

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2005-402

FEBRUARY TERM, 2006

In re B.M., Juvenile

}  
}  
}  
}  
}  
}  
}

APPEALED FROM:

Chittenden Family Court

DOCKET NO. 350-8-03 Cnjv

Trial Judge: Thomas J. Devine

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

Mother and father appeal separately from a family court order terminating their residual parental rights to the minor, B.M. Mother contends the evidence did not support the court=s findings that: (1) there had been a substantial change of material circumstances; and (2) termination of mother=s parental rights was in the best interests of the child. Father contends the evidence did not support the court=s findings that: (1) he would not be able to resume parental responsibilities within a reasonable period of time; and (2) he could not play a constructive role in meeting the child=s future developmental needs. We affirm.

Following a three-day hearing in January and February 2005, the court issued a written decision granting the State=s petition to terminate parental rights. The evidence adduced at the hearing may be summarized as follows. B.M. was born to mother and father, who were never married, in January 2002. The parents lived with mother=s family in Burlington. Mother provided primary care for the child, with assistance from her mother and sister.

In June 2002, father assaulted mother. He subsequently pled guilty to simple assault, was sentenced to four to twelve months, all suspended, and placed on probation. A condition of probation required that he complete the Domestic Abuse Education Program and not contact mother unless approved by probation. In August 2002, mother assaulted her father. While the charges were pending, she and the child lived for several months in a homeless shelter. In December 2002, mother entered a guilty plea, received a suspended sentence, and was placed on probation. Shortly thereafter, she and the child moved back into her parent=s home.

After being placed on probation in July 2002, father consistently failed to attend the required domestic abuse program and became angry and confrontational during meetings with his probation officer, resulting in the filing of violation of probation charges. After receiving two violation of probation charges, father was incarcerated in August of 2003. After he admitted to violating probation, defendant began serving his underlying sentence of four to twelve months in October.

In August 2003, while father was in jail, B.M. was spotted by a neighbor walking unattended in the middle of a public street in Burlington. The child had nail polish all over her face. She was nineteen months old at the time. The police were contacted and able to locate mother, who was asleep when the child apparently got out of her crib and out the door. Mother had an angry confrontation with the police at the hospital where B.M. had been taken, and later became argumentative and confrontational in court at the hearing on the State=s emergency custody petition. The court granted the petition, and B.M. was taken into emergency custody by the Department of Children and Families (DCF).

Upon mother=s admission, B.M. was adjudicated a child in need of care and supervision (CHINS) in September 2003.

Mother has a history of mental health problems, including bipolar disorder, substance abuse, and anger management problems. These surfaced on several occasions after B.M. was taken into custody by DCF. In September 2002, during a visit with the child, the police had to be called because mother refused to return the child to the caseworker and was swearing and screaming at DCF workers. Thereafter, visits with mother were suspended for several months. The initial disposition hearing in October 2003 had to be suspended when mother became disruptive and approached the bench, requiring additional security officers. The hearing was completed in November, when mother agreed to a plan of services calling for mental health counseling, substance abuse screening and therapy, and parent education. Mother refused to cooperate with the parent education program, however, causing the program to suspend its services in November 2003. Father, who was still incarcerated, attended the November hearing and agreed to participate in recommended domestic abuse and ADad safe@ programs to address domestic violence issues.

Mother=s visits with the child resumed in late December and early January 2004, when she began mental health counseling and resumed her parent education program. A February 2004 case plan called for reunification in April 2004. Mother completed a three-month intensive parenting program, although her supervisor recommended that reunification be delayed based on mother=s lack of progress. Social workers observed that, during visits with the child, mother struggled to stay focused on B.M. and to understand the child=s needs. Visits at mother=s home were often chaotic, disrupted by the presence of friends and overnights guests of mother. In March 2004, the police responded to a complaint about mother. In April, mother was suspended from her substance abuse program for lack of progress and failure to appreciate the need for counseling. In May, mother was cited for an assault on a woman in her apartment, resulting in a violation of probation charge to which she admitted.

Father was released from prison in May 2004, and resumed his relationship with mother. After his release, father continued to refuse to participate in domestic abuse counseling or parent education. An Easter Seals worker met with father several times, but the worker felt threatened and discontinued the services as futile. In July 2004, the State filed a petition to terminate both parents= parental rights. Mother continued to have supervised visits with the child at DCF offices through the rest of the year. The case worker observed that mother exhibited some positive interactions with the child, but showed little progress in focusing on the child=s needs. Mother complained to a DCF worker in September 2004 that father was smoking marijuana and not contributing to the family, but the court noted that mother continued to reside with him and shared his belief that domestic abuse counseling was unnecessary. Neither parent was employed at the time of the hearing in January and February 2005.

B.M. was placed with her current foster parent and her partner in August 2003, shortly after she came into DCF custody at the age of nineteen months, and has remained with them since that time. The foster parent, a trained mental health worker, testified that B.M. exhibited serious developmental delays in her speech, attention, and fine motor skills when she was first placed in foster care. She was aggressive, hoarded food, and engaged in selfBmutilating behavior. At day care, she was violent and exhibited sexualized behaviors, requiring the assignment of a one-on-one aid throughout the day. Since then, the child has been in counseling at a center specializing in sensory integration therapy and has been receiving individual therapy, resulting in substantial improvement in her focus and behavior. The foster mother testified, and the court found, that the hoarding of food and sexualized and self-mutilating behaviors have ceased, and her aggression toward other children has subsided. The court found that B.M. had developed a close parental bond with her foster mother and family, who hoped to adopt the child.

Based on the foregoing, the court concludedCwith respect to both parentsCthat there had been a substantial change of circumstances; father had refused to participate in any form of domestic abuse counseling or education, as required by the case plan, and mother, while having participated in several programs, had made minimal progress and continued to engage in assaultive and hostile behavior. Applying the statutory criteria set forth in 33 V.S.A. ' 5540, the court further concluded by clear and convincing evidence that termination of the parental rights of both mother and father was in the best interests of the child, and therefore granted the State=s petitions. These appeals followed.

When termination of parental rights is sought, the court must perform a two-step analysis. It must first determine whether there has been a substantial change in material circumstances, and then determine whether termination of

parental rights is in the child=s best interests. In re K.F., 2004 VT 40, & 8. We will uphold the trial court=s findings of fact unless clearly erroneous, and its conclusions if supported by the findings. Id. Our role on appeal of a termination order is not to second-guess the family court or reweigh the evidence, but rather to determine whether the court abused its discretion@ in terminating parental rights. In re S.B., 174 Vt. 427, 429 (2002) (mem.).

Father raises two claims on appeal. First, he contends the evidence and findings were inadequate to support the court=s conclusion that he could not resume parental responsibilities within a reasonable period of time. Father claims that the court=s analysis of this factor was limited to its finding that he refused to comply with the case plan requirements. The record does not support the claim. The court carefully reviewed the evidence of father=s history with the child, noting that the relationship was minimal; and that father had been incarcerated for more than half her life, did not see her while he was in jail, and had only four visits with her since his release. During those visits, father exhibited little or no ability to place his needs over those of the child; he was hostile toward DCF workers, saw himself as a victim, and refused to acknowledge his history of domestic abuse or the need for counseling and education. Considered as a whole, the evidence and findings were more than sufficient to support the court=s conclusion that father could not resume parental responsibilities within a reasonable period of time.

Father also asserts that the court=s conclusion that he could not play a constructive role in the child=s life was based on an erroneous finding that father had testified Ahe does not believe [B.M.] has any special needs.@ Father claims that he was simply unaware of the special counseling and other services that B.M. was receiving, although he had been released from jail for nearly a year at the time of the hearing and had attended a case plan review. He also testified at one point that he would be willing to provide the child any services she might need, but subsequently stated that he believed the mental health counselors were simply looking for something wrong with the child, that her problems simply stemmed from not being at home, and she had been brainwashed by DCF. The record thus supports the court=s finding that father was expressly antagonistic towards the social workers and the notion the child needed special help, and not likely to be able to play a constructive role in B.M.=s life by attending to her developmental and other prescribed needs.

Mother also raises two issues on appeal. First, she contends the evidence was insufficient to support the court=s finding of changed circumstances sufficient to support a change in the disposition to termination of parental rights. Although a substantial change in material circumstances is often found when a parent=s ability to care for the child has stagnated or deteriorated over time, we have explained that stagnation may be found when a parent has made minimal progress in meeting the expectations of the case plan over a significant period of time. See In re J.S. & S.S., 168 Vt. 572, 573 (1998) (mem.) (AChanged circumstances occur when any improvement in parenting skills fails to conform to the expectations and goals set forth in the case plan.@); In re S.M., 163 Vt. 136, 139-40 (1994) (concluding Asome improvement@ will not preclude a finding that the parent=s capacity to care for the child has stagnated A[i]f the improvement does not substantially conform with the established expectations@). Although mother points to evidence that she had completed a parenting program, participated in other programs, and had made some progress in developing parenting skills, the court found Cand the evidence showed Cthat despite nearly two years of services mother remained unable to focus continuously on the child during two-hour visits, to understand her cues that she needed to be fed or to have her diaper changed, or to understand and place the child=s needs ahead of her own. Moreover, the court noted that, notwithstanding mother=s participation in counseling, her volatile and threatening behavior had not abated, and she had gained no insight into the risk of abuse posed by father. Thus, the court=s finding of stagnation was well supported.

Mother further contends the court=s best-interests analysis focused on an unfavorable and improper comparison between the quality of mother=s character and home and those of the child=s foster parent. See In re E.B., 158 Vt. 8, 12 (1992) (A[P]arental rights cannot be terminated simply because a child might be better off in another home.@). This was not the court=s rationale. Review of the court=s findings and conclusions reveals that it addressed each of the statutory factors under 33 V.S.A. ' 5540. The court acknowledged that mother=s relationship with the child had many positive aspects, but balanced this against a number of other factors, including the child=s close and longterm relationship with her foster family and thorough integration into her current school and community, and her critical need for permanency and stability measured against mother=s inability to resume her parental duties within a reasonable period of time. Accordingly, we find no error.

BY THE COURT:

---

John A. Dooley, Associate Justice

---

Marilyn S. Skoglund, Associate Justice

---

Brian L. Burgess, Associate Justice