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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-250

NOVEMBER TERM, 2003

In re E.S., Juvenile	}	APPEALED FROM:
	}	
	}	Washington Family Court
	}	
	}	DOCKET NO. 15-2-02 Wnjv
	}	
	}	Trial Judge: Stephen B. Martin
	}	
	}	
	}	

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

Mother appeals from a judgment of the Washington Family Court terminating her residual parental rights to the minor, E.S. Mother contends the court misstated the legal standard applicable to weighing the best interests of the child. We affirm.

The trial court= s findings may be summarized as follows. E.S. was born in February 2002, and was taken into the custody of the Department of Social and Rehabilitation Services within a few days of her birth under an emergency detention order. Mother has a long history of emotional instability and mental illness. Her cognitive functioning is low, and her emotional maturity has been described as that of a child. She suffered abuse as a child and was in SRS custody from the age of twelve to eighteen. Mother had a history of bizarre behavior with a pet cat prior to the child= s birth, as well as over ninety contacts with the Montpelier Police Department over the course of several years.

Concerns about mother= s ability to care for the child, including an inability to use a bottle properly or to pick up the baby for several days in hospital, prompted the emergency detention order. SRS initially attempted to place mother and child in the Lund Home, but the home was unable to provide the round-the-clock supervision it felt that they required. A short-term placement in a foster home ended when mother failed to care for the child. E.S. was eventually placed with a foster family in June 2002, and has since remained in their care.

E.S. was adjudicated CHINS in May 2002. SRS recommended termination of parental rights at the initial disposition hearing and filed a TPR petition in June. Following four days of evidentiary hearings, the court issued a written decision containing extensive findings and conclusions. The court noted that despite frequent supervised visits with home health providers, the assistance of friends, and repeated instruction on basic child care techniques mother had made only minimal gains in her parenting abilities. Citing extensive testimony concerning mother= s inability to care for the child for even brief periods without close supervision, the court found that mother= s substantial emotional and cognitive abilities rendered it unsafe for the child to be left alone with mother, and concluded that mother would not be able to parent the child within a reasonable period of time. The court also found that E.S. had done well in the home of her foster parents, who hoped to adopt the child. Accordingly, the court granted the petition, and transferred custody to the Commissioner without limitation as to adoption. This appeal followed.

Mother challenges none of the court= s specific findings and conclusions, but rather asserts that the court applied an incorrect legal standard when it cited language from our decision in Paquette v. Paquette, 146 Vt. 83 (1985), as follows: A [T]he best interest of the child has always been regarded as superior to the right of parental custody. . . . [A] child is a person, and not a subperson over whom the parent has an absolute possessory interest. A child has rights too, some of

which are of constitutional magnitude.@ 146 Vt. at 89 (quoting Bennett v. Jeffreys, 356 N.E.2d 277, 281 (N.Y. 1976)). Mother argues that the court incorrectly assumed that the child= s best interests always prevail over the parent= s right to custody, and that termination could be justified merely because the child might be better cared for somewhere else.

The claim is unpersuasive. Paquette acknowledged the strong presumption in favor of parental custody, but also correctly recognized that in certain A extraordinary circumstances,@ such as a showing of parental unfitness, the best interests of the child must prevail. Id. at 91. Nothing in the record or the trial court= s decision suggests that it misunderstood the meaning of Paquette or applied an incorrect legal standard. Nor, as mother further suggests, was the court obligated to make specific findings rejecting an alternative disposition premised on some form of extensive parental supervision. See In re A.S., 171 Vt. 369, 372-73 (2000) (court not required to make negative findings regarding less drastic alternatives to termination). Nevertheless, the court= s findings make it clear that, even with frequent and regular supervision, mother was unable to safely parent the child. Accordingly, we discern no basis to disturb the judgment.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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Denise R. Johnson, Associate Justice

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Paul L. Reiber, Associate Justice