

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

FEB 25 2010

SUPREME COURT DOCKET NO. 2009-400

FEBRUARY TERM, 2010

In re A.P., A.P. and A.P., Juveniles	}	APPEALED FROM:
	}	
	}	
	}	Windham Family Court
	}	
	}	
	}	DOCKET NO. 50/51/52-4-07 Wmdm
	}	
	}	Trial Judge: Katherine A. Hayes

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

Mother appeals from a family court order terminating her residual parental rights to the minors. Mother contends the court failed adequately to explain why it chose to terminate parental rights despite finding that she had a positive and loving relationship with the children. For the reasons set forth below, we affirm.

This appeal concerns three children, twin girls who were ten years old at the time of the termination hearing, and their older brother who was fifteen. The children came into the custody of the Department for Children and Families in April 2007 for being habitually truant from school during the prior six months. The children were adjudicated CHINS in May 2007. The initial disposition report, filed in July 2007, noted that the family faced “multiple risk factors” that included mother’s inability to attend to the children’s medical needs, ensure their school attendance, provide a safe home environment, keep the home free of dog urine and feces, maintain her own psychiatric health, and understand the children’s physical, developmental and emotional needs. Although the children initially remained with mother, they were placed in foster care in July 2007, after it was determined that mother remained unable to attend to their needs, and they have remained there ever since. A petition to terminate parental rights was filed in January 2009. A three-day evidentiary hearing was held in August 2009, and the court issued its written decision in October 2009.

As the court found, and the evidence showed, many of the problems and goals identified in the initial case plan concerned mother’s inability to cope with her three older sons, ranging in age from seventeen to twenty years old, who lived intermittently at home with mother. Substantial evidence was adduced at the hearing detailing the chaotic, unstable, and violent home environment resulting, in part, from the presence of the older children. Two of the brothers have had multiple police contacts, and the house was chronically filled with their friends and girlfriends. As a result, the younger children were regularly exposed to violence, criminal activity, drugs and alcohol, and sexually inappropriate behavior. In addition, police and social workers reported that the brothers kept multiple dogs in the home, several of which were vicious, wild, and untrained, and all of which were unattended to the point that the house reeked of dog urine and feces and posed a health risk. Mother suffers from a neurological disorder for which she receives SSI benefits, as well as mental health (bi-polar disorder) and communication

difficulties, and was generally unable or unwilling to control the older children or require them to leave the house.

When initially placed in foster care, the twin girls were developmentally delayed and exhibited behavioral problems, and one was diagnosed with post-traumatic stress disorder. Both have since adapted completely to their foster home and are doing well in school, engaged in extracurricular activities, and regularly seeing counselors. Their brother, who was placed in a nearby foster home and regularly visits both girls, has also adjusted well to his foster home and is achieving good grades, participating in sports, and is well regarded by teachers and coaches.

In applying the statutory best-interests criteria, 33 V.S.A. § 5114, the court found that mother had a loving and positive relationship with the children and had made affirmative efforts to stay involved in their lives through visits and attending school functions and sports events. The court also noted that mother had met some of the case plan goals, including those relating to managing her finances and traveling to Keene to obtain free food from the food shelf. The court further found, however, that mother had made no progress whatsoever in restricting household access to the older children and their friends, or in protecting the younger children from witnessing the resulting violence, sexually inappropriate behavior, criminal activity, and the like. As the court observed, mother was unable or unwilling to exercise any control over the older children or their friends and associates, “whose pattern of sexual activity, violence, drug use, criminal acts, and other antisocial behavior would be a risk to all of the younger children There has been no significant change in the pattern of police involvement and calls to the home because of these young men, their friends, and their various activities”

The court further found mother had failed to make any sustained or consistent improvements in maintaining the household hygiene. Together, these findings demonstrated to the court that mother was unable to maintain a minimally safe, stable and healthy environment. Her failure to make any progress at all in this area over time demonstrated that she would not be able to resume parental responsibilities within a reasonable period of time. The children, the court concluded, “deserve permanent, safe, secure and well-regulated homes now.” Accordingly, the court granted the State’s petition. This appeal followed.

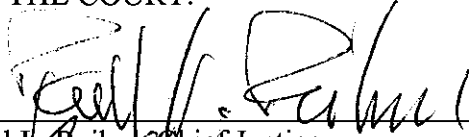
Mother challenges none of the court’s factual findings, but rather asserts that it treated the findings concerning her positive relationship and interactions with the children as mere “surplus,” and failed to explain why it chose to terminate parental rights despite these favorable findings. Our review of a family court ruling in this area is limited. “Our role is not to second-guess the family court or to reweigh the evidence” In re S.B., 174 Vt. 427, 429 (2002) (mem.). The court’s findings may not be disturbed if supported by clear and convincing evidence, nor will we upset its conclusions of law if reasonably supported by the findings. In re A.W., 167 Vt. 601, 603 (1998) (mem.).

With these standards in mind, we find no support for mother’s claim that the trial court treated the evidence and findings concerning her loving and positive relationship with the children as a nullity. On the contrary, the trial court fully recognized mother’s “passionate desire to help and love her children,” and went to great lengths to explain why it had “regretfully” concluded that the children’s need for “permanent, safe, secure, and well-regulated homes now” dictated its decision. We have repeatedly stated that “the most important of the statutory factors is the third one—whether the parents will be able to resume their parental duties within a reasonable period of time,” In re S.B., 174 Vt. at 429, and the court’s decision here made clear that mother’s demonstrated inability over time to provide a safe and stable home environment simply outweighed the other factors in this case. We thus find no error.

Mother also appears to suggest that the trial court erroneously failed to weigh the older child's expressed reluctance to be adopted and the uncertainty about adoption by the younger children's foster parents, owing to the ill health of the foster father. This is not one of the statutory factors for which findings are required, however, and "we have repeatedly stated that a valid termination of parental rights does not depend on the availability of permanent foster care or adoption." *Id.* at 430 (quotation omitted). Accordingly, we find no error, and no basis to disturb the judgment.

Affirmed.

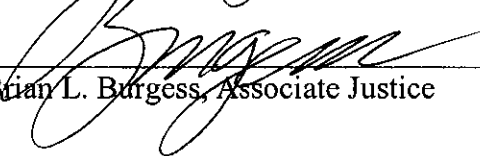
BY THE COURT:



Paul L. Reiber, Chief Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice