

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

ENTRY ORDER

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2009-029

SEP 4 2009

SEPTEMBER TERM, 2009

In re A.M. and E.M., Juveniles

} APPEALED FROM:

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} Washington Family Court

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} DOCKET NO. F84/85-6-07 Wnjv

Trial Judge: Thomas J. Devine

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

Parents appeal from the family court's order terminating their residual parental rights in A.M. and E.M. They argue that the court erred in rejecting the recommendation of a certain witness. We affirm.

The record indicates the following. Both parents have cognitive limitations. Their children, E.M., age two, and A.M., age one, have a range of special needs, including extraordinary medical needs. Both children were diagnosed with failure to thrive, and both are in the lowest percentile for height and weight. A.M. has reflux issues, including urinary reflux issues. E.M. has a rare form of anemia, which in the absence of constant monitoring, could be fatal. The children have been in the custody of the Department for Children and Families since June 2007. Parents stipulated that the children were in need of care or supervision (CHINS).

Following a three-day hearing, the court concluded that termination of parents' residual parental rights was in the children's best interests. It found that parents loved the children, but despite the provision of numerous services over the course of a year, parents continued to struggle to master basic parenting skills. While the parents showed some progress, they failed to demonstrate an understanding of the children's medical needs or the ability to gain such insights within a reasonable period of time. The court also found that while parents' relationship seemed relatively stable at present, it had been marred by domestic violence in the past. Father had been incarcerated for choking mother, and he violated probation by seeing mother. Parents recently had another child together, and the court found that the presence of a newborn in the home made the outcome of an already challenging reunification plan extremely doubtful. The court explained that the children were living together in a stable foster home and their foster parents were willing to adopt them. The foster parents were meeting the children's needs, and they had been able to easily coordinate the children's demanding care schedules. The court found that the children were strongly bonded to their foster parents and to one another.

In its decision, the court considered the testimony of Dr. Susan Yuan, a psychologist who was asked to evaluate both the parents' ability to parent as well as their service needs. In her

revised report, Dr. Yuan recommended reunification of both children with parents to the extent that mother and father could maintain a family unit. Dr. Yuan proposed a community-care model, where parents would receive extensive services, including over twenty hours per week of in-home services from a peer navigator and other service providers. To ensure that E.M.'s health was monitored, Dr. Yuan also recommended that there be daily check-ins from a visiting nurse.

In evaluating this testimony, the court noted that father had made real progress in his domestic violence programming and that the parents intended to remain together. The court found, however, that mother's insistence that there was never any abuse suggested that she lacked insight into the dynamics of abuse. Equally troubling to the court was mother's involvement in maintaining clandestine contact with father during the time period that he was under conditions of probation. Father's probation officer saw mother walking home from father's apartment in the early morning hours, and parent's third child was conceived during a time that parents were under family court and district court no-contact orders. If further violence arose, the court concluded, mother's willingness to report it and thereby protect the children seemed in question. The court found that this could be a fragile foundation for a reunification plan.

The court ultimately concluded that it would be irresponsible to order reunification before parents had demonstrated proficiency in addressing the children's medical needs. Given the amount of time it took parents to master less difficult topics, parents would need much more time to gain the necessary additional skills. In light of the children's young age, the length of time they had been separated from their parents, and their strong adjustment to their present placement, the court found it apparent that such a lengthy additional time period would not be in the children's best interests. Based on these and other reasons, the court granted DCF's petition to terminate parents' rights. This appeal followed.

Mother argues that the family court erred in rejecting the testimony of Dr. Yuan. Mother states that Dr. Yuan's recommendation as to reunification hinged on parents' ability to maintain a stable family unit. She suggests that the court erroneously found that the family unit was potentially unstable because mother refused to admit that father had abused her. She also asserts that the stability of the family unit does not depend on her willingness to report future abuse. Father joins mother's brief.

Mother misapprehends the basis of the court's decision. As we have often stated, to determine if termination of parental rights is in a child's best interests, the family court must consider four statutory factors. See 33 V.S.A. § 5540 (recodified at 33 V.S.A. § 5114). The most important factor in the court's analysis is 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). As long as the 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.).


We find no grounds to disturb the court's decision here. Dr. Yuan was not asked to evaluate if the termination of parents' rights was in the children's best interests. She specifically acknowledged in her testimony that she had not considered what effect her recommendation would have on the children. In any event, the court did not err in observing that Dr. Yuan's

recommendation, which was based on the stability of the family unit, could be a fragile foundation for a reunification plan. The record supports the court's finding that mother minimized her abuse at the hands of father, suggesting she lacks insight into the dynamics of abuse. Mother also admitted seeing father in violation of court orders. The court reasonably concluded that mother might be reluctant to contact the police if further violence arose, thereby placing the children in danger. The court was justified in noting that while the family might appear stable now, the future stability of this family unit was not assured.

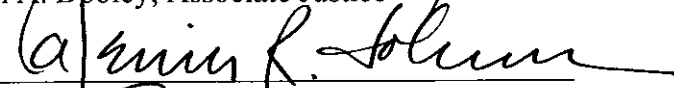
More importantly, the family court's decision in this case did not hinge on the stability of the family unit or on its evaluation of Dr. Yuan's testimony. The family court properly considered all of the evidence and applied the factors set forth by statute. As recounted above, the court's decision was based on parents' inability to acquire basic skills, despite the ongoing provision of services. Given the children's extraordinary medical needs, the length of time the children had been in custody, and their young ages, among other factors, the court concluded that parents would not be able to resume their parental duties within a reasonable period of time as measured from the children's perspective. The court made ample findings to support its conclusion that termination of parents' rights was in the children's best interests, and its findings are supported by the record. We find no error.

Affirmed.

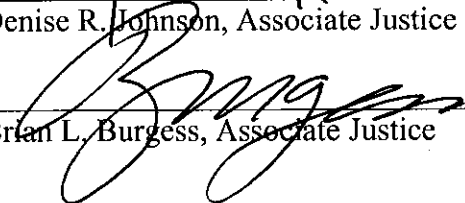
BY THE COURT:



John A. Dpooley, Associate Justice



Denise R. Johnson, Associate Justice



Brian L. Burgess, Associate Justice