

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2002-204

AUGUST TERM, 2002

In re K.H., Juvenile

}	APPEALED FROM:
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}	Chittenden Family Court
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}	DOCKET NO. F480-10-01 Cnjb
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}	Trial Judge: Dean Pineles
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In the above-entitled cause, the Clerk will enter:

Mother appeals from a family court order terminating her parental rights to the minor. She contends the evidence failed to support the court's findings that: (1) she would not be able to resume parental duties within a reasonable period of time; and (2) she had abandoned the minor. We affirm.

The court's undisputed findings may be summarized as follows. K. H. was born on October 2, 2001. She was methadone dependent at birth because of her mother's heroin use while pregnant. Because of her condition, K.H. was taken into the custody of the Department of Social and Rehabilitation Services six days after her birth and placed with foster parents, where she has since remained. Mother was offered extensive visitation with the minor, and was referred to a number of services, including parent education at the Lund Home and Easter Seals, and outpatient substance abuse treatment. Although she initially followed the visitation schedule, by October 19, 2001, mother became increasingly late for visits, and then failed to appear for a series of visits from the end of October through the middle of November. Her last contact with the child was November 3.

On November 14, the court granted a motion by SRS to suspend visitation based upon mother's failure to appear for scheduled visits and failure to participate in substance abuse, education, and counseling services. The motion was not opposed by mother. Mother failed to appear for a scheduled merits hearing in November, which was rescheduled for December. Although on notice, mother again failed to appear for the hearing. K.H. was adjudicated CHINS, and SRS recommended termination of parental rights. After several missed hearings by mother, the TPR hearing took place in April 2002. Mother was represented by counsel but did not attend, and the evidence adduced by SRS was uncontested.

At the conclusion of the hearing, the court made oral findings of fact, and subsequently issued a written decision incorporating its oral findings and setting forth its conclusions of law. Notably, the court found that mother had consistently failed to avail herself of repeated offers of assistance to help her overcome her drug dependence and other parenting obstacles, and had failed to establish a stable residence; indeed, her whereabouts at the time of the hearing were unknown. Furthermore, mother had had no contact with the child for some time, and had effectively abandoned her. K.H. had lived with her foster parents practically since birth, and had a stable, safe, loving and nurturing home with them. Based on these findings, the court concluded that mother had not played a constructive role in the child's life; that she had shown no willingness or ability to overcome her numerous obstacles to parenting the child; that she would not be able to assume her parental responsibilities within a reasonable period of time. Accordingly, the court ordered that

parental rights be terminated, and that custody without limitation as to adoption be transferred to SRS. This appeal followed.

Mother contends the evidence failed to support the court's finding that she would not be able to resume parental duties within a reasonable period time. This factor, which we have characterized as the most critical factor in a termination case, focuses on the parent's prospective ability to parent, although past events are relevant to determining whether the parent can resume parental duties. In re B.M., 165 Vt. 331, 337 (1996). What is a reasonable period of time must be measured in terms of the child's needs. Id. Here, the uncontested evidence of mother's consistent failure to avail herself of drug-abuse, counseling and education services necessary to resume her parental responsibilities, failure to establish a stable home, and failure to maintain a visitation schedule with the child overwhelmingly supported the finding that she would not be able to resume her parental responsibilities within a reasonable period of time. See In re A.F., 160 Vt. 175, 178 (1993) (court's findings will stand unless clearly erroneous, and its conclusions will be upheld if supported by findings). Although mother also suggests that the court's finding that the minor was thriving in her foster home was irrelevant to its determination of the best interests of the child, we have held otherwise. See In re C.H. & M.H., 170 Vt. 603, 605 (2000) (mem.) (approving termination of parental rights which relied, in part, on court's finding that children had positive interaction with foster parents); 33 V.S.A. 5540(1) (best interests determination includes child's interaction with foster parents).

Mother also contends the court erred in finding that she had abandoned the child, noting that she had followed the visitation schedule for a period of time in October 2001, and that her visits were suspended following the hearing in mid-November. The court's finding of abandonment was not based on the period of time following the suspension of visitation, but was reasonably founded on mother's failure not only to show-up for a series of visits in late October and early November, but also her total failure to attend drug-abuse treatment and parent education classes, to meet with SRS workers, and to attend scheduled hearings relating to the resumption of her parental responsibilities. The court's finding was reasonable and supported by the evidence.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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James L. Morse, Associate Justice

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Marilyn S. Skoglund, Associate Justice