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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-370

DECEMBER TERM, 2001

In re B.L.W., Juvenile	}	
	}	APPEALED FROM:
	}	
	}	Orleans Family Court
	}	
	}	DOCKET NO. 41-4-00 Osjv
	}	
	}	Trial Judge: Dennis R. Pearson
	}	

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

Father appeals the termination of his parental rights with respect to his daughter, B.L.W. We affirm.

B.L.W. was born on December 22, 1990. In the fall of 1993, father was charged with aggravated domestic assault based on an incident in which he pointed a rifle at mother and B.L.W. Father was given a suspended sentence of two-to-eight years and released on probation. Father and mother separated shortly after this incident and eventually divorced in 1997 following a brief unsuccessful attempt at reconciliation. The final divorce order gave mother sole physical and legal parental rights and responsibilities over B.L.W. Father violated his probation conditions within weeks of his release in 1994 and spent ever-increasing periods of time incarcerated as the result of further probation violations. Because of his incarceration and other factors, he saw little of B.L.W. during those years, although he was entitled to parent-child contact under the divorce order.

In 1999, the Department of Social and Rehabilitation Services (SRS) substantiated that one of mother's partners had sexually abused B.L.W. In the Spring of 2000, mother voluntarily placed B.L.W. in SRS custody because of her inability to care for the child. In June 2000, the family court determined that B.L.W. was a child in need of care or supervision (CHINS). Mother voluntarily relinquished her parental rights, and SRS sought termination of father's parental rights at the initial disposition hearing. Following a two-day hearing, the family court terminated father's parental rights. On appeal, father argues that (1) contrary to the court's assertion, SRS had to prove his unfitness even though he was not the custodial parent; (2) SRS's failure to provide him with services is a relevant and material consideration; and (3) the court abused its discretion by not choosing among several permanency options.

Father first argues that the family court erred by concluding in a footnote that because mother was the custodial parent and had voluntarily relinquished her parental rights, SRS did not need to establish parental unfitness with respect to father. See In re B.L., 145 Vt. 586, 592 (1985) (fitness of noncustodial parent becomes issue at disposition stage of CHINS proceedings). SRS concedes on appeal that a final divorce order divesting a parent of primary physical and legal rights and responsibilities does not necessarily relieve the family court of making a finding of parental unfitness in a CHINS proceeding. SRS contends, however, that any error on the part of the court is harmless. We agree. The court's findings and conclusions, which are unchallenged and supported by the record, unequivocally establish that father was unfit to parent B.L.W. at the time of the CHINS proceedings. Father had a longtime drinking problem that resulted in him being incarcerated off and on for the previous seven years. He was incarcerated at the time of the disposition

hearing, and was not expected to be released until December 2002. He had not independently maintained his own household for years. He suffered from a major depressive disorder that was life threatening. When he drank, his repressed anger was released in emotional and threatening acts. Father's past actions contributed to B.L.W.'s very serious emotional problems, which make it imperative for her to have stable and reliable parental figures in her life immediately. In short, the evidence and the court's findings establish beyond doubt that father was an unfit parent. Cf. In re C.A., 160 Vt. 503, 505-06 (1993) (trial court's failure to use word "unfit" does not preclude finding of unfitness where balance of court's decision leaves no room for doubt); In re E.B., 158 Vt. 8, 13-14 (1992) (court's amply supported findings and conclusions clearly indicated that parents were incapable of caring for their children and would be unable to do so any time in near future; without saying "magic words," court could not have more clearly pronounced parents unfit).

Next, father argues that SRS's failure to provide services for him is relevant. We find this argument unavailing. At the time B.L.W. was placed in SRS custody and mother decided to relinquish her parental rights, father had essentially been out of his daughter's life, apart from sporadic visits, for more than six years. He had an unresolved drinking problem that resulted in increased periods of incarceration during that same period and extending right through the CHINS proceedings. B.L.W. had suffered enormous emotional trauma and was in desperate need of a stable, structured, and nurturing environment. She was diagnosed with post-traumatic stress disorder and major depression with psychotic features. Visits with father only triggered repressed fears and old patterns of negative behavior. Given this situation, SRS was well-justified in seeking termination of parental rights at initial disposition rather than expending funds to reestablish a relationship between father and B.L.W. See In re J.T., 166 Vt. 173, 177 (1997) (parental rights may be terminated at initial disposition hearing). Indeed, the psychiatrist who conducted the forensic examination of father and B.L.W. concluded that it would be at least three years before father would be able to parent B.L.W., even assuming that father successfully engaged in therapy and extensive parent training, demonstrated his commitment to overcoming his alcohol problems, and set up his own functioning household. Unfortunately for father, as the family court found, B.L.W.'s need for structure and stability was far more immediate.

Finally, father argues that the family court abused its discretion by failing to decide upon a particular permanency option. The family court terminated father's parental rights and ordered that B.L.W. be "released to the full custody of the Commissioner of SRS, without limitation as to adoption, or other suitable permanent placement." Father complains that "other suitable permanent placement" includes long-term foster care and legal guardianship, neither of which require termination of parental rights. In his view, if the court was undecided about whether to employ these options, there was no need for termination of his parental rights.

We find no abuse of discretion. The court examined the criteria set forth in 33 V.S.A. 5540 and determined that termination of parental rights was in B.L.W.'s best interests. The record amply supports the court's decision. The court made this decision following the initial disposition hearing, not a permanency hearing under 33 V.S.A. 5531, and thus was not required to make the election set forth in 5531(d). One of the disposition options in CHINS proceedings is transfer of residual parental rights to SRS. See id. 5528(3)(A). That is what the court chose to do at this juncture. Should SRS determine that adoption is not in B.L.W.'s best interests, that decision can be reviewed later at a permanency hearing. Regardless of what type of permanent placement is eventually chosen for B.L.W., the record supports the family court's decision to terminate father's parental rights.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice