

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-200

SEPTEMBER TERM, 2017

In re J.H. and K.H., Juveniles	}	APPEALED FROM:
	}	
	}	Superior Court, Caledonia Unit,
	}	Family Division
	}	
	}	DOCKET NOS. 5-1-16 & 7-1-16 Cajv

Trial Judge: Robert R. Bent

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

Mother appeals the superior court's order terminating her parental rights with respect to her children, J.H. and K.H. We affirm.

Mother does not challenge any of the court's findings, which reveal the following facts. J.H. was born in February 2007 and later diagnosed with autism. K.H. was born in June 2008. In January 2016, the Department for Children and Families (DCF) became involved with the family after receiving evidence that the children were being exposed to substantial and significant domestic violence while in mother's care and a report that mother had left a residential drug treatment center for heroin addiction against medical advice. When she left treatment, she took the children to stay with her abusive partner in a hotel in violation of his conditions of probation. He was on probation following conviction of three felonies in connection with one of the assaults on mother. An Emergency Care Order issued on January 12, 2016 and the children went to live with the maternal grandmother, who had cared for the children regularly at mother's request. The children have lived with the maternal grandmother and her husband ever since.

On March 4, 2016, pursuant to a merits stipulation, the children were adjudicated children in need of care or supervision (CHINS) based on mother having maintained an abusive relationship, having failed to follow through on substance abuse treatment, and having failed to get the children to medical appointments.

In May 2016, the court adopted a disposition plan with concurrent goals of reunification with mother and adoption. The disposition plan goals required mother, among other things, to participate in substance abuse treatment, to avoid using nonprescribed substances, to develop an understanding of the impact that the children's exposure to substance abuse and domestic violence had on their emotional development, to obtain stable housing, and to consistently attend family time visits. The plan set forth a completion date of September 2016.

After the children were placed in DCF custody in January 2016, mother moved to Grand Isle from Caledonia County, where she had been living and where the children were living with the maternal grandmother and her husband. Until she moved back to Caledonia County in March 2016, mother had mostly only limited telephone contact with the children. Upon her return to

Caledonia County, a contact schedule was reestablished and mother was required to begin substance abuse treatment at Northeast Kingdom Human Services. During this time, mother developed a relationship with a man who lived in Rouses Point, New York. Sometime in May 2016, mother left for New York with that man, despite having recently reassured her children that she would never leave them again. Mother later reported that the man had kidnapped her and forcibly taken her to New York. The man was never charged with a crime, and the superior court found that mother's kidnapping story was not credible. Except for a brief period in the spring of 2016, mother essentially had no personal contact with the children between January and September 2016. The court found that mother's absence during this period was the result of her own decisions. Approximately three months after returning to Caledonia County for a second time in September 2016, mother moved to Barton, where she accepted housing in exchange for work. That situation developed into a romantic relationship with her employer beginning in early 2017.

Meanwhile, in July 2016, DCF filed a petition to terminate mother's and the father's* parental rights. A hearing on the petition concerning mother was held on February 16 and March 10, 2017. In May 2017, the superior court issued its decision to terminate mother's parental rights. The court determined that mother had failed to follow the essential goals set out in the disposition plan, most especially that she have consistent contact with the children. The court found that mother had resided in at least ten different locations since the children came into DCF custody in January 2016, had not reached a point of stability in her life in terms of housing and romantic relationships, had failed to gain insight into how the children's exposure to domestic violence impacted the children, and had effectively abandoned the children for long periods of time. The court further found that the children needed a stable home with clear boundaries and that, as their therapist opined, they "would therapeutically regress were they to believe that one outcome for their future could include the possibility of returning to their mother's care."

Based on these and other findings, the court determined that there had been a change of circumstances through stagnation as the result of mother not engaging in a focused and timely effort to reestablish a relationship with her children as required by the disposition plan. See 33 V.S.A. § 5113(b) (stating that court may modify order on grounds that change in circumstances requires such action to serve children's best interests). The court concluded that mother had not complied with the expectations in the plan aimed at providing some sense of stability and permanence in the children's lives. Regarding the statutory best interests factors, the court concluded that mother's continuing habit of entering into new relationships had a destabilizing and disruptive impact on the children; that mother was unable to provide stability in the children's lives, which was critical for their development; and that mother's continuing instability demonstrated that she would not be able to resume her parental duties within a reasonable period of time from the perspective of the children, as evidenced in part by mother's position that she was not seeking reunification at the time of the termination hearing but hoped to be able to do so within a year or so. See *id.* § 5114(a) (listing best-interest factors).

On appeal, mother does not challenge any of the superior court's findings or conclusions but argues that its termination decision was irrational given that the maternal grandmother had not committed to adopting the children and that the termination of father's parental rights was still in doubt. According to mother, there is no evidence that the children would benefit from a permanent severance of all relations with her. In her view, the children are being adequately cared for now

* The father had been absent from the children's lives and had not participated in the CHINS proceedings. His parental rights were terminated in a separate proceeding on August 12, 2017.

by the maternal grandmother, who has not committed to adopt them, and thus there is no risk to the children in waiting for mother to reach the point when she will be able to parent them.

We conclude that the court's findings and conclusions, which are unchallenged and are supported by the evidence, in turn support the court's termination order. Regarding the alleged uncertainty as to the father's parental rights, father has not been involved in the children's lives or the CHINS proceedings, and, as noted, the superior court has recently terminated his parental rights.

Regarding the maternal grandmother's commitment to the children, she testified that her intent is to provide the children with a stable home, as evidenced by her and her husband's efforts over the years to keep the children safe and to facilitate their reunification with mother, who ultimately was unable to provide the stability they needed. The record is not clear as to whether the maternal grandmother and her husband have ruled out adopting the children. In any event, as this Court has stated on multiple occasions, "an alternative placement is not a prerequisite to termination of parental rights." In re T.T., 2005 VT 30, ¶ 7, 178 Vt. 496 (mem.); see In re E.B., 158 Vt. 8, 15 (1992) ("[T]ermination of residual parental rights does not depend on the existence of an alternative placement.").

Regarding mother's assertion that the children would not benefit from the termination of her parental rights, testimony from the maternal grandmother and the children's therapist indicated that the children had significant fears stemming from their lack of certainty about their future and the prospect of being returned to mother's care. Based on this and other evidence, the court found that mother's lack of contact had "had a demonstrable impact on the children where they fear for the constancy of the adults in their lives." Further, as noted, based on testimony from the maternal grandmother and the children's therapist, the court concluded that the children would regress if they believed that they might have to return to their mother's care. In short, the record supports the court's termination order.

Affirmed.

BY THE COURT:

Paul L. Reiber, Associate Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice