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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-505

MARCH TERM, 2002

In re J.N. and A.N., Juveniles	}	APPEALED FROM:
	}	Chittenden Family Court
	}	DOCKET NOS. 1-1-99/543-10-98 Cnjv
	}	Trial Judge: Alden T. Bryan

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

Father appeals the family court's order terminating his parental rights with respect to his children, J.N. and A.N. We affirm.

J.N. and A.N. were born in May 1997 and July 1998, respectively. Neither mother, who is not appealing the termination order, nor father have ever provided adequate care to their children. Father's ongoing violent conduct resulted in protective orders that limited his contact with the children and prevented him from playing a significant role in their lives. A.N. was placed in the custody of the Department of Social and Rehabilitation Services (SRS) in October 1998, and J.N. was placed in SRS custody in January 1999. In March 1999, the children were adjudicated as children in need of care or supervision. At the disposition hearing, the parties agreed to, and the court approved, a case plan with a goal of reunifying the children with father, who was required to engage in a number of services. The parents were explicitly put on notice that SRS would consider filing a TPR petition if adequate progress was not made by the end of 1999.

In December 1999, SRS filed a TPR petition based on the parents' lack of progress in obtaining parental skills. In addition, father had refused to participate in anger management counseling. He was jailed in December 1999 for assaulting his partner. He was released in January 2000, but arrested and jailed again two months later on federal charges. Following two days of hearings in February 2001, the trial court terminated mother's and father's parental rights in a November 2001 order. Father appeals, arguing that the termination order must be reversed because the family court failed to explain why it was not transferring custody of the children to father's half sister.

Father does not contest any of the family court's findings and conclusions concerning either a change of circumstances or his inability to resume parental duties within a reasonable time. He contends only that the court was required to explain why it was terminating parental rights rather than appointing his half sister as a guardian and transferring custody of the children to her. Father's argument is unavailing. The family court is empowered to terminate parental rights once it has determined, by clear and convincing evidence, that there has been a change of circumstances and termination is in the best interests of the children under the criteria set forth in 33 V.S.A. 5540. In re A.S., 171 Vt. 369, 373 (2000). The court did so here, and father has failed to demonstrate that the court abused its discretion in applying those criteria. If, after employing the appropriate analysis and criteria, the family court concludes that termination is in the children's best interests, the court need not explain why it is choosing termination over the other placement options enumerated in 33 V.S.A. 5531.

That is particularly true in this case, where the parents neither formally asked the court to consider father's half-sister as a placement nor offered evidence that, standing alone, could have supported a decision to make such a placement. The brief testimony of mother and father, relied upon by father, essentially amounted to their complaining that SRS never considered father's half-sister as a placement option. In response, father's social worker testified that father had never identified his half-sister as a potential placement. There was no substantial attempt to demonstrate that father's half-sister would have been a qualified and appropriate placement under the circumstances. See 33 V.S.A. 5528(3)(B) (before individual may be considered as custodian for child in need of care or supervision, family court must find that individual is qualified to receive and care for child); In re C.A., 160 Vt. 503, 508 (1993) (court can transfer custody of child in need of care or supervision to individual pursuant to 5528(3)(B) only after making essential finding that individual is qualified under statute). Nor was there a formal request for an evaluation of such a placement, either by pre-trial motion or during the termination hearing. Under these circumstances, the court had no obligation to even consider placing the children with father's half-sister.

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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Denise R. Johnson, Associate Justice