

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2007-042

JUNE TERM, 2007

In re M.E., Juvenile

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APPEALED FROM:

Chittenden Family Court

DOCKET NO. F512-10-04 CnJv

Trial Judge: David A. Jenkins

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

Father appeals the family court's order terminating his parental rights with respect to his daughter, M.E. We affirm.

M.E. was born in October 2001. Father and the mother were not married and had a violent and abusive relationship. Father never lived with the child, but began visiting her when she was eight months old after his paternity was confirmed. The Department For Families and Children (DCF) filed a CHINS (child in need of care and supervision) petition in October 2004 as the result of mother's substance abuse, lack of supervision, and unstable home environment. M.E. was placed in foster care with the mother's sister. The family court restricted father to supervised visitation because of his significant criminal history, his on-going probationary status, his previous positive drug tests, and his recent refusals to be tested. In March 2005, M.E. was adjudicated CHINS based on mother's stipulation. The ensuing disposition order, which was based in part on an unchallenged disposition report, called for continued DCF custody with a goal of reunification with the mother. The court also noted in the order that father could be an alternative placement option in the event the mother failed in her reunification efforts, but that father had not completed a long overdue substance abuse assessment. The plan of services included recommendations for father to address issues concerning substance abuse, anger management, domestic violence, and consistent visitation.

In November 2005, DCF filed a petition to terminate parental rights because of the parents' failure to meet case plan objectives. In April 2006, the mother relinquished her parental rights conditioned upon the family court's termination of father's parental rights. Following hearings in April and May 2006, the court terminated father's parental rights upon concluding that: (1) there was a substantial change in material circumstances because father had not participated in any meaningful way in the recommended plan of services and had not made progress in addressing the critical issues that brought his daughter into state custody; and (2) termination of parental rights was in the best

interests of the child because father had not played a constructive role in the child's life and would not be able to resume parental duties within a reasonable period of time. See In re S.M., 163 Vt. 136, 138-39 (1994) (before modifying an existing disposition order and terminating parental rights, the family court must first find a substantial change in material circumstances, and then must determine that the best interests of the child requires termination).

On appeal, father argues that reversal is required because the family court based its termination order, in part, on its conclusion that he did not play a constructive role in M.E.'s life, which, in turn was based on its unsupported finding that visitation had been harmful to M.E. We find no merit to this argument. In calling for reversal of the termination order, father focuses on a single statement in the court's twenty-four-page decision noting that father's "continued pattern of inconsistent visitation with the child is harmful and confusing to" M.E. This statement is in fact a conclusion that the court made based on its numerous findings, which were supported by the record, detailing father's sporadic visitation with the child over the course of her life. The record is replete with evidence of father's failure to visit M.E. on a consistent basis since she was placed in DCF custody, and there was also testimony indicating that the child was hurt and confused by the fact that her parents were not consistently a part of her life. Further, even if the evidence did not support the challenged conclusion, there was overwhelming evidence supporting the family court's findings and conclusions that: (1) father had failed to participate meaningfully in services aimed at addressing problems that prevented him from assuming a parental role; (2) father had failed to visit M.E. consistently during her years in DCF custody; (3) father had not played a constructive role in M.E.'s life; (4) father would not be able to assume parental duties within a reasonable period of time; and (5) M.E. was thriving in her foster home. In short, we find no basis for reversing the family court's order. See In re A.F., 160 Vt. 175, 178 (1993) (determining that, even without the unsupported findings and conclusions, the remaining findings and conclusions supported the family court's termination order).

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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Denise R. Johnson, Associate Justice