

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-318

DECEMBER TERM, 2002

In re A.L., Juvenile	}	APPEALED FROM:
	}	
	}	Addison Family Court
	}	
	}	DOCKET NO. 11-3-01 Anjv
	}	
	}	Trial Judge: Matthew I. Katz
	}	
	}	

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

Father appeals the termination of his parental rights in his son, A.L. Father claims the court's order does not reflect any consideration of three of the four statutory factors set forth in 33 V.S.A. § 5540. He also claims the court's analysis of the single factor cited in the order " whether father could resume his parental duties within a reasonable time " was flawed. Finally, father claims that certain findings are not supported by the evidence and are therefore clearly erroneous. We affirm.

A.L. was born on July 23, 1999. On March 8, 2001, the Commissioner of the Department of Social and Rehabilitation Services (SRS) filed a petition with the Addison Family Court alleging that A.L. was in need of care and supervision (CHINS), and detained the child at that time. The court convened an evidentiary hearing on the petition on April 5, 2001, and concluded that A.L. was CHINS due to his mother's parenting deficiencies. On November 26, 2001, the court issued a disposition order transferring custody of A.L. to SRS. In January the following year, SRS moved to terminate father's rights in A.L. The court took evidence on the petition on May 22, 23, and 24, 2002. On June 25, 2002, it issued the termination order giving rise to the present appeal.

On appeal, we will uphold the court's conclusions of law if they are supported by the findings, and we will not disturb the findings if they have a basis in the evidence. In re A.F., 160 Vt. 175, 178 (1993). When considering a petition to terminate parental rights, the juvenile court must determine if the child's best interests require termination. 33 V.S.A. § 5540. The court's analysis must take into account the statutory factors set forth in § 5540. In this case, father contends the court's order fails to demonstrate that it considered all the relevant factors, and instead relied only on the third criterion under the statute. SRS counters that the court's findings indicate that it was mindful of the statutory criteria, and alternatively, that any omission was harmless. We agree.

The court found that father was responsible for his separation from A.L. by engaging in criminal behavior and repeatedly violating the terms of his probation. It found that father had little meaningful knowledge of his son as demonstrated by father's failure to be aware of A.L.'s fear of bathing, love of reading, and his short attention span. On the positive side, the court acknowledged that father changed A.L.'s diapers, fed him, held him, and played with him during visits prior to his incarceration in February 2001.

The court was also skeptical about father's ability to appreciate his criminal conduct. Father is serving time for various sex crimes related to his impregnation of a fourteen-year old girl. Although father was forbidden to have contact with the girl, the court found that he arranged for her to visit a fellow inmate resulting in a " chance" encounter with her that led to physical contact between them. In addition, father accumulated ten disciplinary reports, including one major report, in just two months during his incarceration. Although father believes he will be eligible for release in 2004, the

court found it unlikely that father will be released before completing a sex offender program, or any time prior to the minimum release date of March 2005 as his probation officer testified.

The court made additional findings relative to father's actions and inactions that bear upon his role in A.L.'s life. He never made inquiries about the conditions of mother's apartment where A.L. resided, which was described as chaotic, dark, and messy. He testified that A.L.'s mother had "learned her lesson" and that he would like to see her regain custody of the child. The court found it incredible that father would know whether mother "had learned her lesson" because their relationship had ended before A.L.'s birth and he had been incarcerated since February 2001, a month prior to SRS's CHINs petition. In light of those facts, the court found that father believes whatever serves his present personal interest.

As to father's ability to maintain employment and a stable life for his son's benefit, the court found that father had numerous jobs before his imprisonment but was fired for taking time off. Father's post-imprisonment plans for employment were unrealistic the court found. The court found father was immature and blames others for his problems. He snorted Valium when his probation officer was "stressing [him] out." Father's serial relationships with women also suggested an inability to maintain a stable life the court found.

The above findings indicate that the court considered father's relationship and interaction with A.L., see *id.* § 5540(1), the role father has played in A.L.'s life, *id.* § 5540(4), and the likelihood that father could become a parent to A.L. within a reasonable period of time, *id.* § 5540(3). Overall, father's demonstrated refusal to follow a course of action that would allow him to be a viable parent and resource for A.L., combined with father's lack of introspection and his immaturity, convinced the court that termination was in A.L.'s best interests.

Father is correct that the termination order does not include any findings or conclusions regarding A.L.'s relationship with his foster parents or his adjustment to his community, home, or school. See *id.* § 5540(1) and (2). But father does not explain what evidence related to those factors, or how that evidence should change the result in this case. In the absence of any argument explaining the prejudicial effect of the court's error, we find the court's omission harmless. V.R.C.P. 61.

Father also claims that the court erroneously analyzed whether he could resume his parenting duties within a reasonable time because it did not make any findings or conclusions about how soon A.L. must find permanency before suffering emotional or physical harm. He contends that the court simply ridiculed father for his past use of alcohol and Valium, his serial relationships with women, and his lack of stable employment rather than explain how those issues adversely impact A.L.'s best interests. We find no merit to father's argument. At the time of the termination hearing, A.L. was almost three years old. He had spent nearly half of his short life in the custody of SRS and without significant contact with father due to father's repeated criminal conduct. The court indicated that father will likely remain incarcerated until at least 2005, his prospects for stable employment after his release to support his son were unrealistic, and there was no reason to expect future positive changes in father's ability to become a parent to A.L. Even if father were released in 2004, the record establishes that he would not be ready to assume his parental duties immediately. As to father's drug use and serial sexual relationships, the adverse impact on A.L. is clear in the order. Indulging in self-prescribed medication to relieve stress imposed by the probation officer, the court found, suggests that father is unlikely to accept the assistance of social workers to help him learn effective nurturing skills. Father's sexual relationships with various women in a short time period is reflective of father's unstable life. In light of those findings, the court's failure to precisely define how much more time A.L. should remain in the limbo of foster care was harmless. *Id.* The child's young age and the overwhelming evidence of father's inability to parent the child presently, and the unlikelihood he could do so in the near future, support the court's conclusion that termination was in A.L.'s best interests. See *In re A.F.*, 160 Vt. at 178 (conclusions of law will be upheld if findings support them).

Finally, father claims two factual findings lack evidentiary support, and two findings led to improper inferences by the court. The findings he claims are clearly erroneous are (1) that the "more than ample visitation" mother provided father was not in "an infant's best interests," and (2) father "seems insensitive to age appropriate activities with" A.L. Even if those findings are clearly erroneous, the court's order still does not warrant reversal. The remaining findings, which father does not contest, are sufficient to uphold the court's conclusion that termination was in A.L.'s best interests. *Id.*

Father also complains that the court improperly faulted him for not being aware of A.L.' s short attention span, love of reading, and fear of bathing because there was no evidence that those characteristics had manifested themselves prior to father' s incarceration. Similarly, he complains that there was no evidence to suggest that he was aware of the condition of mother' s apartment where A.L. lived, and therefore he could not take any steps to remedy the situation. The import of those findings relate to father' s unwillingness to take a meaningful interest in A.L.' s welfare while he was incarcerated. We find nothing improper about the inferences the court drew from the findings because they are demonstrative of father' s failure to appreciate his role as A.L.' s parent.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice