

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2001-393

DECEMBER TERM, 2001

In re C.M., Juvenile	}	
	}	APPEALED FROM:
	}	
	}	Chittenden Family Court
	}	
	}	DOCKET NO. 480-9-98
	}	Cnjv
	}	
	}	Trial Judge: James R. Crucitti
	}	

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

Mother appeals from a family court judgment terminating her residual parental rights to the minor, C.M. Mother's sole contention on appeal is that the court erroneously failed to make findings explaining why it did not choose a planned permanent living arrangement such as long-term foster care as an alternative to termination of parental rights. We affirm.

The undisputed material facts may be summarized as follows. C.M. was born in April 1992, not long after mother graduated from high school. Mother ended her relationship with C.M.'s father in 1994, after he became abusive. Father was incarcerated at the time of these proceedings and did not contest the termination.

In September 1998, SRS removed C.M. and two younger step-siblings from mother's care based on reports of neglect resulting from mother's abuse of drugs, particularly cocaine. C.M. was adjudicated CHINS based in part on mother's admission that she was addicted to drugs and unable to care for her children. C.M. was placed in the care of her grandmother. Following a disposition hearing in December, the court agreed to a plan returning the children to mother's custody and requiring that mother participate in intensive outpatient drug abuse treatment, individual counseling, urine screens, parent education, and other services. In February 1999, the court granted a motion to modify the disposition order and transfer custody to SRS based on evidence that mother had tested positive for cocaine, missed urine screens, and failed to follow through with the required treatment programs. In March, SRS submitted an amended disposition report recommending a continuation of treatment and education services, or in the event of a failure to participate in these programs, a termination of parental rights.

Mother commenced the recommended services and, in June 1999, C.M. was returned to her care. In August, however, C.M. was removed for a third time from mother's care based on reports of continued drug use and neglect of C.M.. C.M. was thereupon placed in the home of an experienced foster parent, where she has since remained. Thereafter, mother continued to abuse drugs, lost her apartment and car, and pled guilty to aiding in the commission of a felony, for which she served 15 days in jail. In January 2000, SRS filed a motion to terminate mother's parental rights to the three children. At the beginning of the hearing on the motion in April 2001, mother relinquished her parental rights to the two younger children. Following the hearing, the court found that, although mother had made some recent progress in holding a job, her continued failure to maintain a stable home, attend counseling and education programs, and the fact that she faced pending criminal charges all demonstrated a stagnation in her situation constituting a material change of

circumstances. See *In re S.R.*, 157 Vt. 417, 421 (1991) (court may find substantial change of circumstances based on stagnation).

Turning to the statutory criteria for determining whether termination was in the best interests of the minor, see 33 V.S.A. 5540, the court found that although C.M. was connected to mother, and spoke with her regularly by telephone, the relationship was characterized by C.M.'s sense of responsibility for mother and her siblings resulting from mother's apparent inability to care for herself. The court noted that C.M. had made a full adjustment to her foster home, which had provided her with the consistent structure and nurturing necessary to overcome her behavior and academic problems. The court further concluded that although mother had been C.M.'s primary caregiver until court intervention, and had recently made an effort to maintain daily contact with C.M., she had not played a positive constructive role in C.M.'s life because of her continual substance abuse requiring repeated removals of C.M. from the home. Most significantly, the court concluded that mother would not be able to resume her parental responsibilities within a reasonable period of time, based on the significant problems she continued to confront in her own life; she had not completed parent education or individual counseling, claimed that she had stopped abusing drugs but had not provided verification, showed limited insight into the effect of her drug abuse on C.M., had not been able to maintain her own residence and, in fact, had moved in with a known drug addict who had recently been released from jail, and remained subject to a high risk of continued substance abuse and domestic violence. Accordingly, the court terminated mother's parental rights to C.M., and transferred custody to SRS without limitation as to adoption. This appeal followed.

Mother contests none of the foregoing factual findings, but rather contends that the findings were deficient because the court failed to explain how it selected among available options and failed to address the possibility of a "planned permanent living arrangement" such as long-term foster care. 33 V.S.A. 5531(d)(4). Mother relies on evidence that she had recently made a conscious effort to maintain contact with C.M., aided in part by C.M.'s foster mother who is a friend of C.M.'s maternal grandmother and sensitive to C.M.'s interest in maintaining contact with mother, that the child still loves her mother, and that the question of adoption by her foster parents is uncertain.

Whatever the merits of long-term foster care or legal guardianships, see *In re A.S.*, 764 A.2d 1188, 1190 (2000) (noting that 33 V.S.A. 5531(d) makes such living arrangements "the least desirable alternative" of the dispositions available), we do not read the record evidence as suggesting that they were viable or desirable alternatives in this case. The court readily acknowledged the evidence of a continuing relationship between mother and C.M., but also found that the relationship was not conducive to mother's resuming parental responsibilities, as their roles were largely reversed, where C.M. felt responsible and anxious about mother's well being, and mother showed no insight into the affect of her behavior on C.M. The evidence of C.M.'s urgent need for permanency and stability and her progress in foster care, together with mother's inability to resume parental responsibilities within a reasonable time because of her continued risk of substance abuse and unsettled living situation, amply support the court's conclusion that termination is in the minor's best interest. See *id.* at 1191 (court's findings regarding whether termination is in best interests of minor must be affirmed unless clearly erroneous).

Once a party files a petition to seek termination of parental rights in a permanency hearing, the court must make findings regarding whether there has been a substantial change in material circumstances and whether termination is in the best interests of the child." *In re A.S.*, \_\_\_ Vt. \_\_\_, \_\_\_, 764 A.2d 1188, 1191 (2000). The byproduct of this analysis is a determination as to whether TPR is, or is not, in the child's best interests. Thus, if after employing the appropriate analysis, the juvenile court concludes that TPR is in fact in the child's best interests, the court need not revisit the 33 V.S.A. 5531 options and explain why it is choosing TPR over one of the other enumerated options. Having made that determination on the basis of clear and convincing evidence, the court was not required to address the alternative disposition of long-term foster care. Accordingly, we discern no error.

Although mother belatedly argues in her reply brief that the court did not explicitly state that termination was in the child's best interests, the decision leaves no room to doubt that this was the court's ruling. See *In re E.B.*, 158 Vt. 8, 14 (1992) (findings determining best interests of child need not be in precise words of statute where meaning is otherwise plain). Nor does the fact that adoption by the foster parents was uncertain undermine the court's determination that termination of mother's parental rights was in the child's best interests. See 33 V.S.A. 5540 (although best interests determination includes child's interaction with natural parents, siblings, and foster parents, it does not mention or include adoptive parents).

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