

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-386

FEBRUARY TERM, 2004

	} APPEALED FROM:
	}
	} Franklin Family Court
In re B.C., E.C., S.C.	}
& K.C., Juveniles	}
	} DOCKET NOS. 143-7-01 FrJv; 144-7-01
	} FrJv, 145-7-01 FrJv and 146-7-01 FrJv
	}
	} Trial Judge: Howard E. VanBenthuyesen
	}

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

Father appeals from the trial court's order terminating his parental rights over B.C., E.C., S.C. and K.C. Father argues that he was denied his due process right to testify. We affirm.

Father and mother are the parents of B.C., E.C., S.C. and K.C., all of whom are minors. The Department of Social and Rehabilitative Services became involved with the family in November 1997 after father assaulted mother while she was holding K.C. The children were adjudicated CHINS in December 2001. In December 2002, SRS filed a motion to terminate parental rights. Mother voluntarily relinquished her residual parental rights in June 2003. After a hearing, during which father did not testify nor present any evidence, the court terminated father's residual parental rights. Father appealed.

Father maintains that he was denied his due process right to testify at the hearing in this matter. Specifically, father contends that the trial court erred when it failed to disabuse him of the notion that his testimony would not be listened to and that the court had already decided the case. This argument is wholly without merit. The hearing transcript reveals the following exchange between the trial court and father:

[Father's attorney]: Your Honor, we have no witnesses, and I have advised [father] that it's his right, his right exclusively to testify should he choose, and he does not choose to exercise that right to testify.

The Court: All right. Very well, so the father rests. [Father], you don't desire to take the stand or to put on any witnesses at this point?

[Father]: Your Honor, I really don't think it makes a damn bit of difference to anybody in here anything that I would have say [sic] that's going to have any B make any difference and whatever. It's already been decided or B it's been decided. I guess I'm all set, thank you.

The Court: Okay, so you don't want to testify. You've talked that over with [your attorney].

[Father]: The only thing I can say it doesn't matter to anybody in here other than myself.

The Court: Okay. Well, you have the right to make that choice but I want to make sure that that's your choice freely and voluntarily after talking with your counsel.

[Father]: Thank you.

The Court: Okay. The father has rested then. . . .

The record provides no support for father= s argument that the trial court denied him the right to testify during the hearing, nor does father offer any case law that would support such an assertion. See, e.g., In re Roy Anthony A., 398 N.Y.S.2d 277, 278 (N.Y. App. Div. 1977) (mother denied due process in termination proceeding where she was not allowed to testify on her own behalf or offer any evidence whatsoever). Rather than denying father the right to testify, the trial court made an extended effort to ensure that father understood his right to testify and that he was voluntarily relinquishing that right after consulting with counsel. There is no support for father= s argument that the trial court had the obligation to tell him that it had not prejudged the case and that his testimony could make a difference. The record reflects that the trial court A strictly observed@ father= s due process rights during the termination hearing, and we find no error. In re H.A., 153 Vt. 504, 509 (1990).

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Paul L. Reiber, Associate Justice