

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

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-318

JAN 14 2009

JANUARY TERM, 2009

In re C.P.P., Juvenile

} APPEALED FROM:
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}
} Addison Family Court
}
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} DOCKET NO. 20-2-07 Anjv

Trial Judge: Helen M. Toor

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

Mother appeals from a family court order terminating her residual parental rights to the minor C.P.P. She contends the court's best-interests analysis lacked a rational basis because it failed to account for the fact that the permanency plan was to maintain custody of C.P.P. with his father rather than to free him for adoption. We affirm.

The material facts may be summarized as follows. C.P.P. was born in October 2002. For the first four years of his life mother was his custodian and father had visitation rights on weekends. In 2004, DCF began working with mother because of her addiction to crack cocaine and alcohol abuse, although it is undisputed that mother's substance-abuse problems had been ongoing for many years before that. Mother's history of criminal convictions, including five felony convictions, dates back almost twenty years; since 1992, she has been under the supervision of the Department of Corrections for all but two and a half years. She was on probation at the time of DCF's intervention.

Despite DCF's efforts in conjunction with the probation department to induce mother to enter treatment, she gave birth to another child in 2006 who tested positive for cocaine at birth. Thereafter, it was reported that mother and her husband were smoking crack cocaine in the baby's presence, and mother tested positive for cocaine on four occasions, yet continued to refuse to enter residential treatment. As a result, DCF took custody of the children in February 2007, and mother stipulated to an adjudication of CHINS the following month. DCF placed C.P.P. with father, where he has remained to this date.

In May 2007, mother again tested positive for cocaine. The disposition report approved that month called for reunification and required mother to comply with outpatient drug treatment programs and submit to ongoing drug testing, comply with all her probation conditions, obtain

suitable housing, maintain a drug-free lifestyle, and engage in individual therapy. Within several weeks of the report, however, mother failed to appear at a probation violation hearing based on earlier allegations of drug use and non-attendance at a drug treatment program, failed to maintain contact with DCF, failed to engage in any treatment programs, and failed to appear for a psychological assessment and urine screens. Mother was arrested in August 2007. Her probation was revoked, and mother was sentenced to serve the balance of her term, with a minimum release date of May 2009 (although she could be furloughed 90 days earlier). In addition, at the time of the termination hearing in May 2008, mother was awaiting sentencing in New York State after pleading guilty to two charges of felony possession of cocaine.

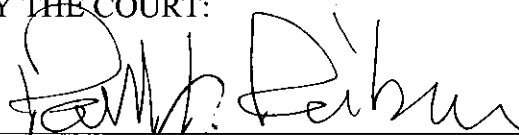
The family court found a substantial change of circumstances based upon mother's failure to meet the goals of the case plan. Although the court acknowledged that mother had recently made some progress in certain programs since being incarcerated in August 2007, it found that this was insufficient to meet the expectations of the case plan. Assessing the child's best interests, the court noted that mother had not seen or interacted with the child for more than one year, having withdrawn her initial request for prison visits, and currently played no role in his life. C.P.P. remained with his father, who provided a loving home, and C.P.P. had adjusted well to his school. On the key issue of mother's ability to resume parental responsibilities within a reasonable time, the court noted that mother's incarceration would last until at least February 2009 if not longer. It also found that, in light of her lengthy history of substance abuse and determined resistance to counseling and other assistance, the point, if any, at which mother could provide adequate and safe parenting would extend substantially beyond her incarceration, a period well beyond the child's need for permanence and stability. Accordingly, the court concluded that termination was in C.P.P.'s best interests, and granted the petition. This appeal followed.

Mother challenges none of these factual findings, but argues instead that the court improperly failed to take into account that the permanency plan was to discharge C.P.P. to his father, rather to release him for adoption. Since adoption was not contemplated, and termination was unnecessary to release the child to father, mother asserts that the termination order was improper. The claim is unpersuasive. As the family court here correctly observed, we have in the past affirmed one-parent terminations. See In re A.D.T., 174 Vt. 369, 376-77 (2002). Further, there is nothing in the statutory best-interests criteria that requires consideration of the particular permanency plan contemplated for the child (or more specifically the other parent's availability), the need for or likelihood of adoption, or the suitability of prospective adoptive parents. See In re S.B., 174 Vt. 427, 430 (2002) (mem.) (“[W]e have repeatedly stated ‘that a valid termination of parental rights does not depend on the availability of permanent foster care or adoption.’” (quoting In re D.M., 162 Vt. 33, 40 (1994)); In re E.B., 158 Vt. 8, 15 (1992) (termination of parental rights does not depend on alternative placement). As we explained in In re S.B., 174 Vt. at 428, a termination proceeding “is not a custody case” in which the family court must balance the respective advantages of different placement options, but rather “a legislatively created . . . proceeding in which the court is required to weigh specified statutory factors when determining whether to grant a petition for termination of residual parental rights.” The family court duly weighed these factors here and determined by clear and convincing evidence that mother could not resume her parental rights and responsibilities within a reasonable time, and that the balance of factors compelled a termination of parental rights. We find nothing lacking in that analysis.

Mother also appears to challenge several of the court's other findings or lack thereof. She contends the court was not "mindful" of the proposed placement with father. As noted, the court was not required to consider the permanency placement option, but did, in fact, discuss the child's good relationship with father and adjustment to his home. Mother also challenges as unfounded DCF's concern that mother would interfere with father's custody absent a termination of parental rights, but there is no evidence that this concern played any role in the court's decision. Finally, mother contends the court overlooked the child's relationship with his maternal grandparents, but the court's decision shows that it specifically acknowledged the stability that relationship had provided for the child in the past, but determined that other factors militated in favor of termination. We find no basis to disturb that conclusion. See In re S.B., 174 Vt. at 429 (our role is not to second-guess the family court or re-weigh the evidence).

Affirmed.

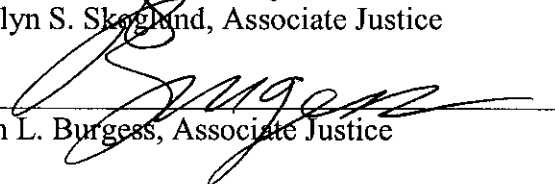
BY THE COURT:



Paul L. Reiber, Chief Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice