

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-487

MARCH TERM, 2006

In re L.N., Juvenile	}	APPEALED FROM:
	}	
	}	
	}	Franklin Family Court
	}	
	}	
	}	DOCKET NO. 143-7-04 FrJv

Trial Judge: Mark Keller

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

Mother challenges termination of her parental rights, arguing that the evidence does not support the family court=s conclusion that mother could not assume a parental role in a reasonable period of time. We affirm.

Mother does not contest the basic facts found by the family court. Mother gave birth to L.N. on June 9, 2004. L.N. came into custody of the Department of Children and Families (DCF) on July 22, 2004, when mother was incarcerated for thirty days. Mother made a plan for L.N.=s care during her incarceration, but that

plan failed. Mother conceded that L.N. was a child in need of care and supervision, and L.N. was placed in a foster home (where he remained through the termination hearing). DCF filed a disposition plan calling for reunification with mother. Following her release in August 2004, mother had the opportunity for supervised visits with L.N., but missed the majority of scheduled appointments. In addition, during this time, mother repeatedly tested positive for drug use, gathered more criminal convictions, and was re-incarcerated in February 2005 as a result. In April 2005, mother began participating in the ATapestry@ program, a comprehensive effort at rehabilitation, and was expected to be released in February 2006.

The DCF=s original disposition report of October 27, 2004, recommended reunification of L.N. with mother, but that recommendation was changed to termination and adoption as of January 24, 2005. The family court held a contested hearing, at which it found that the DCF petition was initiated when mother was unable to parent L.N. due to her incarceration, and circumstances only deteriorated from that point:

Over the next six months [mother] had an unreliable record for parent child contact, continued to use illegal drugs, failed to pursue substance abuse counseling and failed to comply with her terms of adult probation. In the end, [mother] was incarcerated for violating her probation and received a minimum of thirteen months thereby preventing her from parenting her child. [Mother=s] lengthy incarceration is, alone, a sufficient change in circumstance [justifying] the change in the plan.

Having found a substantial change in material circumstances justifying the change in disposition from reunification to termination, the court next examined whether termination was in L.N.=s best interests. See In re S.M., 163 Vt. 136, 138-39 (1994) (termination of parental rights requires finding (1) that there has been a substantial change in material circumstances and (2) that termination is in best interests of child). The decision of whether termination is in the best interests of the child is governed by the four statutory factors set out in 33 V.S.A. ' 5540. Mother does not contest the family court=s findings on the first, second and fourth statutory factors, which counseled that termination was in L.N.=s best interests. Her focus is on the third criterion, which requires the family court to examine A[t]he likelihood that the natural parent will be able to resume [her]

parental duties within a reasonable period of time.@ 33 V.S.A. ' 5540(3).

In considering this factor, the family court found that, at the time of the hearing, L.N. was fifteen months old and had been in DCF custody since he was six weeks old. Mother had an opportunity after her release in August 2004 to establish a consistent parent-child relationship, but failed to do so. Rather, mother engaged in behavior that led to her being re-incarcerated. Mother cites her success in the highly-structured ATapestry@ program as evidence of her ability to resume a parental role. Still, at the time of the final hearing, her earliest release would be more than four months later, in February 2006, at which point she would be required to demonstrate an ability to be consistent and reliable for L.N. for at least five more months before assuming parental duties. The family court determined that L.N., who would have been in DCF custody for eighteen months by the time mother was released from jail, Aneeds [] permanency now.@ Accordingly, the family court concluded that, A[c]onsidering the age of the child when he came into custody, his age now and his age when [mother] may [be] able to resume parental care, the court concludes that the delay is not reasonable.@

On appeal, mother argues that the family court should not have ordered termination in the absence of a specific finding as to how long this particular child could wait for mother to be able to resume a parental role before risking physical or emotional harm. Mother, relying on In re D.A., 172 Vt. 571, 573 (2001) (mem.), argues that time for a parent=s potential improvement may be afforded so long as the delay does not place the child at risk of physical or emotional harm. But this proposition does not translate into an affirmative requirement that the family court make a specific finding regarding precisely what amount of delay will be harmful to the child. Indeed, while the family court is required to make findings on the four statutory factors listed in 33 V.S.A. ' 5540, findings are not otherwise required. In re J.T., 166 Vt. 173, 180 (1997). Accordingly, the family court was under no obligation to make specific findings regarding the amount of time L.N. could wait before suffering emotional or physical harm. Rather, the only applicable standard is that the family court=s finding that mother will not be able to resume a parental role in a reasonable period of time, measured from the child=s needs and situation, be supported by clear and convincing evidence. In re A.F., 160 Vt. 175, 177-78 (1993).

In this case, the family court did make specific findings as to L.N.=s situation and needs. After examining

the facts of this case including that L.N. was placed in DCF custody at six weeks of age due to mother=s incarceration; mother=s re-incarceration since that time; mother=s track record of non-compliance with DOC and DCF plans; and the fact that L.N. would be eighteen months old upon mother=s release without yet having formed a relationship with mother the family court determined that L.N. needs [] permanency now. Mother=s more recent success, while laudable, was achieved only under strict supervision which would not necessarily continue upon her release. The court=s decision not to postpone permanency another nine months, pending a still uncertain outcome, was supported by clear and convincing evidence.

Father filed a letter purporting to join in mother=s appellate brief, but mother=s brief offered nothing in support of father=s appeal. Because mother=s appellate arguments do not address father=s interests, father may be deemed to have waived any arguments on appeal. See King v. Gorczyk, 2003 VT 34, & 21 n.5, 175 Vt. 220 (issues not adequately briefed on appeal are waived). In any event, considering the family court=s uncontested findings with regard to father=s parenting ability (his inability to care for L.N. during mother=s incarceration, participate in visits, or meet any of the requirements of the DCF case plan), we conclude that the termination decision with respect to father was supported by clear and convincing evidence.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice