

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-136

AUGUST TERM, 2006

In re K.M., Juvenile

}

APPEALED FROM:

}

}

}

Caledonia Family Court

}

}

}

DOCKET NO. 65-9-03 CaJv

Trial Judge: Walter M. Morris, Jr.

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

Mother appeals from a family court order conditioning parent-child contact with the minor, K.M., upon mother=s participation in mental health counseling. She contends: (1) the court=s findings fail to support the order; and (2) the court lacked authority to issue a time-limited order. We affirm.

The facts and extensive procedural history underlying this appeal may be summarized as follows. Mother suffers from a severe mental illness that results in psychotic and paranoid delusions. She enrolled her son, K.M., in the kindergarten class of a school in Sheffield, Vermont in 2000, but removed him from the school

when he was in first grade following an altercation with school staff in which she became angry and irrational based on concerns which the court here found resulted from her delusional disorder. She had previously expressed concern over the school=s safety precautions against the danger of K.M. being kidnapped by child protection officials or Ahit men.@ School employees observed that K.M.=s hygiene and clothing were generally inadequate and that he was hungry all the time.

Following her removal of the child from school, mother sought approval from the Vermont Department of Education to home school K.M., but the request was denied by the hearing officer, who determined that mother could not provide a minimum course of study, and this Court affirmed, noting that mother=s pro se submissions lacked Aclarity and coherence.@ In re K.M., No. 2002-340, slip op. at 2 (Vt. June 26, 2003) (unreported mem.). Thereafter, mother applied again for approval for home schooling, and was again denied. A truancy petition was filed, and K.M. was found to be CHINS based upon habitual truancy in November 2003. During this period, mother persisted in undertaking to provide home schooling without approval, and the court here found that the environment in which she provided lessons Awas one of fear, apprehension, and occasional physical abuse,@ and a continuing source of anxiety for the child.

Neither mother nor father appeared for a disposition hearing in February 2004. The court continued the hearing to March 2004, but efforts to locate mother and father were unsuccessful and the court, following the continued hearing, issued an order transferring custody to DCF. The child=s whereabouts remained unknown, and there were concerns about mother=s reaction during execution of the court=s pick-up order.

In March 2004, mother and father were cited to appear in district court on criminal charges of truancy. They failed to appear for their arraignment, and arrest warrants were issued. The parties were eventually located and arrested, resulting in an additional charge against mother for resisting arrest. K.M. apparently remained with his parents at this time. Father pled no contest and was placed on probation. Mother was referred for a competency evaluation, which she refused to attend, and was released on conditions, which she violated, resulting in an additional charge and arrest warrant.

At a disposition hearing in August 2004, which mother did not attend, the court ordered that K.M. be picked-up by DCF in September unless he was enrolled in school. Father subsequently enrolled K.M. in school without mother=s knowledge. The court noted that father was extremely passive and deferential to mother=s emotional swings, and was frightened of her reactions. Nevertheless, in late August 2004, father obtained a temporary relief from abuse order against mother, requiring that she vacate the home and refrain from abusing either K.M. or father. The order was served on mother in early September 2004, at which time she was arrested on several outstanding warrants and an additional charge of resisting arrest.

The district court ordered a competency evaluation. Mother was found incompetent to stand trial and insane at the time of the offenses at issue. Following a hearing in October 2004, mother was involuntarily committed to the Vermont State Hospital for ninety days. Petitions for continued treatment were denied, and she was released in February 2005. Although the court found that mother suffered from persistent delusional and paranoid thinking, and would continue to confront those in positions of authority, including school personnel, social workers, the police, and judges, it concluded that she was not an immediate danger to herself or others. Since her release, mother has lived apart from father and K.M.

During this period, K.M. remained in DCF custody while living at home with father. In December 2004, the juvenile=s attorney moved to modify the disposition order to provide that custody be entrusted to father under a protective order barring contact with mother until she had received necessary mental health treatment. Mother then filed her own modification motion, seeking shared legal custody and no limit on parent-child contact. The court held a hearing over two days in February 2005, and later issued a written decision, comprehensively reviewing the facts and procedural background summarized above, and setting forth numerous detailed findings and conclusions.* Among its findings, the court noted, in particular, the reports and testimony of three psychiatrists who had evaluated mother, and who were in general agreement that her psychosis was characterized by a profoundly delusional thought disorder; that the disorder was essentially permanent, but that anti-psychotic medications and therapy could be effective in treating the symptoms; and that adequate treatment was available in a community setting under the auspices of the community mental health agency, should mother avail herself of these services.

The court found that mother=s mental illness and its manifestations had had a significant impact on K.M. He had been rendered fearful and apprehensive by her physical and emotional abuse, and was currently exhibiting intense anger and behavioral problems at school. A psychiatrist testified that exposure to mother=s psychotic delusions had been, and would continue to be, harmful to K.M.=s psychological well being. The court further found that father had expressed credible fears for K.M. if mother did not undergo treatment, and concerns for K.M.=s safety if left alone with mother because of her temper and history of violence. As for placement of the child, the court found that, with proper support, father would be able to meet K.M.=s needs, and provide a supportive, loving, and stable environment.

As to K.M.=s relationship with mother, the court found that the child=s principal need was to have mother engage in appropriate mental health treatment to obtain better control over her delusional symptoms and thereby interact with K.M. in an emotionally and physically safe manner. Without such treatment, the court found that mother would continue to suffer uncontrolled paranoid delusions, causing her to lapse into violent and confrontational conduct highly detrimental to the child=s welfare. Although emotionally attached to mother, K.M.=s interest in maintaining contact with her was outweighed, the court found, by his need for her to obtain treatment to abate her symptoms so that Abeneficial, rather than traumatic interactions may proceed.@

Accordingly, the court granted the juvenile=s motion, awarding custody to father under the protective supervision of DCF and conditions requiring that K.M. receive regular mental health counseling and regularly attend school; that father continue to work with Easter Seals and other parenting education programs; and that father allow no contact with mother except in accordance with the conditions set forth by the court. As a pre-condition to parent-child contact, the court required that mother immediately engage in treatment for her mental illness with a licensed mental health professional or agency of her choosing; that she regularly attend counseling sessions, as recommended; and that she take all medications as prescribed. Upon compliance with these conditions, the court provided that mother could request that her therapist consult with K.M.=s counselor as to the advisability and conditions suitable to parent-child contact, and then petition the court for a hearing to consider the issue. Until that time, the court limited mother=s contact with K.M. to written communications. The

court on its own motion scheduled a hearing in three months to review the parent-child contact issue. This appeal by mother followed.

Mother contends the court's findings do not support its decision to condition parent-child contact on mother's participation in mental health treatment. She argues that the court's order is essentially a denial of contact in view of the evidence, and the court's findings, that mother has consistently denied her mental health problems and resisted treatment. Mother further claims that the order was unjustified in view of evidence that K.M. had participated in two closely supervised visits with mother while she was committed to the State hospital. She asserts, therefore, that the court should have allowed limited supervised contact.

Mother's claim that the court denied contact is unpersuasive. The order conditioned contact upon mother's availing herself of available mental health treatment; while mother is resistant to treatment, this does not amount to an order denying contact when it is within mother's power to satisfy the condition. As to the basis of the conditions for future contact, the evidence was substantial that exposure to mother's untreated psychotic delusions was damaging to the child and placed him at psychological risk if not physical risk. The evidence thus clearly supports the court's imposition of the treatment condition. See In re K.F., 2004 VT 40, &8, 176 Vt. 636 (mem.) (we will uphold court's factual findings unless clearly erroneous, and its conclusions if supported by the findings). Furthermore, although the court found that K.M. had twice visited mother in the State hospital without incident, it noted that these visits occurred in a highly controlled hospital setting under the continuous supervision of hospital staff with the ability to provide immediate therapeutic intervention. Mother does not claim, nor was there any evidence to suggest, that such conditions to assure the child's safety could be replicated outside such a setting. Accordingly, we discern no basis to disturb the court's ruling.

Mother further contends the order constituted an invalid time-limited order because it was subject to a pending motion by DCF to re-transfer custody to the State, and because the court indicated that it would schedule a hearing to review the parent-child contact issue in three months. The record reveals, however, that the State withdrew the motion in question in January 2006. The order thus plainly constitutes a final, unconditional judgment transferring custody to father subject to DCF supervision. As for the three-month review

provision, the order states that it is confined to the single issue of parent-child contact, and does not change mother=s responsibility to pursue mental health treatment. We find, therefore, that it does not contravene the statutory scheme providing for review of orders transferring custody, guardianship, or parental rights and responsibilities at specifically enumerated times or upon motion based upon changed circumstances. Compare In re T.L. and N.L., 169 Vt. 550, 550 (1999) (mem.) (finding that court lacked statutory authority to order review of disposition transferring custody to DCF in three months in view of statutes limiting such hearings to specifically enumerated time frames). Accordingly, we find no error.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

* Between the hearing in February 2005, and the court=s decision in December 2005, the court issued several orders in response to the State=s request for protective orders based on information that father had permitted K.M. to have contact with mother. The court, in response, continued custody in DCF, and limited contact with mother to written communication, pending its decision.