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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-109

AUGUST TERM, 2006

In re I.B. and E.B., Juveniles	}	APPEALED FROM:
	}	
	}	
	}	Windsor Family Court
	}	
	}	
	}	DOCKET NOS. 8-1-02 & 9-1-02 Wrjv

Trial Judge: Harold E. Eaton

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

Father appeals the family court=s decision terminating his parental rights with respect to his daughter I.B.* Mother=s parental rights were also terminated, and she joins in father=s brief. We affirm.

The family court found the following facts after seven days of hearings. I.B. was taken into custody of the Department for Children and Families in January, 2002, and has been in state custody since that time. I.B. was removed due to concerns that she was at risk from her father, whom DCF had substantiated as a sex

offender. That same year, father pleaded nolo contendere to a charge of lewd and lascivious conduct with his 14-year old niece. In a 35-page written decision, the family court examined the evidence underlying the DCF substantiations (eight in total, involving both physical and sexual abuse of minors and neglect), the nolo contendere plea, as well as other aspects of father=s criminal history. The court found that father had been Aa diligent participant in his sexual offender treatment program,@ but that he did not appreciate the significance of his past actions and had not sought treatment for his anger and sexual behavior beyond what the state required.

While not questioning that mother loved her children, the family court nonetheless found that mother Ademonstrated a lack of full candor during her testimony@ (in particular, regarding whether she had allowed father to have unsupervised contact with the children), that she had failed to cooperate with DCF, and that she Aminimize[d] the significance of [father=s] transgressions with children.@ The court examined the foster placement for I.B. and found that I.B.=s emotional and psychological difficulties had improved with counseling and that she was doing well in her current placement.

In its legal analysis, the court concluded that there had been a substantial change in material circumstances in the form of the stagnation in the parents= ability to properly care for their children. See In re D.M. and T.P., 2004 VT 41, &5, 176 Vt. 639 (requiring threshold finding of substantial change in termination cases). Specifically, the court found that the parents had not improved in their ability to keep the children safe, in part because of their refusal to recognize the emotional and physical risks posed by father=s past actions. The court determined that while father=s treatment in a sexual offender program likely helped him personally, there was no indication that it would improve the safety of the children. The court further concluded that termination of parental rights was in I.B.=s best interests, examining the evidence with respect to the statutorily-mandated factors. 33 V.S.A. ' 5540.

The family court has broad discretion in deciding whether to terminate parental rights, and we will affirm the court=s decision if the findings are based on the evidence and support the court=s conclusions. In re D.M. and T.P., 2004 VT 41 at &5. AOur role is not to second-guess the family court or to 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).

On appeal, father argues that family court=s finding that father had a Alengthy track record of abuse@ was not supported by the evidence. In particular, he argues that the mere existence of a DCF substantiation does not support termination, citing In re A.W., 164 Vt. 412, 416 (1995). Here, however, the family court conducted seven days of hearing and took evidence on the facts underlying these incidents. The court did not rely solely on the mere existence of a DCF substantiation, and made specific findings on the evidence in support of termination.

Father also argues that the family court erred in finding that his efforts in seeking and participating in treatment were not sufficient to protect I.B. from sexual abuse. The family court considered ample evidence on father=s ability to parent his children, and concluded that his participation in state-mandated treatment did not outweigh father and mother=s continued unwillingness to recognize the seriousness of his abusive acts toward children. See In re K.B., 154 Vt. 647, 648 (1990) (recognizing that a parent=s denial of sexual abuse poses danger to children). The finding that treatment alone was insufficient, and the related conclusion that parents were unable to care for and protect I.B., were supported by the evidence.

Finally, father asserts that the family court did not find that there was clear and convincing evidence that DCF had made reasonable efforts to assist the parents (instead finding that the evidence met only a preponderance of the evidence standard), and that such a finding is required. While specific findings regarding reasonable efforts are preferred, we have previously held that specific findings regarding DCF=s efforts are not required. In re J.T., 166 Vt. 173, 180 (1997).

On the whole, the family court thoroughly assessed the evidence relevant to the termination of parental rights. The hearings in this case were extensive and, while there were some conflicts in the evidence, the trial court resolved those conflicts in its findings and there is ample support for the family court=s findings in support of its decision to terminate parental rights.

Affirmed.

BY THE COURT:

_____

Paul L. Reiber, Chief Justice

_____

John A. Dooley, Associate Justice

_____

Denise R. Johnson, Associate Justice

---

[*] The family court denied the petition to terminate parental rights with respect to E.B.