

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2007-469

MAY TERM, 2008

In re L.P.-M.

} APPEALED FROM:  
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}  
} Chittenden Family Court  
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}  
} DOCKET NO. 299-6-06 CnJv

Trial Judge: Brian J. Grearson

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

Mother appeals from a family court order terminating her parental rights to the minor L.P.-M. She contends the court applied an incorrect legal standard to a termination at the initial disposition proceeding. We affirm.

The material facts may be summarized as follows. L.P.-M. was born in May 2006. The identity of the father was unknown at the time of these proceedings. Mother had three children before L.P.-M., each with a different father. Two of the children live with their respective fathers, and one with his paternal grandparents. Mother has not been the primary care provider for any of the older children since 2004, owing to her addiction to a number of prescription drugs. In 2005, mother sought treatment for substance abuse at Serenity House, but relapsed a short time after discharge and was admitted to Conifer House, where her pregnancy resulted in a subsequent placement at the Lund Family Center in December 2005.

In January 2006, mother was convicted of a number of criminal charges, including welfare fraud, DUI, and theft. She was placed on probation, which included a condition that she complete the Lund parenting education and substance abuse program. Shortly thereafter, however, mother was discharged from Lund for rule violations, although she continued for a time in the day treatment program. Immediately after leaving Lund, mother was involved in additional theft-related offenses on the U.V.M. campus, where she was receiving methadone treatment.

In May 2006, mother was readmitted to Lund in contemplation of the birth of L.P.-M., who was born addicted to methadone and as a result required hospitalization to taper off the drug. Mother was again discharged from Lund in June 2006, based on the facility's conclusion that she required more intensive treatment for substance abuse and multiple safety concerns

relating to mother's care of the child. Upon her discharge, mother placed the child with her cousin's family, where he has remained ever since. Mother was then admitted to another residential treatment program, Valley Vista, where she stayed until late June 2006. Upon her discharge, mother was arrested on additional charges of theft and resisting arrest, and was incarcerated on violation-of-probation charges. In November 2006, she pled guilty to the pending criminal charges and was sentenced to eighteen months to ten years, with a recommendation that she participate in an intensive substance abuse program in prison. In July 2007, after one year in prison, mother was released on a furlough program. While incarcerated, she had been the subject of eight disciplinary reports, including a failure to submit to urinalysis and several infractions involving the possession of drugs.

The State's involvement with the minor commenced in late June 2006, when it filed a CHINS petition alleging abuse and neglect based on mother's second discharge from Lund and concerns about her substance abuse and resulting inability to parent the child. In August 2006, while incarcerated, mother stipulated to a finding of CHINS. A scheduled disposition hearing in October 2006, was continued pending mother's sentencing in November, after which the State—based on the length of the sentence and the age of the child—determined to file for termination of parental rights. A two-day evidentiary hearing was held in July 2007, and the court issued its written decision the following November.

In extensive findings and conclusions, the court reviewed the evidence in light of the four fundamental criteria relating to the best interests of the child under 33 V.S.A. § 5540. In sum, the court found that the child had little or no relationship with mother, noting that he was in her care for less than a month after he was born, under the protective setting of the Lund facility, and that he had lived continuously for more than a year since then with mother's cousin, her husband, and their three children. The court further found that mother's visitation with the child had been severely limited while she was incarcerated from July 2006 to July 2007, not all of which was her fault, although the court observed that her incarceration was mother's "sole responsibility." In contrast, the child had enjoyed a stable and secure home life with his foster family, and had bonded not only with the parents but their three children as well. He was adjusted and well integrated into the only home he had ever known, where he was happy and thriving.

As to the critical question of whether mother could resume parental responsibilities within a reasonable period of time, the court found against mother. For over two years mother had been unable to remain substance-free for any length of time. Despite numerous attempts at rehabilitation in various settings, including Serenity House, Conifer Park, Valley Vista, and prison, she had failed to maintain sobriety. She had been discharged twice from the Lund Center for both substance abuse and safety infractions, and cited for drug possession while incarcerated. Although maintaining that she had been drug free since her release from prison, she had attended no treatment programs or counseling. She had been unemployed for over two years prior to the minor's birth, and remained so. She had been living in a homeless shelter before her incarceration, and had obtained no independent residence since her release. In short, the instability that had preceded the minor's birth for over two years had continued thereafter, and her lack of employment, housing, history of substance abuse and repeated failures at treatment demonstrated—in the court's view—that there was no likelihood mother could resume her parental responsibilities within a reasonable period of time.

Finally, the court found that, while there was no doubt about mother's affection for the child, her contact with the child had been severely limited by her incarceration and substance abuse, and she had played no constructive role in the child's life. Thus, the court found by clear and convincing evidence that termination of parental rights was in the child's best interests, and accordingly granted the petition and transferred custody to the Commissioner of the Department for Children and Families without limitation as to adoption. This appeal followed.

Although mother contends that the court failed to "articulate" the correct legal standard applicable to termination proceedings at the initial disposition stage, it is clear that she claims the court actually applied an incorrect standard. Her argument appears to be two-fold. First, she faults the court's citation to Paquette v. Paquette, 146 Vt. 83, 89 (1985), a custody rather than a termination case, for the principle that the "best interest of the child has always been regarded as superior to the right of parental custody." A review of the court's decision as a whole, however, reveals that it articulated and applied the proper standard for termination proceedings, citing, among other cases, In re D.R., 136 Vt. 478, 481 (1978) for the principle that while "[o]ur polestar has been the best interests of the child . . . the rights of the parents must be considered." Indeed, while acknowledging that the parental rights are "fundamental," the trial court here correctly observed that they are "not absolute and may be overcome when the child's best interests require." Accordingly, we find no error in this regard.

Mother further asserts that the standard for a termination of parental rights at the initial disposition proceeding is higher than at a later dispositional review, and that the court here improperly failed to "err" on the side of preserving parental rights. Although we have cautioned that "termination at initial disposition should be rare because it bars all hope of family reunion," In re B.M., 165 Vt. 194, 199 (1996), we have not adopted or applied a separate or higher standard in such proceedings, relying instead on the generally rigorous standards articulated in our statutes and case law requiring a showing by clear and convincing evidence that termination is in the best interests of the child under certain enumerated criteria. See In re J.T., 166 Vt. 173, 177 (1997) (observing that parental rights may be terminated "at the initial disposition hearing if the court finds it to be in the best interests of the child to do so"). The trial court here scrupulously analyzed the record evidence in the light of these standards in reaching its decision, and we therefore discern no error, nor any grounds to disturb the judgment on this basis.

Mother also specifically asserts that a court properly "erring" on the side of preserving parental rights would have afforded greater weight to her claim that she had been drug free for four months since her release from prison. As noted, however, the court applied the correct standard to the evidence, which fully justified the court's finding that mother had demonstrated no ability to remain drug free for any reasonable length of time, as well as its conclusion that mother could not resume parental responsibilities within a reasonable period of time. As we have held, this factor must be considered from the perspective of the child, In re J.L., 2007 VT 32, ¶ 9, 928 A.2d 474 (mem.), in this case a rapidly developing fourteen-month old who had already spent nearly his entire life in foster care. We therefore find no error.

Mother additionally contends the court placed undue weight on her incarceration. In fact, the court acknowledged that some of the impediments to prison visits with the child were not mother's fault, but also reasonably concluded that her imprisonment, and its impact on her

relationship with the child, was her sole responsibility. In re K.F., 2004 VT 40, ¶ 12, 176 Vt. 636 (mem.) (noting that parent bore sole responsibility for frequent incarceration).

Finally, mother asserts that the trial court erroneously implied that a deterioration in the relationship between mother and the child’s foster mother would limit future contact and therefore represent an obstacle to reunification. In its decision, the court observed that the relationship in question had “deteriorated” to the point that when mother was released from prison and contacted the foster mother to arrange a visit with the child she was told to contact DCF, but failed to do so. The record supports the court’s finding concerning the occurrence, but not necessarily its interpretation that it resulted from a deteriorating relationship. Any error in this regard was plainly harmless, however, as the court made no further mention of the matter and there is nothing in its decision to suggest that it considered the relationship an obstacle to further contact with the child or reunification with mother. See In re B.S., 163 Vt. 445, 454 (1995) (rejecting claim that erroneous admission of evidence required reversal of termination decision where there was no showing that court’s use of information was prejudicial to parent). Accordingly, we find no basis to disturb the judgment.

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