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ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-299

FEBRUARY TERM, 2005

In re K.B., K.B., and S.B., Juveniles	}	APPEALED FROM:
	}	
	}	
	}	Franklin Family Court
	}	
	}	
	}	DOCKET NOS. 73/75/76-5-02 Frjv
	}	
	}	Trial Judge: Stephen B. Martin

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

Father appeals from a family court order terminating his parental rights to the minors KB., K.B.. and S.B. Father contends the termination order lacks a reasonable basis. We affirm.

As found by the trial court, the facts may be summarized as follows. Mother and father both have a long history of involvement with the Department of Children and Families (formerly the Department of Social and Rehabilitation Services). Each has three older children from prior relationships. All of the children were in DCF custody at one time or another. Mother and father began a relationship in 1994, which resulted in three additional children, twins K.B. and K.B., born in December 1994, and S.B., born in December 1995.

In June 2002, the three children were taken into DCF custody because substance abuse, mental health, and other issues made it difficult for mother to care for the children. Father was incarcerated at the time. In September of that year, the children were adjudicated CHINS. In February 2003, DCF filed a petition seeking termination of father's parental rights, and approval of a longterm case plan for reunification of the children with mother. The case was heard by Judge Dimotsis over several days in November and December 2003, and by Judge Martin over several additional days in April 2004, following Judge Dimotsis's retirement. At the conclusion of the hearing, the court issued a written decision, granting the petition to terminate father's parental rights, and approving the plan to return the children to mother.

The court found that, beginning in 1995, father had subjected mother and their three children to severe and ongoing physical and emotional abuse. Father was incarcerated in 1998, and has been in custody most of the time since then. He has not had contact with the children since April 2001. He has been incarcerated since April 2002, with a potential release date as late as January 2006. In addition, a relief from abuse order resulting from father's assaults against mother and the children precludes him from having any contact with them until February 2005. In the periods between his prison stays, father's contact with the children has been highly sporadic.

Father has an extensive criminal record, including eight felony convictions. Two of father's convictions are for sexual offenses against minors. The victims of father's sexual abuse include two of mother's older children, as well as mother's younger sister. Father's abuse of mother's oldest daughter, J.D. began when she was eleven years old. J.D. became pregnant by father when she was sixteen, and gave birth to a daughter in May 2002. Father and J.D. were married in March 2003, while father was incarcerated.

The court noted that father's only program while incarcerated has been in the prison automobile shop. He has an extensive record of physical and emotional abuse of mother and the children, and of sexual abuse of minors in mother's household. As a result of his incarceration and a relief from abuse order stemming from his abuse, father had no contact with the children for several years prior to the hearing. In addition, the court noted that father had denied any domestic violence on his part, denied any sexual misconduct, felt that he had no need of parent education services or assistance for his violent conduct, and blamed mother for the family's problems.

The court found that father cannot parent the children or resume parental responsibilities within a reasonable period of time. His early contact with the children was threatening and violent, and he has had no significant contact since April 1997. He has not parented the children or played any role in their welfare. Accordingly, the court found by clear and convincing evidence that termination of father's parental rights was in the best interests of the children. Additionally, the court approved the case plan for reunification with mother. Father has appealed.

Our review on appeal is limited to determining whether the findings are supported by clear and convincing evidence, and whether the findings, in turn, support the trial court's legal conclusions. In re S.B., 174 Vt. 427, 429 (2002) (mem.). Although father has challenged none of the court's factual findings, he asserts that the termination order lacked a "reasonable basis." Underlying the assertion are three rather summary claims. First, he contends the court erred because there was no showing that termination was necessary to prevent father from intervening in the children's lives in the future. He notes in this regard that there was no evidence that father had violated the no-contact order. We note, however, that the court did not order termination merely to preclude parent-child contact. The order was based on the court's conclusion that father was wholly unfit to parent the children, now or in the future. He had an extensive record of physical, emotional and sexual abuse of mother and the children, had no relationship with the children, and could not resume parental responsibilities within a reasonable period of time. See In re B.M., 165 Vt. 194, 199 (1996) (of the statutory factors that court must consider in determining child's interests, most important is likelihood that parent will be able to resume parental responsibilities within reasonable period of time). Accordingly, we find no error.

Father also contends the court erred in ordering termination because there was no evidence or findings on the "potential benefits of future parent-child contact." The court found, and the evidence showed, that father had played virtually no constructive role in the children's lives; that his relationship with the children when he was in the picture was abusive and destructive; that he had failed over many years to address issues of violence and sexual misconduct; and that he had virtually no current relationship with the children because of his absence over the past several years. These, plus the court's finding that there was no likelihood that father could resume parental responsibilities within a reasonable time, plainly demonstrate the absence of any "potential benefits" from future parent-child contact.

Finally, father contends the court erred in failing to consider the children's inheritance rights from father. Father cites no authority to suggest that the court must consider this factor in determining whether termination is in the best interests of the children, and we have discovered none. Nor does he contend or demonstrate that this consideration would have in any way affected the result. See In re T.R. & L.C., 163 Vt. 596, 597 (1994) (mem.) (error does not require reversal where it was "not critical to the outcome"). Accordingly, we discern no basis to disturb the judgment.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.),
Specially Assigned