



*Note: In the case title, an asterisk (\*) indicates an appellant and a double asterisk (\*\*) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

## **ENTRY ORDER**

FEBRUARY TERM, 2022

In re R.S., J.S., I.S., Juveniles	}	APPEALED FROM:
(S.C., Interested Party*)	}	
	}	Superior Court, Bennington Unit,
	}	Family Division
	}	CASE NO. 64-4-19 Bnjv; 65-4-19 Bnjv;
		66-4-19 Bnjv
		Trial Judge: Kerry Ann McDonald-Cady

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

Appellant S.C. is the maternal uncle of the juveniles in these proceedings and appeals a family division order denying his motion for party status. We affirm.

Juveniles are siblings and were removed from their parents' care in April 2019 after the State filed a petition alleging that they were children in need of care or supervision (CHINS). The family court transferred custody of the juveniles to the Department for Children and Families (DCF). I.S. was initially placed with her maternal grandmother, who became a licensed foster parent. R.S. and J.S. were placed in a different foster home and had regular overnight visits with grandmother. Uncle also lived in grandmother's home and assisted with caring for the children, but he was not licensed as a foster parent.

In September 2020, there was a report that uncle physically abused J.S. As a result, DCF immediately discontinued overnight visits with J.S. and R.S. at grandmother's home. DCF substantiated the abuse in December 2020. The substantiation led DCF to remove I.S. from grandmother's home.

In June 2021, when motions to terminate parents' rights were pending in the CHINS proceeding, uncle filed a motion for party status. Uncle alleged that DCF had been unwilling to consider him as a permanency option for the children and that he had not been permitted to see the children.<sup>1</sup> Uncle argued that he was entitled to party status because he had been an integral part of the children's lives and wanted to be a placement for all the children. He alleged that he had not yet been substantiated and urged the court to include him as a party so that he could

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<sup>1</sup> The record reflects that uncle at one time applied for licensure as a foster parent but later withdrew his application.

“have a voice in the courtroom to advocate for permanency.” The State opposed the motion, arguing that DCF could not place the children with uncle because he did not have a foster care license and had been substantiated for abuse of J.S. The State emphasized the juveniles’ need for permanency and the delays that would be caused if uncle was permitted to participate as a party in the proceedings. The juveniles also opposed uncle’s motion. Mother consented to the motion and father took no position on the motion.

The family court denied the motion for party status, concluding that uncle did not fit the definition of “party” in the statute. 33 V.S.A. § 5102(22). The court acknowledged that uncle wanted to be a permanency placement for the juveniles but concluded this desire alone was insufficient to give uncle party status in the CHINS proceeding. Uncle appeals.

The parties to a juvenile proceeding are defined by statute. 33 V.S.A. § 5102(22). Uncle does not fit within any defined statutory category of person entitled to party status. The statute empowers the family court to grant party status to a person that the court determines “to be proper and necessary to the proceedings.” *Id.* § 5102(22)(F). The terms proper and necessary are not defined by the statute. When the family court determines that a party is “proper and necessary” under § 5102(22), the court “may place limits on that person’s participation and may condition participation upon prompt compliance with such discovery as the court specifies.” V.R.F.P. 2(f)(1). We review the family court’s decision on a request for party status for an abuse of discretion. *In re E.W.*, 169 Vt. 542, 543 (1999) (mem.).

On appeal, uncle argues that the family court abused its discretion in denying his motion for party status because the court failed to consider the significant bond he had with the children or the children’s best interests. The family court properly considered all the facts, including uncle’s involvement with the children and the children’s best interests, and acted well within its discretion in finding that uncle was not proper and necessary to the proceeding. The court acknowledged uncle’s past participation in caring for the children and his desire to be a placement for the children. The court also noted, however, that uncle was substantiated for abusing J.S. and lacked a foster-care license. The court emphasized that uncle’s interest in the proceeding was as to the juveniles’ placement and not termination of parents’ rights and his involvement could delay the termination proceeding. The court also explained that mother could call uncle as a witness at the termination hearing and propose him as an alternate permanency option.<sup>2</sup> In light of the time these children had been in custody, uncle’s substantiation of abuse and lack of a foster-care license, and the need to seek permanency, the court acted reasonably in denying uncle’s motion. See 33 V.S.A. § 5101(a)(4) (providing that primary purpose of juvenile proceedings is to ensure timely permanency for children); accord *In re C.L.S.*, 2021 VT 25, ¶ 15.

Uncle’s remaining arguments are without merit. The family court was not required to consider uncle’s fitness as a caregiver or consider the factors in the de facto parentage statute, 15C V.S.A. § 501, in assessing whether to grant uncle party status. Uncle did not seek to be declared a de facto parent and there was no requirement that the court assess those factors or uncle’s general fitness to care for the children in the context of a motion for party status under § 5102(22)(F). Uncle’s due-process arguments fail because uncle has not identified a protected

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<sup>2</sup> Contrary to uncle’s assertion, the court did not improperly assign uncle’s rights to mother. The court simply noted that even though uncle did not have party status, mother was free to argue for juveniles’ placement with uncle if mother believed that was in their best interests. We note that other parties, including juveniles, were also free to call uncle as a witness and to suggest placement with him as a permanency option.

liberty interest. Given the context of uncle's request and the stage of the proceedings when uncle filed his motion, the court correctly focused on uncle's connection to the children and on uncle's relevance to the termination proceeding in assessing whether uncle met the proper-and-necessary requirement. See In re C.B., 2020 VT 80, ¶ 26, (explaining that family court's exercise of discretion in juvenile proceeding is centered on well-being of child). Ultimately, the court's decision denying him party status was within its discretion.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice