonable time was "premature." Although this Court has cautioned against termination of parental rights in the first instance "if there is a reasonable possibility that the causes and conditions which led to the filing of the petition can be remedied and the family restored within a reasonable time," In re J.B., 167 Vt. 637, 639 (1998) (mem.) (quoting In re D.R., 136 Vt. 478,

481 (1978)), we have also observed that what is reasonable " must be measured in terms of the child' s needs." In re B.M., 165 Vt. 331, 337 (1996). Here, Dr. Kiley testified that although she could not say precisely when mother would improve sufficiently to meet the minor' s emotional and developmental needs, the time frame would be measured in years, not months. The court found that waiting a period of years for the possibility of mother' s improvement would deprive the minor of necessary emotional and developmental support and guidance. Thus, measured in terms of the child' s needs, we cannot say that the court' s decision to terminate parental rights was premature or unsupported. Accordingly, there is no basis to disturb the judgment.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned