

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-157

SEPTEMBER TERM, 2005

In re B.Y., H.Y., G.Y. and T.Y., Juveniles	}	APPEALED FROM:
	}	
	}	
	}	Franklin Family Court
	}	
	}	
	}	DOCKET NO. 41/42/43/44-3-03 FrJv
	}	
	}	Trial Judge: James R. Crucitti

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

Mother and father appeal from an order terminating their parental rights in four children, B.Y., H.Y., G.Y., and T.Y., now respectively fourteen, thirteen, ten, and eight years old. We affirm.

The Department for Children and Families (DCF) took the four children into custody on August 12, 2003. Before removing the children from the family home, DCF had worked with the family after receiving reports in 2002 about then five-year-old G.Y.'s sexualized behavior with other children. T.Y. and B.Y. had also exhibited similar behaviors at school. DCF later discovered that G.Y. had been sexually victimized by an older cousin repeatedly, conduct that sibling B.Y. witnessed on at least one occasion. DCF recommended that parents enroll G.Y. in an intensive educational and recovery program for sexually abused children. Parents took no action, however, and even lied to a DCF caseworker about G.Y. being in therapy when he was not in therapy.

In March 2003, DCF filed a petition alleging that the four children were in need of care and supervision (CHINS). The parties stipulated to a CHINS finding the next month. An order of protective supervision was entered requiring parents to put the children into therapy and to engage in other programming recommended by DCF. That same month, mother and father separated and mother retained custody of the children. When it became clear that the protective supervision order was a total failure, DCF removed the children from mother's care and the court modified its disposition order accordingly.

Mother and father both have substance abuse problems. Mother has been abusing drugs and alcohol for twenty-three years. After she and father separated in April 2003, mother's substance abuse escalated and eventually led to the children's removal from the home. Mother has undergone treatment for her problems periodically without much success. In 2003, mother attended an intensive substance abuse treatment program. Mother borrowed money from one of the program's participants so she could buy drugs rather than fully engage in treatment.

Mother's drug and alcohol problems contributed to her criminal history, which dates to 1996. In February 2003, mother went to prison for failing a drug test while on probation. Mother tested positive for cocaine two weeks prior to being sentenced on a federal conviction. Even incarceration failed to deter mother from using drugs as evidenced by her positive tests for benzodiazepines and opiates while in prison. Mother's most recent prison term went from February

2004 to January 2005.

Like mother, father has substance abuse issues that also led to criminal behavior. Father and his girlfriend, J.M., are heroin users who regularly abused the drug during the spring and summer of 2004. They have spent considerable sums supporting their habit. Father has convictions for driving while intoxicated, negligent and careless operation, and violation of probation, among other things. In 2004, father was unsatisfactorily discharged from probation. At the time of the termination hearings in this case, father was awaiting sentencing on yet another conviction.

Because of father=s and J.M.=s substance abuse and criminal conduct, DCF prohibited any contact between J.M. and father=s children. Both father=s and J.M.=s respective probation officers warned the couple not to contact each other. Father ignored the probation officer=s warnings, and DCF=s prohibition, when he allowed J.M. to drive with G.Y. in the car while J.M. was drunk. On that occasion, J.M. lost control of the vehicle and went off the road. The juvenile court found that J.M. and father share a post-office box, that both have a key, and that father=s claim to the contrary was not credible.

The juvenile court heard testimony on the termination petition over three days in early February 2005. The order granting DCF=s petition was entered on April 7, 2005. Mother and father appealed the order. On appeal, mother argues that the record does not support the court=s decision to permanently sever her legal ties to the children. Father argues that the court failed to assess the quality of his relationship with the children. He also claims that the juvenile court erred by finding, contrary to the evidence, that father cannot resume his parental duties within a reasonable period of time. As we explain below, there is no merit to parents= arguments.

When faced with a petition to terminate parental rights, the juvenile court must determine if the child=s best interests are served by termination after considering four statutory factors. In re T.T., 2005 VT 30, & 5 (mem.); see 33 V.S.A. ' 5540 (setting forth criteria for juvenile court=s consideration when adjudicating a petition to terminate parental rights). The most important factor is the likelihood that the parent will be able to resume his or her parental duties within a reasonable period of time. In re K.F., 2004 VT 40, & 10, 176 Vt. 636 (mem.). When the juvenile court applies the proper standard, as here, we will not disturb its findings unless they are clearly erroneous; in turn, we will affirm the juvenile court=s conclusions if the findings support them. Id. Notably, the law does not mandate that the juvenile court consider alternative disposition options when deciding whether the State has demonstrated, by clear and convincing evidence, that termination is warranted. In re T.T., 2005 VT 30, & 7.

We begin with mother=s claim that the record does not support the juvenile court=s decision to terminate her parental rights because it failed to consider whether the children would benefit in the future from retaining their legal relationship to her. The argument wholly misses the point of termination. By determining that termination of mother=s parental rights was in the children=s best interests, the juvenile court necessarily considered and rejected mother=s claim. The juvenile court found that mother was unlikely to be able to resume her parental duties within any reasonable time period. Mother points to evidence in the record that suggests that she has recently made substantial progress in confronting the obstacles to reunification with the children. However, it is not up to this Court to weigh that evidence of relatively brief sobriety against other evidence in the record of mother=s extended unavailability due to drug dependence. The juvenile court is the sole arbiter of evidentiary weight and credibility. In re A.F., 160 Vt. 175, 178 (1993). Mother does not challenge the court=s findings as lacking evidentiary support, and she has not argued that the court applied the wrong standard under ' 5540 of Title 33. Mother presents no basis to overturn the court=s well-supported decision.

Like mother=s appeal, father=s claims lack merit. He first argues that the juvenile court committed reversible error by not evaluating the bond he has with the children. We disagree. The court heard conflicting evidence on father=s interactions with the children. Father correctly notes that the court heard evidence that H.Y. loves her father and that father and the two oldest children have had positive contact. But the record also establishes that father virtually ignored G.Y.=s need for counseling after being molested by his older cousin; encouraged the children to lie and told them not to give DCF any information about the family; allowed his drug-addicted girlfriend to have contact with the children against the directives of DCF and his probation officer; permitted his girlfriend to drive drunk with one of his children in the car; and continued to commit criminal offenses even after his children were removed from their home.

Until recently, father=s conduct demonstrated that his priorities were drug use, maintaining his relationship with his girlfriend, J.M., and avoiding his family responsibilities. Those facts are relevant to the quality of father=s relationship and bond with the children. Father may not agree with the juvenile court=s findings and conclusions on this issue, but the decision is supported and must be affirmed.

Finally, father argues that the court erred by finding that he was unlikely to be able to resume parenting the children within a reasonable time period. The juvenile court heard testimony that father=s recent progress resulted from two things: the threat that his parental rights would be terminated and his girlfriend=s incarceration. In the past, father consistently put his own desires ahead of his children=s needs. That was particularly true while he was involved in a relationship with J.M. The DCF caseworker testified that more time was necessary for father to prove that he can maintain sobriety and act in the interests of his children. She was justifiably uncertain, for example, whether father could continue on the right path once J.M. was released from prison because his past conduct suggested otherwise. After six month=s sobriety, father=s own drug counselor agreed that another six months would be necessary to ensure against relapse. Given father=s history, continued sobriety and responsibility is not a foregone conclusion. Most importantly, the caseworker testified that father=s children cannot wait for his final transformation, whenever that may occur. Father had already been afforded enough time to do what was necessary to regain custody of the children, and their need for permanency was more important than their hope that father might someday become a responsible parent to them. Given all the evidence in the record, the court=s findings are supported, and its conclusion that termination meets the children=s best interests is supported by the findings. No error appears.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice