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ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-325

FEBRUARY TERM, 2006

In re A.R., A.R., and A.A., Juveniles	}	APPEALED FROM:
	}	
	}	Franklin Family Court
	}	
	}	DOCKET NOS. 216/217/218-12-03 Frjv
		Trial Judge: James R. Crucitti

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

Maternal aunt, Tina Raymond, appeals from the family court=s order terminating her guardianship over A.R., A.R., and A.A. She argues that the family court erred in concluding that she, as guardian, lacked the authority to determine where the children should be placed. We affirm.

A.R., A.R., and A.A. are the children of mother Allison Allen and fathers John Smith and Ricky Revis.[*] Parents have criminal and violent histories. In May 2003, a North Carolina court issued an order granting Tina Raymond, a Vermont resident, legal and physical custody of the children and appointing her as their guardian. The court also concluded that it was in the children=s best interest that any visitation between mother and children be supervised and that none of the children live in mother=s home. After issuing its order, the North Carolina court relinquished jurisdiction of the matter.

In May 2003, the children moved to Vermont to live with Raymond. In December 2003, the Department for Children and Families (DCF) filed a petition alleging that the children were in need of care and supervision (CHINS) because they were actually living with mother in Sheldon, Vermont. The family court transferred legal custody of the children to DCF pursuant to a temporary detention order. In March 2004, the children were adjudicated CHINS under 33 V.S.A. ' 5502(a)(12)(B) based on Raymond=s admission that she permitted the children to have unsupervised contact with mother. The children were continued in DCF custody. Two of the children were placed with Angela Heath, Raymond=s sister, and A.A. was placed in a foster home. In June 2004, DCF filed a disposition report recommending termination of parents= residual rights (TPR) and shortly thereafter, DCF filed a TPR petition.

A disposition hearing was held in September 2004. Raymond did not attend the hearing but she indicated through counsel that, although she was not mentioned in the TPR petition, she would relinquish any legal rights that she had to the children. In December 2004, Raymond, through her attorney, requested a forensic evaluation to determine if the Heath household was appropriate and if it would be in the children=s best interests to be living together. The court approved Raymond=s request in January 2005. In April 2005, the State moved to dismiss Raymond as a party to the disposition/TPR proceeding. Raymond objected. The family court determined that the North Carolina order appointing Raymond as guardian was akin to a permanent guardianship under 14 V.S.A. ' 2664, and Raymond was entitled to a hearing in the nature of a modification or termination hearing pursuant to 14 V.S.A. ' 2666.

The court held three days of hearings and issued a written order in July 2005 terminating Raymond=s guardianship. The court made the following findings. Raymond had difficulty caring for the children. Three months after the children moved in with her, their mother moved to Vermont. Mother=s extremely violent boyfriend, John Smith, followed shortly thereafter. Raymond was concerned that Smith would flee with the children to get back at mother, and she obtained a relief-from-abuse order on behalf of herself and the children ordering Smith to stay away from them. With assistance from a battered women=s advocate, Raymond and mother arranged for mother to move into a safe house with the children. Raymond did not inform the advocate that there was a court order prohibiting the children from staying with mother. Mother left the shelter shortly thereafter and moved into a trailer with the children. Raymond was aware that this occurred. Mother then reestablished contact

with Smith. Concerned school officials contacted police and DCF, and the children were taken into DCF custody. Although Raymond initially engaged in visitation with the children, she indicated in June 2004 that the visits were too difficult for her. In September 2004, Raymond indicated through counsel that she would not contest the termination of her legal rights concerning the children.

The court found that these facts demonstrated that a substantial change in material circumstances had occurred since the guardianship order was issued. The court explained that the North Carolina order granting Raymond custody and guardianship required supervised visitation with mother and the order prohibited the children from staying overnight or residing with mother. Raymond was aware of these requirements yet she allowed the children to move in with their mother. Raymond stated that she was Anot surprised@ to learn that Smith was living with them as well. The court also found that Raymond indicated she could no longer care for the children.

The court rejected Raymond=s proposal that she remain guardian for the purpose of determining where the children would be placed. The court found that such action was not contemplated by the North Carolina order nor by Vermont law after a CHINS determination had been made, and it was an inappropriate consideration for maintaining a guardianship. The court stated that the decision regarding permanency and placement should be made by a court, rather than an individual who was unable to care for the children. The court explained that a forensic evaluation had been prepared to evaluate the children=s best interests and, at the hearing on the TPR petition, the court would have the opportunity to hear all of the evidence and arguments as to the appropriate placement for the children.

The court then reviewed the factors set forth at 33 V.S.A. ' 5540 and made numerous findings in reaching its conclusion that termination of Raymond=s guardianship was in the children=s best interests. The court explained that the children would remain in DCF custody until the family court determined the appropriate placement at the TPR hearing. Raymond appealed.

On appeal, Raymond argues that the family court erred in concluding that it, rather than she, had the authority to determine where the children would be placed. Raymond asserts that, as guardian, she was authorized to arrange for a suitable placement for the children.

Raymond mischaracterizes the family court=s opinion, and her legal arguments are without merit. While Raymond may at one time have been authorized to arrange a suitable placement for the children as their legal guardian, she lost any such authority when legal custody of the children was transferred to DCF. See 33 V.S.A. ' 5528(3)(A) (when child is adjudicated CHINS, family court may transfer legal custody, or guardianship over the person, or residual parental rights and responsibilities, to DCF); see also In re B.C., 169 Vt. 1, 13 (1999) (concluding grandparent=s assertion that she retained residual parental rights by virtue of guardianship order subsequent to CHINS determination was Adoubtful, at best, considering that 33 V.S.A. ' 5528(3) gives the family court the authority to transfer guardianship of a child found to be in need of care of supervision to [DCF] or any individual qualified to care for the child@). As we explained in In re S.P., 173 Vt. 480, 482 (2001) (mem.) (citing 33 V.S.A. ' 5532(a)(2)), a guardianship order may be set aside Aon the ground that changed circumstances so require in the best interests of the child,@ and a CHINS adjudication Ain and of itself demonstrates a substantial change in material circumstancesCthe custodial guardian is unable to protect and care for her ward, contrary to expectations when the guardianship was conferred.@ As the children here were in DCF custody, it was DCF, not Raymond, that was empowered to determine where the children would be placed, subject to the family court=s acceptance or rejection of DCF=s recommendation. See In re J.D., 165 Vt. 440, 444 (1996) (family court may reject DCF=s recommendation as to placement).

Even assuming that the transfer of legal custody to DCF did not supercede the North Carolina guardianship order, there is simply no support for Raymond=s assertion that the family court erred in refusing to continue her guardianship for the sole purpose of allowing her to determine where the children would be placed. This is particularly so in light of Raymond=s failure to protect the children while they were in her care. See In re S.P., 173 Vt. at 482 (AThe purpose of a guardianship, as its name suggests, is to lawfully invest a person with the authority and duty to protect and take care of another person.@). The family court=s conclusion that complete termination of Raymond=s guardianship was in the children=s best interest is well-supported

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by its findings, which are in turn supported by the evidence. We find no error in the court=s decision. See Payrits v. Payrits, 171 Vt. 50, 52-53 (2000) (noting family court=s broad discretion in determining a child=s best interests and rendering a custody determination).

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice

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[*] Parents either voluntarily relinquished their residual parental rights or had their rights terminated by the court in the underlying actions, and no parent has appealed.