

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-462

MARCH TERM, 2004

} APPEALED FROM:
}
} Windsor Family Court
}
In re A.B. and K.B., Juveniles } DOCKET NOS. 122-7-01/18-1-02 Wrjv
}
} Trial Judge: Amy Marie Davenport
}
}

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

Mother and father appeal the family court's order terminating their residual parental rights with respect to their two daughters, A.B. and K.B. We affirm.

A.B. was born in January 2001. The following summer, the Department of Social and Rehabilitation Services (SRS) initiated an investigation in response to reports concerning the child's lack of weight gain, mother's mental instability, and the parents' unstable housing situation. A.B.'s pediatrician diagnosed the child as failing to thrive, and she was hospitalized. After A.B. spent one week at the hospital with her parents, the pediatrician agreed to discharge her if the parents signed a contract obligating them to participate in certain services aimed at improving their parental skills. The pediatrician and the SRS case worker believed that it was important for mother to participate in a psychiatric evaluation scheduled for July 25, 2001, but the contract did not require her to do so, and A.B. was discharged even though mother, at father's urging, did not appear for the evaluation. After learning that mother failed to attend the evaluation, SRS obtained an emergency detention order, and A.B. was taken into SRS custody. At a detention hearing the following day, the family court ordered continued SRS custody, with supervised visits occurring at least three times a week. In October 2001, mother and father entered no-contest pleas to a petition alleging that A.B. was a child in need of care or supervision (CHINS), and the court granted the petition.

In December 2001, the parents left for Pennsylvania. The following month, on January 30, 2002, K.B. was born. SRS obtained custody of the baby at birth through the Interstate Compact. On June 12, 2002, following one day of testimony at a merits hearing, the parents entered no-contest pleas to the CHINS petition concerning K.B. Eventually, SRS filed termination petitions with respect to both children. The cases were consolidated, and a hearing was held over seven days in June and July 2003. Following the hearing, the family court terminated mother's and father's residual parental rights to both children.

On appeal, mother argues that the family court erred by terminating her parental rights even though SRS's failure to provide her with mental health evaluations played a critical role in her delayed progress toward acquiring the parental skills necessary for her to resume care of her children. We conclude that the family court's termination order is supported by its findings and conclusions, which, in turn, are supported by the evidence in the case. See *In re B.M.*, 165 Vt. 331, 340 (1996) (termination order will be upheld if evidence supports findings that are sufficient to support decision). The primary concern of the family court in juvenile proceedings is protect the children's welfare. *In re B.S.*, 166 Vt. 345, 352 (1997). To further that end, the Legislature has directed the family court to examine factors concerning the best interests of the child, including whether the parents will be able to resume their parental duties within a reasonable period of time. *Id.* at 353. These factors do not include an open-ended inquiry into how the parents might

have responded to alternative services, or why SRS failed to provide such services. *Id.* The assistance that SRS provides to troubled parents may be a factor in determining whether SRS met its burden of showing that a parent is unlikely to be able to resume parental duties within a reasonable period of time, @ *In re J.T. & C.T.*, 166 Vt. 173, 180 (1997), but the focus of the court's inquiry must remain on the best interests of the children.

Here, the evidence was overwhelming that termination of parental rights was in the children's best interests, in light of the factors set forth in 33 V.S.A. § 5540. The family court found that the parents made virtually no progress in improving their parental skills during the first six months after A.B. was placed in SRS custody, notwithstanding the multitude of services provided to them. According to the court, the parents lacked any meaningful insight into how they contributed to A.B.'s failure to thrive. Both parents, but especially mother, had difficulty acquiring even the most basic parental skills. Mother was dominated by father, whose anger at SRS and medical personnel took precedence over his efforts toward reunification. While acknowledging that mother had made significant progress in her life after she found a therapist she trusted and began taking antidepressants in early 2003, the court found that neither parent was ready to care for their children. The court noted that the parents' decision to leave Vermont in early 2002 in the hopes of preventing SRS from taking custody of their second child had disastrous consequences with respect to their relationship with A.B. The months apart essentially destroyed what fragile bond existed between the parents and A.B. before she was taken into SRS custody. After the parents returned from Pennsylvania, visits were reduced because of the children's negative reaction to contact with the parents. In the court's view, termination of parental rights was required because of the diminished bond between the parents and the children, the extended time that these young children had spent in SRS custody with the same foster families, the parents' continued inability to acquire the parental skills necessary for them to resume care of their children, and the children's immediate need for a permanent home.

Mother speculates that she would have acquired the necessary parental skills more quickly had SRS given proper attention to her problems by insisting that she undergo a psychiatric evaluation and by following through on the parent educator's recommendation that she receive a developmental, educational, and cognitive assessment. This is a questionable proposition, given that mother sought out mental health counseling herself shortly after losing her children and changed therapists at least twice before finding someone who she trusted and who prescribed the antidepressants that improved her mental health. In any event, mother does not challenge the family court's findings and conclusions demonstrating that the children are in immediate need of a permanent home, and that neither she nor father are ready to care for them. See *In re B.M.*, 165 Vt. at 342 (critical question in termination case is not how much parents have bettered their personal circumstances, but rather whether they have present ability to care for their children). These findings and conclusions, which are supported by the evidence, fully support the family court's termination order.

Father also argues that the family court had no jurisdiction to consider SRS's termination petition because the underlying CHINS finding was based on an erroneous allegation that the parents violated the contract they signed to get A.B. discharged from the hospital. We find no merit to this argument. By entering no-contest pleas to the CHINS petitions, father and mother waived any challenge to the family court's CHINS determinations. See *In re A.O.*, 161 Vt. 302, 308 (1994) (where father's attorney indicated acceptance of disposition case plan, family court did not err by failing to make findings in support of disposition order); *In re P.F.*, 133 Vt. 64, 66 (1974) (where parties stipulated that child was CHINS, father forfeited right to compel state to prove neglect); see also *State v. Gleason*, 154 Vt. 205, 211 (1990) (no-contest plea is taken as complete admission of guilt in pending proceeding; conviction resulting from no-contest plea stands on same footing as conviction produced by trial or guilty plea, unless statute creates difference). The parents cannot concede that a CHINS petition is well pled, and then years later challenge the validity of the resulting CHINS order in a later TPR hearing. Cf. *In re B.C.*, 169 Vt. 1, 6-10 (1999) (rejecting mother's argument challenging termination order based on claim that family court lacked jurisdiction to hear original CHINS petition).

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Paul L. Reiber, Associate Justice