

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-268

OCTOBER TERM, 2017

In re A.T., Juvenile

} APPEALED FROM:
}
} Superior Court, Caledonia Unit,
} Family Division
}
} DOCKET NO. 62-12-16 Cajv

Trial Judge: Robert R. Bent

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

Mother appeals the superior court's merits and disposition orders regarding her daughter, A.T. We affirm.

The material facts are not in dispute. A.T. was born in July 2008. Mother had been in an abusive relationship with the father of her first two children, who were eventually adopted by their paternal grandmother. Mother later married A.T.'s father, who began using drugs. When she attempted to leave him, he assaulted her, resulting in a five-year prison term. Three months before his release from prison in September 2015, mother and her family moved from Maine to Lyndonville, Vermont, for fear of their safety. During the 2015-2016 school year in the St. Johnsbury school district, when A.T. was in the second grade, she was absent fifty-one times and tardy twenty-seven times. A.T. was enrolled in the Lyndon Town School for the 2016-2017 school year. From the beginning of the school year through the first week of December, A.T. missed forty-five days of school. An assistant principal at the school contacted mother during the fall of 2016 about the absences. Mother explained that she felt A.T. was unsafe at the school because of a video that had been made available online solely for the parents of students even though she had asked the school not to take any pictures of A.T. The video depicted the back of A.T.'s head. Either mother or her husband also informed the assistant principal that they were considering moving. Mother had also removed A.T. from an individualized education plan at the school.

In October 2016, a social worker for the Department for Children and Families (DCF) was assigned to look into the matter due to concerns of educational neglect. After several unsuccessful attempts, the social worker was finally able to contact mother, who told him that she was looking into homeschooling or moving A.T. to another school and that the family might be moving. Mother never followed up with DCF to confirm that she had pursued homeschooling or placing A.T. in another school setting.

On December 9, 2016, DCF filed a petition alleging that A.T. was a child in need of care or supervision (CHINS). The affidavit accompanying the CHINS petition sought a conditional custody order (CCO) with conditions. A merits hearing was held on February 2, 2017. Mother did not appear for the hearing, but A.T.'s stepfather did. The assistant principal testified that A.T.'s "chronic absenteeism last year and this [year] are having a significant impact on her education."

A.T.'s stepfather testified that mother had gone to Maine with A.T. He also expressed his belief that A.T. was not behind in her schooling. At the conclusion of the hearing, the superior court adjudicated A.T. CHINS on grounds of educational neglect, and granted DCF custody of the child. The court found credible the assistant principal's testimony that A.T.'s absences from school over a two-year period had "had a cumulative impact which leaves her way behind." The court stated that it was not persuaded that "at this stage . . . there's any imminent threat which required the child to be kept out of school in this fashion." The court further found that mother had received sufficient notice of the hearing. The court expressed concern that mother might be attempting to evade its jurisdiction. Although the court also expressed uncertainty as to the potential impact that separation from mother would have on A.T, it didn't "see any other way around it."

On March 30, 2017, DCF filed a disposition case plan calling for continued DCF custody and a goal of reunification with mother. A contested disposition hearing was held on June 29, 2017. The State presented several witnesses. Mother was present and testified. Testimony was taken concerning visitation between mother and A.T., mother's history of domestic violence issues, A.T.'s adjustment to her foster home and school, mother's failure to follow through with planning and scheduling meetings to discuss various aspects of A.T.'s case plan, A.T.'s needs and progress, and DCF's recommendation for continued DCF custody. The DCF caseworker testified that she was recommending that mother and her current husband meet with a domestic violence specialist because of reports from Maine Protective Services indicating that there may have been domestic violence between mother and her current husband in A.T.'s presence. The case worker also recommended that mother have a mental health assessment.

Mother testified about her past abusive relationships and history. She stated that she had been diagnosed with Post-Traumatic Stress Disorder, Attention-Deficit/Hyperactivity Disorder, and Battered Women's Syndrome. She also stated that she would abide by any court-imposed condition requiring a mental-health assessment as well as any follow-up counseling. Moreover, she stated that she would abide by the conditions of a CCO.

At the conclusion of the hearing, the superior court adopted DCF's disposition plan calling for continued DCF custody with a goal of reunification with mother. The court reasoned that mother's problems getting A.T. to school had continued over two school years and that she was "exercising hypervigilance" in response to a video that, in the court's estimation, presented "minimal risk" to A.T. The court acknowledged that DCF initially sought only a CCO but eventually realized that there were deeper problems, including mother's mental health issues. The court emphasized that it was critical to assure visits were taking place because of a concern over the effect A.T.'s separation from mother could have on the child.

On appeal, mother challenges both the custody order issued at the merits hearing and the disposition order. She first argues that the superior court's first custody decision lacks a rational basis, given the court's uncertainty as to the impact on A.T. resulting from her separation from mother and the option of a CCO with a readily verifiable condition requiring mother to send A.T. to school.

We conclude that the superior court's stated reasons for granting DCF custody at the merits hearing support its decision. Mother had failed to have A.T. consistently attend school during the two-year period in which the family had been living in Vermont and she had failed to appear for the merits hearing, having taken A.T. to Maine. In any event, given that mother is opposing A.T.'s placement at the merits hearing, the issue is moot because the disposition order superseded the order of custody made at the merits hearing. Cf. *In re A.M.*, 2017 VT 5, ¶ 10 (stating that where father did not oppose CHINS finding, his challenge to court's refusal to grant him custody pending

disposition was effectively mooted by disposition order); In re A.O., 161 Vt. 302, 307 (1994) (refusing to consider father’s challenge to family court’s assessment of its authority to order limited term of state custody at disposition, given that eighteen-month disposition hearing had already been held at time of oral argument on appeal).

Mother raises a similar argument, however, regarding the superior court’s disposition order. She contends that the court expressed concern over potential damage resulting from A.T.’s separation from mother, but took no concrete action to safeguard the child’s interests in that regard. She further states that easily verifiable conditions of a CCO could assure that mother and A.T. engage in counseling and that A.T. attend school on a consistent basis. According to mother, the language used by the court in its oral findings and conclusions indicates that it was speculating as to whether mother’s safety concerns were legitimate and whether mother’s mental health issues had any impact on her parenting.

We conclude that the record supports the court’s disposition order. See In re S.B., 174 Vt. 427, 429 (2002) (mem.) (stating that this Court’s role in reviewing CHINS decisions “is not to second-guess the family court or to reweigh the evidence, but rather to determine whether the court abused its discretion”). There was evidence that mother’s failure to have A.T. attend school extended over two school years, in part because of what appeared to be her unsubstantiated fear that the school video had exposed A.T. to danger, that she had shown some reluctance to work with state agencies and service providers, and that she had mental health issues that had the potential to interfere with her ability to seek out the assistance she needed and, more importantly, a corresponding history of failure to take the steps necessary to meet A.T.’s educational needs. The fact that the court surmised that mother suffered from depression, absent any evidence on this issue, was harmless insofar as the court’s order was based on mother’s actions and behavior rather than the court’s inferences about her mental health. Taken as a whole, the evidence supported the court’s disposition order. The record before us does not compel this Court to require the superior court to issue a CCO with conditions rather than DCF custody.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice