

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-476

MARCH TERM, 2007

In re W.E., Juvenile

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APPEALED FROM:

Bennington Family Court

DOCKET NO. 146-9-04 Bnjv

Trial Judge: Ellen H. Maloney

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

Mother appeals the family court's order terminating her parental rights to her son, W.E. Mother argues that the court's order should be reversed because there was a six-month delay before the merits hearing and because DCF failed to file a case plan within sixty days. We affirm.

The family court issued an emergency detention order for W.E. on September 15, 2004, in response to a report that mother left W.E. and another child home alone for an hour. Mother had been previously warned about her failure to supervise her children and protect them from harm. A detention hearing was held on September 17, 2004, and mother agreed to Department for Children and Families (DCF) custody pending the merits hearing.

At an October status conference, the merits hearing was scheduled for January 17, 2005. At a December hearing, mother's attorney requested that the hearing be rescheduled because she could not attend in January and mother did not want a replacement public defender. Although the court expressed reluctance to delay the hearing, eventually it was rescheduled. The court held a contested merits hearing on March 7 and 8, 2005. The court determined that W.E. was a child in need of care and supervision based on mother's history of failing to supervise and protect him. The first case plan was prepared in March 2005. The long-term goal was reunification with a parent, although the likelihood of mother to assume responsibility could not be determined at the time due to her ongoing difficulties with the criminal justice system. Under this plan, mother was required to develop proper parenting abilities, regularly visit her children, avoid criminal activity and get mental health and substance abuse counseling. The disposition plan, dated May 2, 2005, also recommended reunification with a parent, but expressed doubt as to the ability of either mother or father to prepare themselves to care for the child..

On May 5, 2006, DCF filed a petition to terminate both parents' rights to W.E. Father voluntarily relinquished his rights. On October 10 and 11, 2006, the court held a contested hearing on termination of mother's rights. In a written decision, the family court terminated mother's parental rights, concluding that she had failed to meet the expectations in the case plan and that termination was in W.E.'s best interest.

In reviewing a termination decision, we will affirm the family court's findings unless clearly erroneous and uphold conclusions of law if supported by the findings. In re A.F., 160 Vt. 175, 178 (1993). In this case, mother does not challenge the family court's findings or conclusions of law. Instead, mother argues that because the process did not conform to statutory time frames, the termination decision is void.

Mother's first contends that termination should be reversed because six months elapsed from the time the CHINS petition was filed to the court's consideration of the merits. Mother's argument rests on 33 V.S.A. § 5519(a), which requires the court to fix a time for hearing on a CHINS petition within fifteen days of filing the petition. Mother urges that the purpose of this provision is to protect parental rights. Mother reasons that without a merits hearing she was deprived of a case plan, which hampered her ability to receive intervention or services.

We reject mother's contention that the delay requires reversal of termination. As we have explained, juvenile proceedings should be resolved quickly, but the statutory time frames are directory, not jurisdictional. In re M.B., 158 Vt. 63, 67 (1992). Although there was a substantial delay between the initial CHINS adjudication and the merits hearing, we find no evidence that the delay prejudiced mother or that the best interests of the child were not served. See id. (explaining that the purpose of the time frames is to further the best interests of the children). Mother never objected to continuing the merits hearing. In fact, the record demonstrates that mother stipulated to continued DCF custody in October and that she requested the delayed adjudication of the scheduled January 2006 hearing to ensure her representation by a specific public defender. Consequently, we find no reason to reverse termination on these grounds.

Mother also argues that her rights were prejudiced because DCF failed to prepare a case plan within sixty days of W.E.'s removal from the home. Mother concludes that because there was no case plan, she could not understand the reasons for prolonged detention nor could she meet DCF's goals for reunification. Mother relies on U.S. Department of Health and Human Services, Administration for Children and Families regulations that require states receiving federal aid to develop a case plan within sixty days after a child is removed from his home. See 45 C.F.R. § 1356.21. Mother also posits that Vermont statutes imply that a disposition report should be created no later than thirty days after detention. See 33 V.S.A. § 5526 (requiring disposition hearing no later than thirty days after CHINS adjudication), § 5527 (requiring disposition report to be submitted to the court prior to hearing). In her case, DCF first filed a case plan March 28, 2005, six months after W.E. was transferred to DCF custody.

Because mother did not object in the trial court and raises this matter for the first time on appeal, we conclude that mother waived this issue. In re A.K., 153 Vt. 462, 465 (1990). In any event, we are not persuaded that DCF was required to file a case plan within sixty days, or that the

delay prejudiced mother in this case. The federal law upon which mother relies controls state receipt of federal funds and does not create a private right of action. See In re K.H., 154 Vt. 540, 542-43 (1990) (holding that Adoption Assistance and Child Welfare Act does not create a private right of action in state juvenile proceedings). Moreover, mother's complaint that she was prejudiced because she lacked notice of why DCF took custody of her children and what DCF expected her to do to achieve reunification is not supported by the record. The trial court found that mother had a long history with DCF replete with warnings for failure to properly supervise the children and protect them from harm, and that, even after the case and disposition plans, mother proved herself incapable of accomplishing fundamental parenting goals. Whatever the delay, mother was well aware of why her children were in DCF custody, what was needed for reunification, and was afforded the time to achieve it.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Brian L. Burgess, Associate Justice