

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-287

NOVEMBER TERM, 2007

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| In re S.R.T., T.R.F. and J.R., Juveniles | } | APPEALED FROM: |
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| | } | Chittenden Family Court |
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| | } | DOCKET NOS. 199-4-02 Cnjv, |
| | | 390-9-05 Cnjv & |
| | | 391-9-05 Cnjv |

Trial Judge: Brian J. Grearson

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

Mother appeals from the termination of her parental rights in children S.R.T., T.R.F., and J.R. She argues that the family court erred in concluding that she would be unable to parent within a reasonable period of time. We affirm.

S.R.T. was born to mother in February 2001 when mother was fifteen. In January 2002, mother was substantiated as a risk of harm to S.R.T. due to a physical altercation between mother and mother's sister. Both mother and S.R.T. were found to be children in need of care or services (CHINS) and they were placed in the custody of the Department for Children and Families (DCF). Mother's behavior continued to escalate, and DCF filed a CHINS petition on behalf of mother's unborn child, T.R.F. T.R.F. was born in May 2002 and he was taken into DCF custody. He was adjudicated CHINS in June 2002. In late August 2004, S.R.T. was placed with mother and T.R.F. was placed with his father, although both children remained in DCF custody. Mother regained custody of S.R.T. in February 2005. In March 2005, T.R.F. was removed from father's care and placed with mother. Mother gave birth to J.R. in June 2005. One month later, mother asked DCF to remove T.R.F. from her home because of his aggressive behavior towards the baby, and the child was removed. In August 2005, DCF received a report that mother's home was "unsuitable for human occupancy," due to rotting food, "an unpleasant, over-powering smell" and trash and filth everywhere. A new CHINS petition was filed on behalf of S.R.T. and J.R. in September 2005, and the court granted temporary custody of the children to DCF. In January 2006, mother admitted that S.R.T. and J.R. were CHINS due to her long history with DCF, her non-compliance with the existing case plan, and her failure to provide the children with appropriate housing. In August 2006, DCF moved to terminate mother's residual parental rights. After several days of hearings, the family court granted its request.

The family court made numerous findings of fact, none of which mother challenges on appeal. The court explained that the most recent case plan, adopted in April 2006, required mother to show significant progress within three months, and she failed to do so. She did not complete a substance abuse evaluation, she did not start counseling, she did not have a stable living situation, and she failed, for the third time, to follow through with a parent educator. Mother had not visited S.R.T. or J.T. since May 2006, and mother's visits and phone calls with T.R. had been discontinued in April 2006. Mother had lived in more than fifteen different residences during the children's lives, often subjecting them to unsanitary living conditions and an atmosphere of physical abuse and neglect. Mother had been unable to provide safe or suitable housing for her children, maintain steady employment, and she failed to take advantage of the numerous services offered to assist her with these issues. The court found that mother's lack of parenting skills and the children's need for the same were demonstrated during the supervised visits, where mother's lack of nurturing, discipline, and emotional response to her children's needs were noted. Mother was unable to respond to cues as to her children's needs, and mother responded to parenting suggestions with anger and derision. The court also found that the children were doing well in their foster placements and they could remain in the same placements if freed for adoption.

Based on these and numerous other findings, the court concluded that mother had stagnated in her ability to parent the children, and it was in the children's best interests that her residual rights be terminated. In evaluating the children's best interests, the court considered the factors set forth in 33 V.S.A. § 5540, and found that they all supported termination. As to the most important factor, the court found no likelihood that mother would be able to resume her parental duties within a reasonable period of time. It reiterated many of the findings set forth above, and concluded that mother's failure to engage in any of the numerous services offered to her demonstrated that she was unable to resume her parenting role within a reasonable period of time. The court noted that mother had made no progress whatsoever in the year prior to the termination hearing, while during this same period, the children had finally begun to establish some stability in their living situations. Mother appealed from the court's order.

Mother contends that the court's conclusion that she would not be able to parent within a reasonable period of time lacks an adequate factual basis. According to mother, the court's decision was based in part on findings that the children were likely to be adopted by their foster parents. Mother maintains that, given this, the family court should have analyzed factors set forth in 15A V.S.A. § 3-703(a)(4) to determine if the probate court, faced with an adoption petition, would likely find that these foster parents were suitable adoptive parents.

This argument is without merit. The family court must consider four statutory factors to determine whether termination of a parent's rights is in the best interests of a child. 33 V.S.A. § 5540. These factors include a consideration of the children's relationship with their foster families and their adjustment to their foster home, as well as the most important factor—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). In contrast, the family court has no statutory obligation whatsoever to make findings concerning the suitability of prospective adoptive parents in deciding if termination of parental rights is in a child's best interests. As long as the family 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.).

The family court plainly applied the proper standard here and its decision is amply supported by the record. Contrary to mother's assertion, the court's conclusion that mother would be unable to parent the children within a reasonable period of time was not based on findings that the children were likely to be adopted by their foster parents. Rather, as reflected above, the court's conclusion rested upon mother's consistent failure to engage in the numerous services offered to her, and the absence of any indication that her behavior would change. As the court explained, mother had a minimal understanding of her children's needs and she had resisted all efforts to assist her in understanding those needs and how to address them. The court explicitly found that mother's naïve understanding of the children's needs conclusively demonstrated that she could not resume her parental role in a reasonable time. We find no basis to disturb the court's conclusion.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice