

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-277

NOVEMBER TERM, 2008

In re K.L. and B.L., Juveniles	}	APPEALED FROM:
	}	
	}	
	}	Chittenden Family Court
	}	
	}	
	}	DOCKET NO. F22/23-1-05 CnJv

Trial Judge: Mark J. Keller

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

Mother and father independently appeal from the family court's order terminating their parental rights with respect to their two sons, K.L. and B.L. We affirm.

K.L. was born in January 2000, and B.L. was born in March 2001. The family came to the attention of the Department for Children and Families (DCF) in 2002 when the Department received reports of the children, then just toddlers, playing unsupervised in the road. A juvenile case was opened, and a protective order was issued requiring the parents to engage in parent-education services and substance-abuse treatment. Because of the parties' noncompliance with the order, the boys were found to be children in need of care or supervision (CHINS). The September 2003 disposition report identified problems concerning substance abuse, supervision of the children, home stability, and domestic violence, among others. By January 2004, the children were living with father, and the case was closed.

In January 2005, the boys were taken into emergency DCF custody after police executed a search warrant at the family's residence and discovered drugs. As it turned out, not only had father allowed mother to move in with him and the children, in violation of a protective order, but also was involved in using and selling drugs and providing them to mother. In February 2005, the boys were again adjudicated CHINS, and a second disposition order recommended reunification with one or both of the parents. The June 2005 case plan called for a concurrent plan of either reunification or termination with adjudication. In the summer of 2005, mother was convicted of felony drug use and given a suspended sentence, while father was convicted of multiple offenses and given a two-to-ten-year sentence. Father was incarcerated for approximately two years, from August 2005 until September 2007.

In August 2005, DCF filed a petition to terminate the parents' parental rights with respect to the boys and to a daughter born in August 2004. The petition was granted as to the girl, but denied as to the boys. In September 2006, with mother showing improvement in her recovery from drug abuse, the boys were placed with mother. During the following year, mother tested positive for cocaine on several occasions, and she was discharged from two drug treatment programs. In September 2007, K.L. was seriously injured when he walked in front of a car believing that he had special powers that would stop the car with his eyes. Mother had not taken K.L. directly to his classroom that day, as she was required to do with the special-needs class he was in. She admitted to using cocaine during the two week period before this accident.

In November 2007, DCF filed a renewed petition to terminate both mother's and father's parental rights to the boys. Following four days of hearings, the family court granted the petition, concluding that there had been a substantial change in material circumstances, and that the best interests of the children in light of the factors set forth in 33 V.S.A. § 5540 required termination of parental rights. See 33 V.S.A. § 5532(a); In re B.W., 162 Vt. 287, 291 (1994) (stating that to terminate parental rights, the family court must make a threshold finding that there has been a substantial change in material circumstances, and further must find that the children's best interests require termination of parental rights). After detailing the extensive services that mother had received over several years, the court found that she had not made any fundamental changes in her parenting, which had an adverse impact on the children, and almost cost K.L. his life. The court further found that mother continued to engage in drug use and to enter into destructive relationships with men. The court also found that father had made little progress in his parenting skills and had been absent from the children's lives for two critical years because of his drug activities. The court stressed the children's immediate need for stability and a positive environment, something that the parents had failed to provide over a long period of time despite the availability of significant services to help them.

On appeal, both mother and father first argue that the evidence does not support the family court's finding that there was a substantial change in material circumstances. We find no merit to this argument. With regard to mother, the court found that her continued drug use and inability to safeguard her children amounted to changed circumstances. The record supports this finding, notwithstanding mother's reliance on testimony indicating that she had made some progress in some areas. It is undisputed that mother tested positive for cocaine on a number of occasions, as late as September 2007, and yet continued to deny her drug problem up until the final termination hearing. She was unable to stop her drug use despite the significant support and services she received and the adverse impact that her drug use had on her ability to parent her children. This plainly amounted to changed circumstances in the form of stagnation, even assuming she had made some progress in some areas of parenting. See In re D.M., 2004 VT 41, ¶ 7, 176 Vt. 639 (mem.) ("The key question for the court when considering whether stagnation has occurred is whether the parent has made progress in ameliorating the conditions that led to state intervention."); In re D.B., 161 Vt. 217, 220 (1993) (noting that "stagnation may be found even though a parent's generalized parenting skills improve").

Father fares no better on the issue of changed circumstances. Although father had already served approximately a year in prison at the time the family court denied DCF's previous termination petition, he remained in prison and out of the children's lives for another critical year during the children's development. As the court pointed out, his absence from his children's

lives was the result of his drug activity, which he continued despite numerous services offered to help him and mother with their drug problems. While in prison, father was disciplined on a number of occasions based on reports charging him with disruptive and threatening behavior, among other things. Father may have been drug-free for a lengthy period at the time of the final hearing, but the family court's finding that he was "in the first steps of his recovery" was not clearly erroneous, given his long history of drug use and the fact that he had not yet demonstrated that he could remain drug-free outside a strictly supervised setting, such as prison or a "sober house," where he was living at the time. There was also evidence that father had made little, if any, progress in his parenting skills. In short, there was ample evidence to support the court's finding of a substantial change in material circumstances with respect to father, as well as mother.

Notwithstanding mother's and father's arguments to the contrary, the record also supports the family court's conclusion that the children's best interests, considering the factors set forth in § 5540, require termination of parental rights. The family court detailed the children's difficult childhood and strong need for stability in their lives. While acknowledging mother's love for the boys, the court found that neither mother's nor father's relationship with the children had been a constructive one because of the ill effects resulting from their drug use. The court found that the children were slowly adjusting to their new home and community, but had not had a chance to bond with their current foster family. Nevertheless, the court found that the children were in immediate need of peace and security, and that neither parent would be able to offer such an environment or resume parental duties within a reasonable period of time.

Mother asks this Court to reverse the family court because she loves her children and is making progress with her drug problems. Unfortunately, the record demonstrates that, despite years of extensive services made available to her, she has not been able to overcome her drug problems or provide the boys with a safe and stable environment. As the trial court found, mother's drug problems persist and endanger her children, who are in desperate need for stability.

As for father, he contends that the family court failed to make adequate findings to assess the bond between him and his children. We disagree. The court stated that it was unclear from the evidence whether father had demonstrated love for the children. The court noted that father had been out of the children's lives for two critical years, and that his apparent interest in their placement appeared to have more to do with competition than any demonstrated love. Apart from the testimony of father's brother and sister-in-law that the boys were attached to father, there was no evidence demonstrating a current bond between father and the boys. It was the court's responsibility to assess the credibility and demeanor of witnesses and to weigh evidence. Here, the court addressed each of the factors set forth in § 5540 and made adequate findings regarding each factor. Moreover, the record supports the court's conclusion that those factors require termination of parental rights.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice