

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. 2009-203

OCT 8 2009

OCTOBER TERM, 2009

In re N.B., Juvenile

} APPEALED FROM:
}
} Windham Family Court
}
} DOCKET NO. 6-1-08 Wmjv

Trial Judge: Ellen H. Maloney

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

Mother appeals from the termination of her residual parental rights in N.B. She argues that the court may have given too much weight to one of the statutory factors—her inability to parent N.B. within a reasonable period of time—in reaching its conclusion. She also asserts that the court made contradictory findings and that its findings misconstrued the evidence. We affirm the family court's decision.

Mother has five children by four different fathers. She has a long history of exposing her children to domestic violence and known sex offenders. Three of her children were fathered by men who have been convicted or substantiated for sexual offenses and domestic assault. None of mother's children live with her. Mother's rights in two of her children, J.B. and D.B., were terminated in 2006 after mother repeatedly exposed the children to at least two known sex offenders. J.B. later disclosed being sexually abused by these men. N.B. was born to mother in 2005; N.B.'s father is also a convicted sex offender. In January 2008, the Department for Children and Families (DCF) learned that a different sex offender had been present in mother's home (the same individual facing charges for abusing J.B.) and that mother's domestic partner had threatened to kill mother and N.B. N.B. was taken into emergency custody of the DCF, and she was eventually placed in the same foster home where two of her siblings reside.

The State moved to terminate mother's rights, and following a hearing, the court granted its request. The court found that mother had demonstrated her inability to make necessary changes that would allow N.B. to live safely in her home. Mother continued to allow sex offenders to reside with her, and she repeatedly entered into violent relationships. While mother had been provided a wide range of services through DCF over the course of five years, she had shown little or no benefit from them. Her life choices had not changed. Indeed, the court explained, notwithstanding almost five years of education and support, mother allowed the man who sexually molested her son to return to live with her and N.B. Mother also continued her relationship with a woman who threatened to kill her and N.B. Mother remained unable to control her own anger, or prioritize N.B.'s needs, and she lacked insight into her parental shortcomings.

The court found that N.B. was doing very well in her foster placement. Her foster parents sought to adopt N.B., as they had done for N.B.'s siblings. The foster parents were also committed to therapeutic parenting for N.B., and they were able to address N.B.'s behavioral issues in constructive ways. The court noted that the foster parents were open to appropriate communication with mother.

After evaluating the evidence in light of the factors set forth in 33 V.S.A. § 5114, the court concluded that mother would not be able to parent N.B. within a reasonable period of time, and that termination of mother's rights was in N.B.'s best interests. Mother appealed from this order.

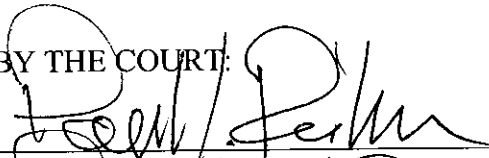
By statute, the family court must consider four factors in determining if termination of parental rights is in a child's best interests. 33 V.S.A. § 5114. The most important factor in the court's analysis is the likelihood that the natural parent will be able to resume his or her parental duties within a reasonable period of time. 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, and we will affirm its conclusions if they are supported by the findings." In re G.S., 153 Vt. 651, 652 (1990) (mem.).

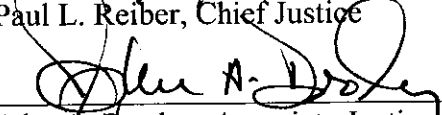
Mother first asserts, generally, that even if a person cannot parent his or her child within a reasonable period of time, the remaining statutory factors could weigh against terminating a parent's rights. She suggests that the court here may not have understood that it must evaluate all of the factors under § 5114 in reaching its conclusion. This argument is wholly without merit. The record plainly shows that the court considered all of the statutory factors, mindful that mother's inability to parent within a reasonable period of time was the most important factor. We do not repeat all of the court's findings here, but we note that none of the statutory factors favored mother in this case. The record amply supports the court's numerous findings, and its findings support the court's conclusion that termination of mother's rights was warranted.

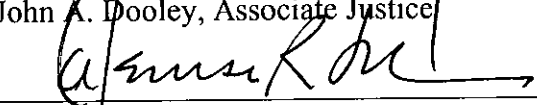
Mother's remaining arguments are equally without merit. Mother maintains that the court made contradictory findings. Specifically, she points to the court's finding that N.B.'s foster parents acknowledged mother's "important" role in the child's life, which she argues is inconsistent with the court's finding that "[t]he evidence is not strong on [mother's] role in N.B.'s life." She also cites the court's finding that mother's failure to attend one-third of her visits with N.B. while the child was in custody most likely decreased mother's role. These findings are not inconsistent. The court made the latter observations in evaluating whether mother had played and continued to play a constructive role in the child's life. See 33 V.S.A. § 5114(a)(4). The fact that a child's birth parent may be significant to the child does not mean that the parent had a positive role in the child's life. Indeed, the overwhelming evidence is to the contrary in this case. Finally, we reject mother's assertion that the court should have given more attention to the positive aspects of her visits with N.B., rather than stating only that the visits were emotionally problematic for the child. As we have often repeated, the weight of the evidence is a matter to be decided by the family court, not this Court. Kanaan v. Kanaan, 163 Vt. 402, 405 (1995). We find no basis to disturb the court's decision.

Affirmed.

BY THE COURT:


Paul L. Reiber, Chief Justice


John A. Dooley, Associate Justice


Denise R. Johnson, Associate Justice