

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2006-016

MAY TERM, 2006

In re I.M., Juvenile

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APPEALED FROM:

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Orleans Family Court

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DOCKET NO. 66-11-04 OsJv

Trial Judge: Alan W. Cook

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

Mother, whose residual parental rights in I.M. were terminated, appeals from the family court=s denial of her request that custody and guardianship of the child be transferred to his maternal grandmother. Mother argues that the court=s rejection of her request was based on faulty reasoning. We affirm.

The Department for Children and Families became concerned about I.M. while mother was pregnant after receiving reports that mother was homeless and abusing drugs and alcohol. After I.M.=s birth in August 2004, DCF received reports about mother=s volatile mental health status, domestic violence issues, and unsanitary living conditions, and parents= aggressive behavior and neglect of I.M. In November 2004, an emergency

detention order was issued and I.M. was placed in temporary DCF custody. He was subsequently placed with his current foster parents. After a detention hearing, I.M. was continued in DCF custody. In February 2005, I.M. was adjudicated as a child in need of care or supervision based on the parties' stipulation. DCF then filed a motion to terminate parents' residual rights.\*

After a hearing, the court issued an order terminating mother's residual rights and denying her request that I.M. be placed with his maternal grandmother. Mother does not challenge the court's finding that she would not be able to parent within a reasonable period of time nor its conclusion that termination of her rights was in the child's best interests. Instead, mother argues that the court should have abided by her request that the child be placed with his maternal grandmother. According to mother, the family court erred because: (1) it failed to evaluate whether a bond existed between I.M. and his maternal grandmother and grandmother's fiancé in evaluating the child's best interests; and (2) it erroneously concluded that grandmother would not be able to adequately care for the child, tend to his special needs, and protect him from mother.

We reject these arguments. In its petition, DCF sought custody of I.M. without limitation as to adoption, and the family court was therefore required to consider the four factors set forth in 33 V.S.A. ' 5540 to determine whether termination of mother's residual rights was in the child's best interests. The court conducted the required analysis and concluded that the statutory factors overwhelmingly favored termination of mother's rights. The court's failure, in evaluating whether mother's rights should be terminated, to make specific findings under ' 5540(1) as to A[t]he interaction and interrelationship@ of I.M. with grandmother is harmless. See In re A.F., 160 Vt. 175, 178 (1993) (error in family court's decision does not require reversal where other evidence supported termination of parental rights).

In conducting its best-interests analysis under 33 V.S.A. ' 5540, the court was not required to evaluate the fitness of a custodian that mother proposed, nor was it required to defer to mother's wishes regarding placement when she has been found to be an unfit parent. See In re J.T., 166 Vt. 173, 180 (1997) (court not required to make findings on factors not enumerated by ' 5540). In any event, the court did make findings regarding mother's proposed placement, and it acted within its discretion in rejecting her request. The court concluded that placement with grandmother was not in the child's best interests because: grandmother was

unable to control mother; the court had no confidence that grandmother would be able to protect I.M. from mother; and grandmother did not fully grasp the intensity of services that I.M. would require as a special-needs child. The court also found that removing I.M. from his current foster home, where he had been living since coming into DCF custody, would disrupt his healthy, loving attachment with his foster family. These findings are supported by the record. While mother points to evidence that she believes shows that grandmother would be a suitable placement, the family court concluded otherwise, and we will not disturb its assessment of the evidence on appeal. See In re A.F., 160 Vt. at 178 (AWe leave it to the sound discretion of the family court to determine the credibility of the witnesses and to weigh the evidence.@). We find no error in the court=s decision.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice

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\* Father B.M. voluntarily relinquished his parental rights.