

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2006-528

MARCH TERM, 2007

In re H.R., J.R., & K.R., Juveniles	}	APPEALED FROM:
	}	
	}	Windsor Family Court
	}	
	}	DOCKET NO. 34/35/36-4-05 WrJv

Trial Judge: Harold E. Eaton, Jr.

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

Mother appeals from the family court’s order terminating her residual rights in H.R., J.R., and K.R. She argues that the family court’s conclusion that she would be unable to resume her parental duties within a reasonable period of time is unsupported by the court’s findings and the evidence. We affirm.

Mother and father are the parents of three boys: K.R., born in May 1994, H.R., born in February 1997, and J.R., born in April 1998. Mother and father divorced in 1995 after father was convicted of abusing K.R. The parties reunited, however, and mother subsequently gave birth to H.R. and J.R. In April 2005, the children were taken into the custody of the Department for Children and Families (DCF), and they were later adjudicated as children in need of care or supervision (CHINS). In the June 2005 initial disposition report, DCF opined that reunification with mother would likely be impeded by mother’s defiant behavior, which had a negative impact on her ability to improve her parenting skills, become more aware of her children’s needs, and access appropriate services for them.

In May 2006, DCF moved to terminate both parents’ residual rights. Father voluntarily relinquished his rights, and after a two-day hearing, the court issued a written order terminating mother’s rights. The court made numerous findings, including the following. All three children have special needs, including the need for counseling. They have I.Q.’s of 78 or below. K.R. has speech and language difficulties and other learning problems consistent with his intellectual abilities. K.R. has also had issues with sexual misconduct with at least one of his brothers. H.R. has a hearing loss, and he has also been diagnosed with adjustment disorder with mixed disturbances of emotion and conduct and attention deficit hyperactivity disorder. H.R. engages in dangerous behavior, requires close supervision, and can be exhausting for his care providers. J.R. has speech and language delays and difficulties with fine motor skills. All three children have problems with their social skills, including hygiene and table manners. They are all on IEP’s at school, and have issues with attention deficit disorder.

In the summer of 2005, DCF placed H.R. and J.R. with mother. Mother also had contact

with K.R. through twice-weekly supervised visits. In September 2005, DCF removed H.R. and J.R. from mother's care due to problems with the boys' attendance at school, mother's removal of J.R. from his medication, and the failure of the boys to participate in therapy. The children were placed in foster homes, where they are doing well. After September 2005, attempts were made to have supervised visitation between the boys and mother. These visits were chaotic, and mother had difficulty focusing on all three children. Visitation with mother was upsetting for the children, and neither K.R. nor H.R. wants any contact with mother. After April 2006, mother did not contact DCF for visitation for many months. In September 2006, the court suspended visitation until mother took certain steps. Mother failed to take any of these steps, and she has not had visitation with the children since April 2006.

During the period when visitation occurred, mother was combative with the DCF case worker, Ms. McEvoy, as well as with others who assisted with visitation. Mother threatened Ms. McEvoy on several occasions, and she created an uncomfortable and menacing environment. Throughout the course of visitation, mother was unsupportive of DCF's efforts to impose rules, she defied specific requests from DCF, and she was disrespectful to Ms. McEvoy. She was unreceptive to DCF's attempts to assist her in gaining parenting skills, and unreceptive to any discussions with DCF about the children's welfare. She continually deferred to the children's wishes. The court found mother's behavior consistent with her behavior toward other professionals working with the family. Several of the children's counselors had obtained no-trespass orders against mother. The court also noted that mother had also been recently been convicted of disorderly conduct arising out of a dispute with a police officer. Mother was highly critical of the children's foster placements, and the court found it readily apparent why mother had confrontations or disagreements with so many of the individuals working with the family. She was unreceptive to the direction of others and unwilling to work with professionals trying to assist her sons unless she agreed with them. She seldom agreed with anyone providing services for the children. She presented herself in court as hostile to the DCF caseworker and anyone she perceived to be against her.

The court found that mother loved the children very much, but her love clouded her judgment as a parent and compromised her objectivity in assessing the needs and abilities of the children. She made choices that were detrimental to the children, including failing to work cooperatively with therapists for the boys. The court found that during the time the children had been in DCF custody, mother made virtually no progress on any of the objectives of the case plan directed at improving her parenting skills, her abilities to meet her own emotional or medical needs, and her ability to successfully parent three special needs children. Mother encouraged the children's defiant behavior, used them to protect her from those she found emotionally threatening, and insisted that they did not need counseling to address their needs. Although mother now claimed that she would support the children's IEP programs and their counseling, the court found this in marked contrast with her behavior while the children were in custody, which was characterized by defiance, opposition, and hostility.

The court also noted that mother insisted that she was pregnant, and had earlier stated her due date as October 2006. Mother reiterated that she was pregnant at the November 2006 hearing, but the court observed no signs that this was true. Mother admitted that she had not seen a gynecologist and indicated that she did not know her due date. She claimed that the baby would come when it

was ready. The court expressed serious doubt that mother was actually pregnant. It concluded, however, that if she was actually pregnant, it would further compromise her ability to meet the needs of the three boys. If she was not pregnant, her insistence that she was suggested psychiatric issues that raised concerns about her appreciation of reality and thus concerns about the well-being of children in her care.

Based on these and other findings, the court concluded that mother had stagnated in her ability to parent, and that termination of her residual parental rights was in the children's best interests. As to the most important factor in the best-interest analysis, the court concluded that mother had shown no ability to resume her parental abilities within a reasonable period of time. It explained that the children had been in DCF custody since April 2005, and mother had not worked cooperatively with her own therapist, therapists for the children, DCF caseworkers, or other counselors to assist in either meeting her own emotional needs or the special needs of her children. She had not demonstrated any increased ability or willingness to meet the children's needs. For this and other reasons, the court thus concluded that termination of mother's rights was in the children's best interests. Mother appealed.

On appeal, mother challenges the court's evaluation of the children's best interests, specifically, the court's conclusion that she would be unable to parent the children within a reasonable period of time. According to mother, the family court improperly focused on her inability to work cooperatively with service providers when it should have focused on her demonstrated ability to care for her children. Mother points to her care of J.R. and H.R. during the summer of 2005 as support for this assertion. She maintains that the family court failed to explain if her care during this period reflected poorly on her parenting skills and if DCF's reasons for removing the boys really related to the children's best interests. She states that the court made no attempt to describe the circumstances underlying DCF's decision to remove the children, i.e., the children's alleged absence from school, the nature of J.R.'s medication that mother terminated, or the children's need for therapy during the summer of 2005.

We find no error in the family court's decision. The family court must consider four statutory factors in determining whether termination of parental rights is in a child's best interests. See 33 V.S.A. § 5540. The most important factor is the likelihood that the natural parent will be able to resume his or her parental duties within a reasonable period of time. See *In re B.M.*, 165 Vt. 331, 336 (1996). As long as the court applied the proper standard, we will not disturb its findings on appeal unless they are clearly erroneous; we will affirm its conclusions if they are supported by the findings. *In re G.S.*, 153 Vt. 651, 652 (1990) (mem.).

In this case, the court evaluated the statutory factors, and its conclusion that termination of mother's residual parental rights was in the children's best interests is supported by the record. As reflected above, the court concluded that during the time the children were in DCF custody, mother made virtually no progress on any of the objectives of the case plan directed at improving her parenting skills, her abilities to meet her own emotional or medical needs, or her ability to successfully parent three special needs children. Mother refused to engage in counseling, she was defiant and hostile toward those trying to assist the family, and her behavior precluded her from gaining any parenting skills or insight into the needs of her children. Contrary to mother's assertion,

the court did not improperly focus on mother's behavior with service providers, but rather, it legitimately considered how mother's behavior toward these providers impacted her ability to parent the children and address their needs.

While mother asserts that her behavior in the summer of 2005 offers the "best test" of her ability to parent, it is not the role of this Court to second guess the family court or reweigh the evidence. In re S.B., 174 Vt. 427, 429 (2002). The family court's findings as to why DCF removed the children from mother's home is supported by the record. The record also shows that during the year after the children were removed from mother's home, mother failed to make any progress in improving her parenting skills, and she was wholly unable to tailor her behavior to meet the children's needs. She was combative with DCF employees, and with other professionals trying to assist the family. Indeed, after April 2006, she stopped contacting DCF for visitation, and when visitation was suspended, she refused to take the necessary steps that would have allowed her to see the children. The court's conclusion that termination of mother's rights was in the children's best interests is supported by the evidence, and we find no error.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Brian L. Burgess, Associate Justice